

Steve Koc DC, New OBCE Board member

Salem chiropractor Steve Koc has been appointed by Governor Kulongoski as the newest member of the OBCE, replacing George Siegfried DC, who resigned last July. Dr. Koc was confirmed by the State Senate in late November.

Dr. Koc is a Life College East graduate and has practiced chiropractic in Georgia, California and Oregon since 1980. Since 2005 he has served as a member of the OBCE Peer Review Committee and more recently as its chairperson. In the

1990's he assisted the California Board of Chiropractic as a peer review investigator.

In his appearance before the Senate Rules and Executive Appointments Committee, Dr. Koc said, "I was always raised with the concept of giving back to the



**New OBCE member
Steve Koc DC**

community. I've been working with the current board and wanted to get more involved. I'm more of a uniter and have worked to bring minority viewpoints into the peer review process. It's time to put our (chiropractic) differences aside and work to present ourselves with a united front. This needs to become a priority."

Laser/Light Therapy Affirmed as Standard

A variety of low-level laser and light therapies (LLLT a.k.a phototherapy) are available to Oregon chiropractic physicians as a standard treatment for NMS conditions. Western States and other chiropractic colleges have current core curriculum on this subject. In addition, WSCC is continuing work on future curriculum to cover advances and new applications of technology in this field. LLLT has been used to speed wound healing, stimulate tissue repair, reduce swelling and edema, and reduce acute and chronic pain. LLLT has been popular in Europe and Asia. More recently, in 2002, the United States FDA granted 510 (k) clearances allowing for healing and pain relief with various soft tissue disorders including carpal tunnel, rheumatoid arthritis, bursitis, tendonitis and more.

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President's Report

By Minga Guerrero DC

On behalf of the Board of Chiropractic Examiners we would like to thank Jim Wilkens!

Dr. Wilkens traveled from Bend, Oregon during his 6 years on the board. Two of the six years were served as chairperson. As chair, Jim set the standard for efficiency with one meeting ending by Noon! To cover an entire board agenda in a half day is no small feat! One of Jim's legacies was the first rendition of the much discussed Clinical Justification Rule. His efforts made sure the standards for IME doctors were the same as for all treating chiropractors. We extend our thanks, Jim, for your generous spirit in giving

so much time to help the profession.

The Board extends it's thanks to Dr. George Siegfried who served 3 years on the board, including service as Vice-President. George's attendance at meetings added a unique perspective that brought about much needed discussion. We appreciate the time Dr. Siegfried gave.

We also want to thank Dr. Bonnie Malone from Sisters for her six years of service on the Peer Review Committee, including her term as chairperson. She was truly one of our stalwarts on this committee. Thanks to Dr. Michael Burke for his term on Peer Review and for his

presentations on peer review and record keeping at our New Doctors meetings, and also to Dr. Christine Robinson for her short but helpful service.

Doctors, we need your service on our OBCE committees! Please contact the Board office if you are interested in Peer Review, Rules Advisory, ETSDP or other committees.

The mission of the Oregon Board of Chiropractic Examiners is to protect and benefit the public health and safety, and promote equity in the chiropractic profession.

BackTalk is the official newsletter of the Oregon Board of Chiropractic Examiners. The Board's next meetings are March 16 and May 18, 2007. Please call the Board office for locations or look on OBCE web site at www.oregon.gov/obce

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Bonnie Malone DC (left) former Peer Review member and Jim Wilkens DC (right), former OBCE member, receive OBCE Plaques of Appreciation from President Minga Guerrero (center).

BackTalk

Laser/Light Therapy **CONTINUED FROM PAGE 2**

Following recommendations from the OBCE ETSDP committee (a.k.a. Examinations, Tests, Substances, Devices, and Procedures), the OBCE approved and reaffirmed as standard use of Class I-IIIa lasers/phototherapy for use by chiropractors (as well as certified chiropractic assistants!) as a physiotherapy modality.

The OBCE also approved use of Class IIIb & IV "hot" lasers for use by chiropractic physicians to treat NMS conditions. (Class IIIb & IV laser therapy for cosmetic purposes is still under discussion.)

Chiropractors must be properly trained for use of all LLLT, especially Class IIIb & IV. Training is usually available from the vendors of these devices. Class IIIb for NMS conditions does not require detailed special training other than provided by vendors, however use of Class IV devices requires strict adherence to safety protocols.

Phototherapy involves the application of specific wavelengths of light energy capable of penetrating into tissue and being absorbed by cells. Light energy can be produced by low level laser and/or super luminous diodes (SLDs). Sufficient energy must be delivered to target tissue to trigger a response. Light is absorbed by irradiated tissue where the light energy is transformed into biochemical energy, which is then available for photochemical cell activities.

The FDA has classified lasers into six categories based on their potential damage to the eye. They are:

Class 1: Safe to human eye or contained within device, no labeling required.

Class 2: Low power lasers with output less than 1 mW. Labeled, "CAUTION – Laser Radiation: Do not stare into beam"

Class 2a: Eye damage can occur if laser enters eye more than 1,000 seconds. Labeled: "CAUTION- Laser Radiation: Do not stare into beam"

Class 3a: Power output up to 5 mW. Direct eye contact for short periods is not hazardous, but viewing laser through magnifying optics such as eyeglasses can present a hazard. Labeled: "CAUTION- Laser Radiation: Do not stare into beam or view directly with optical instruments."

Class 3b: Involves certain risk. Laser output 5mW to 500 mW. Labeled "DANGER – Visible and/or invisible laser radiation – avoid direct exposure to beam."

Class 4: High power lasers with output greater than 500 mW. Involves definite risk. Labeled "DANGER – Visible and/or invisible laser radiation – avoid eye or skin exposure to direct or scattered beam."

According to Western States instructor Joel Agresta PT, DC, a patient treated with Class IV lasers must wear goggles. "Class IV lasers have great benefits if handled properly and can deliver more energy in less time, but

proper training and understanding of the contraindications is imperative. As far as I understand, the manufacturers (i.e., K-Lasers and Avicenna) issue specific protocols that keep these lasers safe for NMS conditions. These protocols have some degree of safety built into them. By their nature they do require a higher level of safety precaution, but when following the programmed protocols it appears that they are safe."

"Class IV lasers have great benefits if handled properly and can deliver more energy in less time, but proper training and understanding of the contraindications is imperative."

He also said by law, Class III and above must be stored in a locked cabinet. Dr. Agresta says that "photobiostimulation" stimulates or speeds up the inflammatory process and resultant healing when lower doses are used. However, he says that at higher doses starting around 100 to 200 Joules/cm² (Joules/cm² = power/beam area x time) inhibitory or negative effects may occur.

The ETSDP Committee and the OBCE reviewed a wealth of published clinical literature documenting many therapeutic applications of LLLT.

(Many thanks to Dr. Agresta for his expert advice on this subject.)

Advertising Claims Challenged

Last November the OBCE questioned the "NASA Medical Breakthrough" advertising claims of some chiropractors promoting use of spinal decompression traction devices. A typical claim is that an "Accidental Discovery by NASA in Outer Space Quickly and Easily Solves 86% of Back Pain... Astronauts that left with back pain would come back without it. So NASA did what they are good at...they investigated this new phenomenon." (The OBCE has made no conclusions about the efficacy of spinal decompression.)

A Google search of "spinal decompression" will confirm almost identical advertising claims being made by mostly chiropractors all across the country.

Information obtained by the OBCE casts doubt on the validity of these advertising claims.

One study published in *Psychosomatic Medicine* in 2001 states, "Back Pain is one of the most frequently occurring medical problems during space flight. It has been reported by 68% of astronauts."¹ Another 2001 article in the same journal states, "astronauts grow taller in space, and stretching of the spinal nerve roots can lead to back pain."² A 2004 article in *Aviation Space Environmental Medicine* states, "Lengthening of the vertebral column and associated lumbar back pain experienced by astronauts is common in microgravity."³ A paper titled "Advanced Trauma Life Support for the Injured Astronaut" states, "... back pain is common upon return to gravity and may confound physical examination of a possible spine injury."⁴

To date no credible information supporting the "NASA Medical Breakthrough" advertising claims has been provided to

the OBCE. This same advertising program consistently repeats a claim of "86% success" in treating a range of back conditions based on one study published in a trade (not peer reviewed) journal. Previously the OBCE has informed chiropractors that the 86% success rate claim violates the administrative rule that prohibits any advertising which "contains statistical or other assertions of predicted rates of success of treatment..." (OAR 811-015-0045)

Oregon Revised Statute 684.100 Grounds for discipline, Section (1)(j) says "The use of any advertising making untruthful, improper, misleading or deceptive statements." is unprofessional conduct. The OBCE's policy is that advertising statements must be supported by credible evidence.

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Dr. Megehee (right) makes a point in the Board's July 2006 meeting with Bend area doctors.

Advertising Claims Challenged

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Often the OBCE sees advertising that is concerning to them, but can't be shown to violate any law or rule. One example of that is the aggressive pursuit through the mail or by

telephone of car accident victims (accident reports are public information apparently). Another example is use of the term "miraculous" which seems to be excessive; however, one defini-

tion of "miracle" is "any amazing or wonderful event." The best the OBCE can do in these circumstances is to send a (non-disciplinary) Letter of Concern and hope that professional peer pressure can do the rest.

Advertising Tips

While advertising your practice is important, it can lead your patients to unrealistic expectations. This may lead to law suits. To help you avoid these potential law suits (or board complaints); follow the risk management tips listed below. They are designed to help promote more realistic patient expectations.

- Develop advertising that is close related to the actual services provided. This should include: type of personnel, kinds of treatments, type of facility, and equipment used.
- Capitalize on the strong points of the services offered instead of blanket advertising.
- Review all advertisements from the patient/client perspective. Ask the following questions when reviewing your promotional materials:
 1. Is this always true, in every circumstance, for every patient?
 2. Are the listed results realistic?

3. Does this provide a clear, correct message regarding the care provided?
4. Can all the promises be fulfilled without exception?
5. Does this advertisement accurately portray the standard of care you deliver?

If the answer to any of these questions is no, a closer review and modification of the ad copy must be made.

- Have your legal counsel review all advertisements, office brochures and patient handouts
- Make certain that listings in telephone books and other publications are correct, so there is no potential for misleading the public.
- Advertise accurately. Do not exaggerate.
- Avoid phrases such as: "We are the best", "We are number one", "highest quality of care", "optimal care", etc... as these may hold you to a higher standard of care.
- Do not, under any circumstances, guarantee results.

Ultimately, the challenge for the OBCE is to ensure consumers and patients are not being subjected to "untruthful, improper, misleading or deceptive statements" while recognizing the legitimate commercial free speech rights to advertise chiropractic or other services. The profession as a whole as well as the associations have an important role to play in how chiropractic is presented to the public.

1. "Depression, Mood State, and Back Pain During Microgravity Simulated by Bed Rest," Styf, Hutchinson et al, *Psychosomatic Medicine* 63:862-864 (2001)
2. "Physical and Psychological Challenges of Space Travel: An Overview," Ziegler, *Psychosomatic Medicine* 63:859-861 (2001)
3. "Back pain during 6 degrees head-down tilt approximates that during actual microgravity," Hutchinson, Watenpaugh, Convertino, Hargens; *Aviation Space Environmental Medicine*, March 1995.
4. "Advanced Trauma Life Support for the Injured Astronaut," Third Edition, Cheatham, Department of Surgical Education, Orlando Regional Medical Center.

Source: "the St. Paul Risk Prescription" St. Paul Insurance Company

Policy & Practice Questions

Question: *Several of my patients have asked if I can write a prescription for the previously over-the-counter (OTC) cold medications which have been relabeled as prescription due to the meth crisis. May chiropractic physicians still prescribe these cold medications?*

Answer: If the product is not OTC, you cannot prescribe it. Unfortunately, this will mean no prescribing Pseudofed or substances which may now be prescription drugs. . Only OTCs are allowed under the Oregon chiropractic scope of practice unless they are anesthetics or antiseptics used in conjunction with minor surgery.

Question: *A DC is taking a 150 hour course in needle EMG testing in another state. Is needle EMG within the Oregon chiropractic scope of practice?*

Answer: Yes, as long as this is strictly for diagnostic purposes.

Question: *A person with whom a DC has previously had negative interaction wishes to make an initial patient visit appointment. The DC feels very uncomfortable with this, believing this is a lawsuit waiting to happen. What is his responsibility towards this person?*

Answer: The DC is under no obligation to enter into a patient-doctor relationship. (OAR 811-035-0005 (3), Chiropractic physicians have the right to select their

cases and patients.) He should communicate this appropriately and consider suggesting an alternative DC as a courtesy.

Question: *Can an acupuncturist buy a chiropractic clinic and then employ the chiropractor?*

Answer: No. Chiropractic clinics must have majority ownership and control by licensed Oregon chiropractic physicians. That said, there is a provision for multidisciplinary clinics in OAR 811-0010-0120 (8) for a business entity majority owned and controlled by two or more health-related licensed professionals. An acupuncture clinic and a chiropractic clinic could merge under that provision. Aside from that, another health care professional such as an acupuncturist could employ a chiropractic physician (but not dictate that DC's patient care).

Question: *Does informed consent have to be in writing?*

Answer: No, but there does have to be informed consent. (OAR 811-035-0005 (2)) Also, if the DC doesn't document this in some way (writing PARQ for example) how does she prove it occurred? No specific format is required or endorsed by the OBCE, but there are many good ones in circulation. The EMEBC Patient-Doctor Chapter has an entire section including informed consent recommendations. This is available on the OBCE's web page under Educational Manual.

Question: *In regards to new OAR 811-010-0130 Other Licensed Health Care Providers, does this mean that a DC may utilize "ancillary" personnel who are offsite for patient care or diagnostics and bill insurance for services where their insurance carrier may reimburse them?"*

Answer: Yes, if you have an established relationship with the licensed health care provider as either an independent contractor or employee (e.g. x-ray).

Question: *Is it OK for a chiropractic clinic to charge a patient for missing an appointment?*

Answer: Yes, but you must first notify the patient of this and other billing procedures orally and in writing at the initial visit per the OBCE fee rule (OAR 811-015-0000 (2)).

Question: *A patient who was recently in a MVA told the DC that she deliberately ran into the other car. The DC knows this patient has some mental health issues and has been previously under professional care. What are the DC's responsibilities in this scenario?*

Answer: OBCE staff referred her to the HIPAA Imminent Danger Exception policy in the OBCE's Guide to Policy & Practice Questions. If the patient is a threat to herself or someone else or evading law enforcement, the DC is allowed to contact the

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Policy & Practice Questions

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treating MD (in this case), county mental health, or if need be law enforcement, or the DC can make the decision to delay or not contact anyone. It's really up to the DC to make the best decision with the patient and community in mind.

Question: *May DCs participate in the Rainbow Rewards marketing plan or is this a violation of the OBCE's fee-splitting prohibition? The (Colorado-based) Rainbow Rewards credit card plan is a marketing plan which is entering the Oregon market. Consumers who have a Rainbow Rewards credit card may go to a participating provider or merchant and receive a 15% discount using that credit card. In return for the increased business the merchant sends 5% of the proceeds to Rainbow Rewards as a marketing fee (a part of which is used to support charities).*

Answer: The OBCE determined this is fee-splitting and a chiropractor may not participate.

Question: *May a DC order a DEXA (bone density) scan?*

Answer: Yes. The Oregon chiropractic scope of practice for diagnostic procedures is very broad. It certainly includes diagnostics like Dual Energy X-ray Absorptiometry (DEXA)

Question: *May a DC employ a licensed Athletic Trainer to provide therapies to chiropractic patients?*

Answer: A chiropractor may employ an Athletic Trainer, however the AT's scope is limited to care related to "reha-

bilitation and/or reconditioning to facilitate recovery from an athletic injury or restore athletic function and/or performance."

Correction Noted:

First I wanted you to know that I enjoy the Backtalk very much. In the last issue there was a question about performing iontophoresis using ultrasound. Iontophoresis is the driving of charged ions into the skin through the use of an electrical current. Ultrasound functions through the use of

sound waves and not electricity. The procedure where ultrasound is used to drive molecules into the skin is called *phonophoresis*, which is allowed as long as the substance is non prescription OTC.

Melissa McMullen, D.C.
Dean of Clinics
WSSC

CE Requirements

Chiropractic physicians must complete 2 CE hours related to "Evidence-Based Outcomes Management" by January 1, 2008. This relates to amendments to OAR 811-015-0010 (Clinical Justification) adopted in January 2005.

Continuing Education courses that meet the general criteria for "Evidence-Based Outcomes Management" for the 2-hour requirement should:

- Identify "outcomes management" tools appropriate for curative chiropractic treatment. This should include both subjective or patient-driven information as well as objective or provider-driven information.

- Identify and present the evidence that supports use of these tools, and comment on the strength of this evidence.
- Present methods or protocols for use of these outcomes management tools, including documentation that carries substance, offers specific treatment approaches, and proves or not the need for ongoing care.

Also required by January 1, 2008 is seven hours of pain management CE (including a one hour online course which can be found at <http://www.oregonpain.org/Presentation.aspx>)

OBCE Public Protection Update

Final and Proposed actions May 26, 2006 to December 31, 2006

Final Actions

Terrence Hansen DC, Final Order by Default.

\$250 civil penalty for violations of ORS 676.100 and OAR 811-015-0045(3), Oregon Doctor's Title Act. "Licensee has failed to identify his profession in his newspaper advertising prior to April 1, 2006, and consistently has failed to identify his profession on his website and telephone advertising, even after being informed about the applicable law both verbally and in writing. After having properly identified his profession in his newspaper advertising on Thursday, April 13, 2006, Licensee's newspaper ad then is changed to "Hansen DC." It is the determination of the Board that the term "DC" by itself is not compliant with the advertising requirements of the Oregon Doctor's Title Act which requires use of the terms, "chiropractor," "chiropractic physician," or presumably "chiropractic" in all advertising." (6/29/2006)

Adam Lopez DC, Final Order by Default. 30-day suspension, three years probation, \$5,000 civil penalty and ProBE ethics course for sexual misconduct and boundary violations with one patient. Violations of ORS 684.100(1)(g)(A); and OAR 811-035-0015(1)(b) through(e). (7/6/2006)

Todd Hansen DC, Final Order by Default. Letter of Reprimand and \$1,000 civil penalty for unsupervised and unlicensed practice by an employee as a chiropractic assistant. Violations ORS 684.100 (1)(g) and (n); OAR 811-035-0015 (3) and (10). (7/12/2006)

James Olshove DC, Final Order by Default. Letter of Reprimand and \$1,500 civil penalty for unlicensed and unsupervised practice of massage by doctor's chiropractic assistant; substandard history and examination, and altered or fabricated chart notes. Violations of ORS 684.100(1)(g)(A) and (B), OAR 811-015-0010, 811-010-0110 (15), and 811-035-0015 (3), (4) and (12). (8/2/2006)

Jason C. Morris, DC, applicant. Consent Agreement for conditions on license related to DUI

convictions in Arizona. Applicant agrees to abide by Arizona board stipulations for probation and UA testing. Violations of ORS 684.100(1)(f) , ORS 684.100 (1)(g)(A), and OAR 811-035-0015(13). (8/6/2006)

Terry Womack DC, Final Order of Revocation and cost recovery for sexual misconduct and boundary violations with ten female patients. (Licensee had previous disciplinary order for similar violations.) The OBCE adopted the Administrative Law Judge's recommendations following a five-day contested case hearing. Violations of ORS 684.100(1)(g)(A); and OAR 811-035-0015 (1)(a) and (1)(c)(B). (Final order may be found on the OBCE's Web page.) (8/10/2006)

Mark Walsh DC, Stipulated Final Order. Six-month suspension, \$20,000 civil penalty, ten-year probation and NBCE Ethics & Boundary Examination. Licensee attempted to borrow substantial amounts of money from up to four patients. (Licensee has previous disciplinary order for charging patients credit cards without their knowledge.) Violations of ORS 684.100(1)(g)(A); and OAR 811-035-0015(8). Also altered chart notes, and billings for services not provided are violations of ORS 684.100(1)(g)(A) and OAR 811-035-0015(5) and (12), 811-035-0005(1). (8/15/2006)

Nick Toyas DC, Stipulated Final Order. One-year mentoring plan to ensure acceptable examination, clinical justification, charting and billing practices, and 12 hours additional CE in clinical record keeping and chiropractic examination procedures. Violations of 811-015-0010 (1), (3) and (4); 811-035-0005 (2), and 811-035-0015(5). Board action follows Peer Review Committee report. (9/12/2006)

Gail Ott DC, Stipulated Final Order, Letter of Reprimand and \$500 Civil Penalty. Violation of OAR 811-010-0110 (6) and (15) and ORS 684.100(1)(g)(A) in that Licensee failed to supervise certified chiropractic assistant who admitted to four instances of unsupervised massage. 10/1/2006)

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Samantha Kennedy CCA, Final Order by Default. Letter of Reprimand and \$250 Civil Penalty. Licensee admitted to four instances where she provided massage without the supervision and the on-site presence of a chiropractic physician and practiced massage without a license. Violations of OAR 811-010-0110 (6) and (15) and ORS 684.100(1)(g)(A). (11/9/2006)

Joseph Shields DC, Final Order by Default. 90 day suspension, 12 CE additional hours on risk management and documentation/chart noting, and one-year mentor program. Following interview with Licensee, the Peer Review Committee and the OBCE found Licensee did not follow the standard of care and failed to correctly assess the situation after the onset of a patient's cerebral vascular accident. Instead, he left the treatment room for several minutes, failed to contact emergency medical care even though the patient was suffering a potentially life threatening condition. This falls below the minimal standards of acceptable chiropractic practice and is a violation of ORS 684.100(1)(A) and OAR 811-035-0015 and OAR 811-015-0010(1) and (2). Charts notes were found substandard in violation of 684.100(1)(A) and OAR 811-015-0005(1). Licensee did not obtain an adequate history of this patient prior to performing the cervical spine manipulative procedures. There is a description of a "wry neck" in the charts but there is no history of onset, location, duration, intensity, radiculopathy, exacerbation or timing included in the chart notes. This information would be the standard of care for a patient who hadn't presented in the past eleven months such as this patient. This is a violation of ORS 684.100(1)(A) and OAR 811-015-0005(1) and is unprofessional conduct in not keeping accurate records on all patients, including but not limited to legible notes, and updated treatment plans. (1/9/2007)

CCA Applicants Anita Crawford, Lorie Dawn Lacy, Debra Montour, Meghan Holton agreed to Consent Orders to inform their current and prospective chiropractic employers of their misdemeanor convictions or other specified incidents.

Proposed Actions

Case # 2006-1039, Proposed Letter of Reprimand and \$1,500 Civil Penalty. Licensee advertised but failed to provide to a patient a live demonstration of the DRX9000 spinal traction unit, advertised but did provide a written recommendation of an "action plan" following the examination; advertised but did not provide a surface EMG examination. Licensee also did not identify himself as a "chiropractor," or a "chiropractic physician," which is a violation of OAR 811-015-0045(2) and (3) and the Oregon Doctors' Title Act. The examination did not support a referral or clinical justification for a MRI on the patient in violation of OAR 811-015-0010(1) and an x-rays were taken but no x-ray report was submitted by Licensee who certified that the entire patient file was submitted. This is in violation of OAR 811-030-0030(k). Licensee has requested a contested case hearing. (9/25/2006)

Case # 2006-5005. Proposed revocation of license for participating in a trust scheme devised to conceal income from the IRS. Licensee conspired with others in the sale and promotion of the trust scheme including at least five other individuals. Licensee admitted that he caused a total tax loss to the United States of approximately \$1,055,000 which included a tax loss of \$248,000 as a result of his personal participation in the trust scheme On August 7, 2006, Licensee pled guilty and was sentenced to federal prison for 20 months and was assessed a \$10,000 fine. After release, he will be on supervision for 36 months. Violations of ORS 684.100 (1)(d), and OAR 811-035-0015. ORS 684.100(9) provides the Board with authority for revocation. (11/17/2006)

Case # 2006-5013. Proposed DC license suspension and \$250 civil penalty for failure to respond to continuing education audit verification request. Violations of ORS 684.092 and OAR 811-015-0025 (11). (12/6/2006)

Case # 2006-5010. Proposed denial of CCA license application for recent Theft II conviction (applicant states she has been out of work with no income for a year, and stole \$26 in coins from laundry machines from an apartment complex where she used

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to work), and also has one DUI. Applicant is not employed by any chiropractic physician. Violations of OAR 811-010-0110(14)(b) and OAR 811-010-0110(14)(c). (11/22/2006)

Case # 2006-5012, Proposed denial of CCA license application for recent Theft II conviction for stealing clothing from a department store. Applicant has been employed by a chiropractor for two years, who is supportive of the application. (11/21/2006)

Case # 2006-5012, Proposed condition on CCA license to inform current or prospective chiropractic employers of her 1989 misdemeanor conviction for burglary and forgery (she did perform community service and provided restitution).

Case # 2005-3003, Proposed Letter of Reprimand to Licensee, two year probation and counseling for slapping a staff member and other unprofessional conduct, including failure to keep charts on

Administrative Rule Highlight

Chart Note Entries Must Be Identified

OAR 811-015-0005 (1) (b) Every page of chart notes will identify the patient by name, and the clinic of origin by name and address. Each entry will be identified by day, month, year, provider of service and author of the record.

a patient. Violations of ORS 684.100 (1)(g)(A), OAR 811-035-0015, OAR 811-035-0015(6) and OAR 811-015-0005(1).

Dismissed Complaints

During this reporting period the OBCE made a determination of insufficient evidence (I.E.) on 10 cases; no statutory violation (N.S.V.) on 11 cases, and case closed on 16 cases. violation on 4 cases, and case closed on 7 cases.

OBCE Committees Report

Recently the reconstituted ETSDP Committee (Examinations, Tests, Substances, Devices and Procedures) met to review low level laser/light therapy, Auriculotherapy and the EPEX-SCIO device. New members recently appointed are Drs. James Aungst, Chris Allen, Guillermo Bermudez, Chris Clark, Lee Cowan and Jayson Frisch. They join Drs. Judith Boothby, Jay Harris, John Lawton and Lester Lamm, and Minga Guerrero (Board liaison).



Dr. Dodi Simon (center) discusses laser light issues with the ETSDP committee November 2, 2006.

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Oxygen in Emergencies

Chiropractic physicians may obtain oxygen units on an over-the-counter non-prescription basis provided a few basic requirements are met. Use of portable oxygen units for clinic emergencies is currently taught at Western States Chiropractic College. Access to emergency oxygen could be useful in the event of a cardiac arrest or other incident in which a patient may stop or have difficulty breathing. These OTC oxygen units are readily available over the Web from a variety of distributors.

According to the FDA, any oxygen inhaled by a human or animal is considered a drug as per section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (the Act), and is required to be dispensed by prescription. *However*, the agency allows medical oxygen to be dispensed without a prescription to properly trained individuals for oxygen deficiency and resuscitation, as long as the following conditions are met:

1) A high pressure cylinder filled with medical oxygen and used for oxygen deficiency and resuscitation must have the following statement present on the drug label: "For emergency use only when administered by

properly trained personnel for oxygen deficiency and resuscitation. For all other medical applications, Rx Only."

2) The equipment intended for such use must deliver a minimum flow rate of 6 liters of oxygen per minute for a minimum of 15 minutes, and include a content gauge and an appropriate mask or administration device, and

3) Proper training is documentation that an individual has received training within the past twenty four months or other appropriate interval, in the use of emergency oxygen including

providing oxygen to both breathing and non breathing patients, and safe use and handling of emergency oxygen equipment. Training may be obtained from any nationally recognized professional organization, such as the National Safety Council, the American Heart Association, the American Red Cross, etc. Under no circumstances can emergency oxygen be used to fill high pressure cylinders or be used in a mixture or blend.

Once all of these conditions are met, an individual may have access to medical oxygen without a prescription. (11/16/06)

Oxygen

In consideration of a licensee's request to use oxygen in an emergency situation, the Board adopted the following policy:

The Board of Medical Examiners rules state that providing oxygen in an emergency situation is NOT practicing medicine; therefore it is allowable for a chiropractic physician to use in medical emergencies.

Previously, after consultation with the Board of Pharmacy, the OBCE determined that medical oxygen is on the Food and Drug Administration's list of drugs and substances which require a prescription. Based on this information, medical oxygen clearly is outside the chiropractic scope of practice. Therefore, chiropractic physicians may not prescribe oxygen for therapeutic purposes. (4/27/00) 3/16/06

TAKE THE OBCE CUSTOMER SATISFACTION SURVEY: www.oregon.gov/obce

Licensing & Continuing Education

By Kelly Bird

Both statutes and rules are very clear as to when and how an address change should be reported to the Board – “promptly,” “shall file,” “immediately notify this Board in writing” and what could happen if the change is not reported.



Regardless of these regulations, I continue to receive notices of address change at a licensee’s renewal date (or not at all), but I doubt that everyone is moving in his or her birth month! Please appreciate that I am hoping to increase our service to and for you by this reminder. These are the advantages to both of us:

1. You actually receive your renewal notice
2. You may actually receive a refund from the OBCE for overpayment of your renewal!
3. You receive informative communications from the OBCE regarding the practice of chiropractic in Oregon, or upcoming meetings in your area, or other opportunities
4. You may be notified, in advance, of illegal practices or advertising, thereby

saving yourself any complaints by the public

5. I actually will renew your licenses in a more efficient manner. Changing your address (not normally part of the automated license process), requires an entirely separate procedure and thus adds another task; It presently takes me almost a week to process a license.
6. I will actually be able to reach you if the public requests your contact information.
7. The OBCE can be even more efficient, if we also receive your EMAIL addresses.

I think the above are all great reasons to comply with the address notification requirements beyond the obvious, “it’s mandated.” Please help

me help you; send your address (and telephone!) changes at the time that they happen, not two, three or six months later.

Briefly, I have a second request regarding the use of email. The OBCE would like to provide you information via email, including public notices, newsletters, press releases, rule hearings, and other important announcements about your profession.

In order to do this efficiently, we need to know that the emails we have on file are valid. To those of you that have been including this information on your renewal notices, thank you. I have been inputting that information into our database. However, I also notice that from year to year, 50% of the email addresses change; apparently, email addresses change as frequently as rain falls in Oregon in the winter!

I appreciate your attention to both of these issues. Efficiency, with education, is our goal. Thank you for your attention and response to these mentions.

Kelly

Educational Manual Report Health Promotion & Wellness

The OBCE has requested the EMEBC (Educational Manual for Evidence Based Chiropractic) Steering Committee to begin the process of developing a Health Promotion and Wellness chapter. Dr. Meridel Gatterman, author of the recently published "Chiropractic, Health Promotion and Wellness" says this topic breaks down into four major categories. Dr. Gatterman has served as process consultant and steering committee member for many years. These are

- Wellness Promotion (evaluation, screening, risk

assessment, counseling for lifestyle modification)

- Nutrition (healthy eating, supplements, weight control, food sensitivities, allergies)
- Activities (fitness, exercise, stress management, posture and spinal health)
- Occupational Health (environmental health, injury prevention, ergonomics)

The participation of many chiropractors will be needed to form a 5 to 7 member seed

panel for each category. A content expert assists in locating the relevant clinical literature. With the help of a neutral facilitator, the seed panel then creates and reaches consensus on the initial seed statements. These are reviewed by a larger Nominal Panel, and then reviewed with an even larger (100 plus) Delphi panel (by mail). The final document is published by the OBCE. Broad-based participation and consensus is essential so that no single point of view or philosophical leaning dominates.

So far the Forward, Patient-Doctor Relationship, Diagnostic Imaging and Record Keeping Chapters have been provided to all Oregon chiropractic physicians. These are available on the OBCE web page. (A Patient Safety chapter is still in draft form.) Over 200 Oregon chiropractic physicians have participated in chapter review at one point or another.

"Oregon's Educational Manual is a resource available to chiropractors and licensing boards across the country," says Donna Liewer, Executive Director of the Federation of Chiropractic Licensing Boards (FCLB), "This is a key tool to promote quality practice as a proactive public protection tool while engaging practicing doctors in an ongoing dialogue."



Peer Review meeting with the OBCE November 2006, (clockwise) Drs. David Corll, Steven Koc, Lori Lindley AAG, Michael Burke, Sunny Kierstyn, Todd Bilby, Cookie Parker Kent (public member), Joyce McClure, Kelly Bird (staff), Mark LaRue, and Minga Guerrero.

DCs Address Barriers to Chiropractic Care

Recently several issues once again demonstrate the need for a strong state professional association. While these issues are tangential to the OBCE's core public protection mission, they certainly affect the availability, and by extension, the quality of chiropractic care to several groups of chiropractic patients.

Forest Grove chiropractor Ron Romanick reported that the Oregon School Activities Association (OSAA) recently adopted a policy stating which health care providers could authorize a student's return to play following a concussion injury. This list consists of medical doctors, osteopaths, certified nurse practitioners, licensed physician's assistants and athletic trainers, but not chiropractic physicians. With the help of WSCC's Drs. Brimhall and Lamm, and Dr. Guerrero on the behalf of the OBCE, Dr. Romanick is providing information about chiropractic training to the OSAA and their Medical Advisory Committee. While the OSAA is a private non-profit, their Board of Directors consists of school superintendents and athletic directors from around the state. We are hopeful that they will reconsider and even perhaps include a chiropractor on their advisory committee, especially since many chiropractors serve as team doctors around the state.

Another issue brought to our attention by Linda Stockton, who helps manage her husband's chiropractic clinic, involves a recent attempt by a major insurance company to convince the Oregon Workers Department (WCD) to adopt rules which tie the Workers Comp fee schedule to CMS NCCI Software Edits utilized by the Medicare system. Due to HB 3668, this fee schedule covers PIP auto insurance as well. The OBCE addressed this as a scope of practice issue and sent comments to the WCD stating, "The Oregon chiropractic scope of practice includes a broad range of physiotherapeutic procedures and treatments addressing soft tissue injuries and repair (in addition to osseous adjusting and manipulation). This type of care is both prevalent and necessary for treatment for both injured workers and

persons injured in motor vehicle accidents. The CMS NCCI Software Edits/Medicare policies are extremely limiting in their coverage and reasonable billing for these treatments. Limitations of this magnitude were neither discussed nor approved during legislative deliberations on HB 3668." Fortunately the WCD department has again rebuffed the insurance company on this issue, but they'll no doubt try again.

With the Legislative Session beginning, demonstrating professional unity is key to achieving success for chiropractic and chiropractic patients. While the OBCE may weigh in on issues affecting availability (and thus quality) of chiropractic care, there's no substitute for a sustained representation by a strong professional association.



Dr. Verne Saboe, CAO lobbyist (left) and Dr. Robert Taylor (right), ODOC President, join forces January 25th at Chiropractic Day at the State Legislature along with a large group of DCs from around the state.

BackTalk



Rules Advisory Committee members Dr. John Collins (center), Michael Smith AAL (left) and Dr. Joyce McClure (right).

OBCE Committees Report

CONTINUED FROM PAGE 10

The Administrative Rules Advisory Committee met on January 4th to review advertising rule changes proposed by Dr. Kim Privitera. The committee discussed the need for additional rules to address harassing or coercive telephone advertising. New members recently appointed are James Aungst, Usha Honeyman, Chris Clark, Steve Lumsden, and Michael Miller. They join Drs. David Ager, Daniel Beeson, Alex Bellingham, Hilary Bjornson, John Collins, Sharron Fuchs, Gregg Helms, Richard Hews, Patrick Iaboni, Craig Johnson, Jocelyn Kirnak, Neil McMahon, Michael Megehee, Michelle Waggoner and Robin Albert; and public members David Buchanan and Michael G. Smith, AAL. Dr. Joyce McClure is the Board liaison member.



The Rules Advisory Committee met January 4, 2007 in Wilsonville to review advertising issues.

The Peer Review Committee has been meeting regularly given a heavier than usual caseload. Recently the Board appointed new members Drs. Sunny Kierstyn, Christopher Allen, and Mark LaRue. They join Drs. David Corll and Todd Bilby. Dr. Christine Robinson recently resigned due to her new commitments (she had a baby! Congratulations). Dr. J. Michael Burke has declined a

second term due to his teaching commitments at WSCC. Immediate past chairperson Steven Koc was recently appointed to the OBCE. There are openings for two new Peer Review members and up to two observation members. Diversity applicants are especially encouraged to apply. Call 503-378-5816 ext. 23 for more information.

BackTalk

Newly Licensed DCs

5/26/06 through 1/9/07

Seth C. Alley
Paul D. Anding
David V. Avolio
Douglas E. Babbitt
Ryan C. Baker
Andrew M. Beutz
Joseph M. Birdwell
Shane D. Boucher
John P. Brotzman
Melanie B. Brown
Julio C. Cardona
George J. Cluen
Karis M. Cooper
Glenda A. Culbertson
Robyn R. Develle
Holly A. Dohrn
Jeffrey R. Dougal
Nathan D. Edmonds
Michelle T Farago
Jeffrey L. Foster
Thaddeus R. Gala
Joel T. Groft
Franchesca M. Harper
Allen D. Harrison
John M. Howell
Robert A. Jeffrey

Coby L. Johns
Brian J. Joynt
Tomoko Kadoya-O'Rourke
Jason M. Kremer
Martin D. Mack
Arah M. McLaughlin
Shane M. McLaughlin
Neil R. Mennell
Adam G. Mohr
Annette M. Morasch
Jason C. Morris
Jerry C. Morris
Jeffrey G. Neal
Steven B. Noble
Marion H. Odell
Keith J. Okerstrom
Cara R. Olsen
Kirsten E. Petersen
Mary K. Ratz
Alejandra Robles
Suzanne M. Sarmasti
Ronald J. Singer
Alan D. Smith
Cory M. Thiele
Michelle K. Waggoner
Christopher J. Walters



BackTalk

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