

BackTalk

Newsletter of the Oregon Board of Chiropractic Examiners ~ Summer 2004

Let's Clear the Air

By Jim Wilkens, DC

OBCE President

We are quite certain that some may be upset or disagree with some part of the following. They may feel that something in this article is directed specifically at them or that the OBCE is "after" them. Let me assure you from the start that this is not the case.

It is with great interest that we have followed the recent e-mails regarding the proposed excessive fee and excessive treatment rules. There have been widely divergent views, which have been articulated well on both sides of these issues. There are those who appear to feel the profession needs no further rules or regulation of any sort under any circumstance. On the other side some within our profession appear to feel that there are those "bad apples" who do a disservice to the public, as well as us professionally, that need to be regulated.

Comments have been made that perhaps the OBCE is playing "Chicken Little" and claiming that the sky is falling (i.e. that practitioners abusing the system is a problem that needs addressing) when it is not.

Some see the purpose of the OBCE as a practice helper to help protect and educate them professionally. Others think that the OBCE should do nothing other than examine and license chiropractors within the state while yet another group sees the OBCE's role as that of public protection.

The various opinions and perspectives have been beneficial to read and consider while reviewing these proposed rules. They

CONTINUED ON PAGE 2

RECENT CHIROPRACTIC RULE CHANGES

By Kathleen Galligan DC,
OBCE Vice-President

Recently the Oregon Board of Chiropractic Examiners made significant changes in our Administrative Rules. As with any rule changes, these went through several reviews by the Rules Advisory Committee and several public hearings. We would like to thank all who participated in this process.

Due to both the number and the breadth of the changes made, the OBCE thought that it would be helpful to give an overview of the changes. We hope that this will be useful in interpreting these changes.

It's critical to note the first four rules below occurred as a direct result of the evidence-based consensus process. While 98% of the Educational Manual for Evidence-Based Chiropractic (EMEBC) results in practice recommen-

CONTINUED ON PAGE 3

PRESIDENT'S MESSAGE



What's

New IME Policy - 5
Pain Management Commission - 6

Inside

HB 3668 & PIP - 6
HIPAA & OBCE - 7-8
Agency Streamlining - 8

BackTalk

OBCE Budget - 9-10
Educational Manual - 10-11

Policy & Practice Questions - 11-12

New Peer Review - 12
Licensing & CE - 13
CA Corner - 12-14
Public Protection Report - 14-15
Diversity Status - 16

BackTalk

President's Report CONTINUED FROM PAGE ONE



CAO President Verne Saboe (standing) and ODOC President Kimberly Privitera (seated) addressed the OBCE January meeting in regards to excessive treatment issues.

will be considered by the OBCE along with all public comments. However, some things are clear.

First, the role of the OBCE is to protect the public not benefit the profession. However, often what is good for the public is also good for the profession. They do not have to be mutually exclusive. In my opinion, assisting to make chiropractic care more accessible, and available, to the public is good for Oregonians. It remains, however, that the primary role of the OBCE is to protect the public.

It is also interesting that some within the profession think that the OBCE originally proposed both of these rules when in fact the CAO proposed the excessive treatment rule and OBCE public member Jim Hendry has strongly advocated the excessive fee rule.

My idea of a "perfect world," from a health-care regulatory viewpoint, would be that of a totally free-market system where the health-care

consumer called all the shots and made all the decisions. In this system, the patient, after obtaining the opinions of the health-care provider(s) they chose, would decide where to spend their dollars. There would be no insurance coverage. In this system the patient would decide what they were willing to pay for a particular service. If the service did not seem reasonable, if it was overpriced, or if it was not effective the patient could choose to go elsewhere with their health-care dollars. Those practitioners that provided a beneficial service at a fee the patient felt was reasonable would get the health-care dollars. We as chiropractors would shine in this system. While no system, including this one is perfect there would be significantly fewer problems related to fees and excessive treatment under this setup.

This however is not the system under which we practice. While there are cash only

CONTINUED ON PAGE 3

BackTalk is the official newsletter of the Oregon Board of Chiropractic Examiners. The Board's next meetings are July 22 and September 30, 2004, in the 1st floor conference room in the Morrow Crane Building, 3218 SE Pringle Road SE, Salem, Oregon. Call the Board office at 503-378-5816 for meeting times, directions or a map.

Board Members

Jim Wilkens, DC
President, Bend

Kathleen Galligan, DC
Vice-President, Lake Oswego

Minga Guerrero, DC
Secretary, Portland

George Siegfried, DC
McMinnville

James Hendry, AAL
Public Member, Portland

Jan Nelson
Public Member, Crow

Staff Directory

Telephone 503/378-5816

Dave McTeague (Extension 23)

Executive Director
Administration; Legal questions; Board issues; Practice questions

Kelly Bird (Extension 22)

Administrative Assistant
DC license renewal & information; CA certification, renewal & information; Continuing education, Practice questions

Michael Summers (Extension 25)

Investigator
Complaints; Investigations

Jane Billings (Extension 24)

Office Specialist II
DC applicants; Examinations; Peer Review; Contracts

Carol Rohde (Extension 21)

Office Specialist I
DC lists; Record requests; Meeting coordinator; License verifications

BackTalk

Recent Rule Changes CONTINUED FROM PAGE ONE

dations, there are instances where the evidence is strong enough to rise to the level of a minimum standard of practice. Those standards are then considered for adoption through the administrative rulemaking process. Rules 1-4 are the result of this process.

1. PARQ Required for Informed Consent

The new rules more accurately reflect the accepted protocol for an informed consent. A procedures, alternatives, risks and



Dr. Galligan (standing), along with Dr. Guerrero (seated at right), addressed the March 2004 meeting of newly licensed chiropractors.

questions (PARQ) conference appropriate to every patient is now required. Please note that the rule does not tell the physician how to deliver the informed consent, as the literature does not support

any one format for delivery of the information. The essence of informed consent is communication between the doctor and the patient, whether written or oral.

CONTINUED ON PAGE 4

President's Report CONTINUED FROM PAGE 2

practices most health-care providers, including chiropractors, obtain at least part of their reimbursement for services from insurance carriers. Therefore, there is less "buy in" from the patient and they have less at stake resulting in their being less vigilant in watching over the efficacy and charges of the services received.

Practitioners who feel less direct responsibility to their patients for their financial remuneration may find it easier to overcharge or over treat. While the vast majority of chiropractors do not take advantage of (or abuse) this situation, some do. This abuse is harmful to both the public and the profession.

I would submit that we are practicing in an inherently flawed system. These "flaws" will not be totally corrected whether or not the OBCE adopts these rules. There is potential for

both good and bad results.

The underlying issues are perhaps much greater than the OBCE, or the profession at large, have full control over. They are, in my opinion, societal and evidence of the manner in which our current society and government operate. It is not my intent to discourse on societal and governmental trends in the United States but rather to assert that we do not have a perfect option available. The question, after weighing the pros and cons of the issues, becomes how do we arrive at the best possible solution given our current situation.

If we do not adopt the rules we have less "interference" by the OBCE in our practices and less possibility of being overregulated. We also have the possibility, in a sense, of the free-market system working against us. Whether motivated by good or bad, right or wrong, there are

those who use the actions of the "bad apples" against us to limit public access to chiropractic care in certain venues (i.e. PIP and other insurance coverage).

If we do adopt these rules it may be possible to decrease the abuses of the "bad apples" and show a reasonable attempt to police our profession. By adopting these rules we may be less exposed to a situation in which our practices are limited by those outside our profession. This puts us in a position of being proactive instead of reactive to a negative situation. And yes, we run the risk of being overregulated or restricted in some way that the rules were not intended to restrict.

Whether the OBCE adopts these rules or not, the outcome will not make or break chiropractic in Oregon - life and chiropractic will go on, and so will our challenges.

To borrow a phrase from the late Fred Barge, D.C., "Enuf said."

Recent Rule Changes

CONTINUED FROM PAGE 3

The Patient-Doctor chapter of the Educational Manual has an excellent discussion on informed consent that is a must read.

2. Minimum Requirements for Initial and Re-Examinations

A second very important change is the inclusion of a definition of the type of work needed to do a functional chiropractic analysis. This portion of the rule was written to be inclusive of the breadth of chiropractic practices and techniques used in Oregon. It allows for the judgment of the physician as to what is appropriate on a case-by-case basis. An example of the scenario this language attempts to clarify is whether you are adjusting a patient or rendering an opinion regarding adjusting a patient, a functional chiropractic evaluation (as broadly defined in the rule) must be in evidence in the record.

This rule makes it clear that over and under-utilization are both considered unprofessional. It also requires that a copy of an independent examiner's report must be made available to the listed parties, upon request.

3. Reasonable Notice Required to Terminate Patient-Doctor Relationship

Rule changes also clarify the process of terminating the doctor-patient relationship. The important pieces to remember are that the doctor must assure continuity of care for the patient and give reasonable notice before termination. It may be somewhat frustrating that the rule does not de-

fine "reasonable," but the literature does not support the definition of a hard and fast time line. It is up to the treating chiropractor to make this determination for each case.

4. Romantic Relationships With Patients Are Unprofessional Conduct

It is unprofessional conduct for a treating physician to begin a romantic relationship with a patient, unless such relationship existed before the development of the doctor-patient relationship. In a dual relationship of doctor-patient and subsequent sexual or romantic interest, the opportunities for damage to the patient and the doctor are far too great. The Board continues to see a disproportionate number of complaints in this area, and our hope is that this rule can serve to clarify potentially gray areas. We also suggest taking the time to read the Educational Manual for Evidence Based Chiropractic Patient-Doctor Relationship Chapter. This is an excellent compilation of the best current evidence regarding this sometimes-confusing issue and hopefully can be of help before a problem arises.

The following rules were generated by intense discussions at the Board of Chiropractic Examiners meetings. This is chronicled in the board meeting minutes available online at www.obce.state.or.us

5. New Clinical Justification Rule

The Oregon Board of Chiropractic Examiners often struggles to define when treatment, lack of treatment or a decision-making process has adequate clinical justification. In order to try to clarify some of these issues both for the board and the practicing chiropractor, the "excessive treatment" rule was changed in its entirety. The amended rule is now titled, "clinical justification." One very important change made is reflected in the first segment of the rule. The rule states very clearly now that for any opinion, diagnostic or therapeutic procedure, clinical rationale must exist that is within accepted standards and understood by a group of peers. This means that whether you are treating your own patient, providing a second opinion exam/consultation or providing an independent review exam, the standards are the same. This is the view long held by the OBCE; however, this language makes it very clear.

6. Chiropractic Standards Clarified

Several changes were made in the rules regarding Peer Review. All reference to medically accepted standards was removed and replaced with language more appropriate for chiropractic practice. The Oregon Chiropractic Practice and Utilization Guidelines (OCPUG) were originally written into the rule as "medically accepted standards." This was not the intent of the document, as it was written as a guide for the practice of chiropractic. The new rule reflects that intent. In regards

CONTINUED ON PAGE 5

AGREEMENT ADDRESSES INDEPENDENT EXAMS

In a recent Stipulated Order of Agreement between the OBCE and a doctor who conducts IMEs, a new understanding was reached regarding conduct of independent examinations, and in particular panel exams conducted with a medical doctor. The agreement concludes this contested case without a finding of disciplinary action.

According to Jim Wilkens, OBCE President, "This agreement is significant in that it addresses the longstanding problem of panel exams where the results of the chiropractic examination are not adequately documented in the IME report, especially when narrated by the medical doctor. This agreement has produced a clear OBCE policy that the examining chiropractic physician must ensure the chiropractic exam findings are clear and distinct."

The new policy provides an interpretation of the new Clinical Justification rule,

OAR 811-015-0010, as it relates to the conduct of independent examinations. This new rule states that for any opinion, diagnostic or therapeutic procedure, clinical rationale must exist that is within accepted standards and understood by a group of peers.

"The parties understand and agree as follows:

a. The doctor/patient relationship between examiner and the examinee is limited to the examination, the opinion, and the review of the patient history and medical records provided and does not include ongoing treatment monitoring. The examiner shall make important health information, diagnosis and treatment recommendations available to the patient, treating doctor, and patient's legal counselor or guardian via the independent report. Upon request, a copy of the independent report shall be made available to the patient, the treating doctor and/or the

patient's legal guardian.

b. An independent chiropractic examiner should review the dictated medical opinion of a fellow panel member of an independent or insurer examination in the chiropractic or medical profession for its accuracy and completeness, and when necessary to clarify biomechanical or chiropractic reasoning, the independent chiropractor examiner should supplement the dictated medical opinion with his or her independent chiropractic opinion....

c. In independent or insurer medical exams for workers' compensation claims and/or personal injury claims, the examiner is required to consider all relevant historical information, perform an exam as indicated in OAR 811-015-0010 where applicable, and the Educational Manual for Evidence-Based Chiropractic, Section 8, and assure the report reflects the findings of that examiner accordingly."

Recent Rule Changes

CONTINUED FROM PAGE 4

to the Peer Review committee and the Board specifically, the rule makes it clear that they may use OCPUG as a guide to assist their decision making.

The Oregon Board of Chiropractic continually reviews its rules for appropriateness and usefulness. We welcome all feedback from practicing chiropractors as the development and evaluation of the rules is a joint effort.

CURRENT PROPOSED RULES

The proposed excessive fee rule will again be reviewed at the July 8th meeting of the Administrative Rules Advisory Committee followed by another public hearing at the July 22nd OBCE meeting in Salem. Public comment is reopened until July 22nd. The discussion at the May 20th OBCE meeting can be reviewed in the OBCE minutes found on the website at www.obce.state.or.us

under Public Notices.

There is also discussion about excessive treatment rules occurring between the Chiropractic Association of Oregon (CAO) and the Oregon Doctors of Chiropractic (ODOC). The CAO has a draft concept proposing to tie treatment parameters for patients covered by casualty insurance (PIP in particular) to patient outcome measures.

Oregon Pain Management Commission New CE requirements for Oregon DCs

Oregon chiropractic physicians will be required to take six hours of continuing education in pain management under the terms of Senate SB 885 passed in the 2001 Oregon Legislature. An additional one-hour on-line course, offered by the Oregon Pain Management Commission, will also be required.

This requirement is effective beginning January 1, 2006, with completion required within the following two years. However, doctors wishing to take these courses prior to the effective date may do so.

Astoria State Senator Joan Dukes sponsored this legislation to focus attention on the challenges faced by persons living with chronic pain. The new

law created the Commission, comprised of health professionals representing seventeen different disciplines, and the Office of Chronic Pain Management in the Oregon Department of Human Services. Most health related professions are required to work with the Commission to ensure completion of the new continuing education requirements.

The Commission is a multi-disciplinary panel, which includes one chiropractic physician. It has been meeting for the last two years and has produced an outline of issues to be addressed in continuing education courses. This can be found on the Web at: <http://www.dhs.state.or.us/publichealth/pain/>

Other stated purposes of this Commission are to develop pain management guidelines and standards and represent the concerns of patients to the Governor and Legislative Assembly.

Carol Misrack RN, Office of Chronic Pain Management director, reviewed this Commission's work with the OBCE at their May 20, 2004 meeting. Willard Bertrand DC, from La Grande, attended May 13th Commission meeting in Salem. He told the OBCE this presents an opportunity for chiropractic to interact with the other health care professions at a policy and professional level.

PIP Chiropractic Payments Tied to Workers Comp Fee Schedule

The 2003 Oregon Legislature passed HB 3668 during one hectic week last August. This new law increases the minimum PIP (personal injury protection) coverage from \$10,000 to \$15,000, for all policies issued or renewed after the effective date of the act. However, the new law also ties reimbursement for chiropractic care to the existing workers comp fee schedule. Section 4 reads as follows:

"A provider may not charge a person who receives personal injury protection benefits or that person's in-

surer an amount that exceeds the amount the provider charges the general public or an amount that exceeds the fees schedules for medical services published pursuant to ORS 656.248 for expenses of medical, hospital, dental, surgical, ambulance and prosthetic services."

The State of Oregon Insurance Division issued a new Bulletin on Feb. 13, 2004 further interpreting this new law. This Bulletin clarifies that the wording of section 4 of the bill refers specifically to the fee schedules for medical services published pursuant to ORS 656.248 and

the legislative history indicate the narrower intent and reading. Specifically, the workers comp limit on chiropractic services to 12 sessions and 30 days in OAR 436-010-0005(2)(c) does not apply to the determination of or payment for PIP benefits.

Link to HB 3668:

http://pub.das.state.or.us/LEG_BILLS/PDFs/EHB3668.pdf

Link to Insurance Bulletin 2003-07 (revised):

<http://www.cbs.state.or.us/external/ins/docs/bulletins/bulletin2003-07.htm>

HIPAA & OBCE

The Oregon Department of Justice has advised the OBCE and other health licensing boards against providing specific HIPAA (Health Insurance Portability and Accountability Act of 1996) Privacy Rule advice and guidance to our licensees. To meet this need, the Board has

encouraged continuing education providers, such as the associations and college, to offer HIPAA related continuing education.

However, the OBCE's public protection mission is recognized in the HIPAA law and regulations. The HIPAA provisions are specific to a "covered entity."

HIPAA recognizes health licensing boards, such as the OBCE, as Health Oversight agencies authorized by law to oversee the health care system (whether public or private) in which health information is necessary to determine eligibility or compliance.

HIPAA recognizes OBCE staff as "law enforcement officials" who investigate or conduct an official inquiry into a potential violation of law (or rule) and prosecute or otherwise conduct the resulting administrative proceeding.

HIPAA requires a covered entity to disclose protected health information

How do I determine if my practice is a covered entity? Ask yourself, "Does my office do any of the following?"

- ◆ File claims or transmit any health information electronically
- ◆ Use a billing service or clearinghouse that transmits patient health information electronically
- ◆ Check ONLINE for a patient's health care benefits or to determine if the patient is enrolled in a health plan
- ◆ Obtain authorization to make a referral ONLINE
- ◆ FAX patient reports using your COMPUTER (NOT a stand-alone fax machine)
- ◆ Receive payment to your bank ONLINE from an insurance company

If you do any one of these, you MUST COMPLY with HIPAA.

Source: American Chiropractic Association

to an administrative body like the OBCE that is investigating a complaint for law enforcement and health oversight purposes.

OBCE authority, Disclosure for Health Oversight Activities

A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, for administrative investigations, proceedings or actions necessary for appropriate oversight of the health care system.

Disclosure to OBCE as a Law Enforcement Agency

A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official provided: (1) The information sought is relevant and material to a legitimate law enforcement inquiry; (2) The request is specific and limited in scope to the extent reasonably practicable; and (3) De-identified information could not

reasonably be used. The request is for the "minimum necessary information."

Covered Entities must track who have requested and received covered records.

Patients have a right to an accounting of disclosures of protected health information made by a covered entity in the previous six years. However a health oversight agency may temporarily suspend this right provided the agency gives the covered entity a written statement such disclosure is reasonably likely to impede the agency's investigation, and it must have a time limit. If such a request is made orally, the covered entity must document and honor the request for up to 30 days, until the written request is received.

Imminent danger exception for Covered Entities

A covered entity may (consistent with applicable law

CONTINUED ON PAGE 8

Governor's Regulatory Streamlining Initiative

Governor Kulongoski's regulatory streamlining initiative has gained steam ever since his February 2003 Executive Order instructing state agencies to make this a priority. The Office of Regulatory Streamlining is now tracking more than 220 streamlining projects that are completed, under way, or in development throughout state government. The OBCE's two current streamlining projects are:

New continuing education rule.

The old CE rule had barriers to approval of all recognized and valid chiropractic continuing education offerings. An extra layer of approval of "vendors" as a quality control measure proved to be restricting without sufficient benefits. The new rule has eliminated the cumbersome preapproval process in favor of criteria that allows flexibility for doctors to choose the best way to obtain CE that benefits their practice.

Transition to birth-month relicensure for DCs beginning in July 2005. This promotes efficiency by evening out the agency's licensing workflow. The current annual licensing consumes most of Kelly Bird's time for

nearly three months, pushing other important functions to the side. Another benefit is that it evens out the agency's revenue.

New OBCE streamlining projects include consideration of Web page improvements to provide online license verification, and on-line financial transactions to pay for license renewals and license applications. Most of the DC and certified chiropractic assis-

tant (CCA) application information will be placed on the OBCE web page. Greater use of email is being considered for distribution of public notices and the BackTalk newsletter. This would involve collecting and maintaining up to date licensee email addresses. If you have other ideas or comments please call the OBCE office, speak to any OBCE board member, or send email to Oregon.obce@state.or.us.



Jack Pedersen DC, former Peer Review member, also addressed the March 2004 meeting of newly licensed chiropractors.

HIPAA & OBCE

CONTINUED FROM PAGE 17

and standards of ethical conduct) use or disclose protected health information, if it believes the use or disclosure (to law enforcement or the OBCE) is necessary to prevent or lessen a serious and imminent threat to the

health or safety of a person or the public; is reasonably able to prevent or lessen the threat, including the target of the threat; or is necessary for law enforcement authorities to identify or apprehend an individual.

OBCE Budget Proposes Background Checks & Diversity Efforts

By Dave McTeague

Executive Director

As a small state agency, the OBCE goes through the same extended three-step budget development process as any large state agency. We are guided by the OBCE's Mission Statement and Strategic Plan Goals which are reviewed one section at a time at every OBCE meeting and updated if needed. This is always a public process open to stakeholder participation.

Key features of the current 2003-05 biennium budget are the state salary - freeze and no inflation factor for other costs, in keeping with the Legislature's share-the-pain approach. The Board's current two-year budget is \$916,244, with \$506,493 for personal services and \$402,251 for "supplies and services" (S&S). S&S covers rent, legal costs, expert witnesses, professional services, office expenses, printing, mailing, Web page development, state government charges, and meeting costs. A special account (up to \$7,500) was created for the administration of the Board's mentoring plans.

Step One is developing the 2005-07 Agency Request Budget. Initial adjustments are made to reflect inflation and changes in other fixed costs in both personnel and S&S. These calculations

Public Hearing

**OBCE Agency Request budget
July 22, 2004, 1:30 p.m.
OBCE large conference room
3218 Pringle Road SE, Salem**

are made following explicit state budget instructions for all state agencies. In addition, the OBCE is proposing two new policy packages and renewing a previous request.

Policy Package #1. National FBI database finger print background checks.

The OBCE has proposed a law change to expand the DC applicant criminal history check to include the national FBI database. Currently the OBCE collects fingerprints from applicants that are checked against the Pacific Northwest regional database only. This extra level of public protection could either deter an applicant or catch someone not willing to divulge a conviction history. The total additional cost for this program is \$3840 (\$24 per FBI check. The funding is proposed to come from applicant fees.

**Policy Package #2.
Promoting Diversity.** We have been responding to SB 786 (2001) mandates to promote diversity on the board and in the profession by collecting baseline data. We have asked the Governor's office to make diversity a

strong consideration in board appointments. Promoting diversity in the profession is a tougher challenge. This program

could include efforts to promote chiropractic to high school career teachers and health programs, and possibly establish a scholarship program working with the Oregon Student Assistance Commission. It is essential to have a partnership with the college and our state associations.

Policy Package #3 seeks to reclassify our Office Specialist 2 position to an Administrative Specialist 2 to reflect the high level performance required of this position.

Please know that our goal is not to spend every last dime of budget authority granted to the OBCE. (In 2001-03 biennium, we were under by \$44,195.) However we must maintain the capacity to pay for our essential public protection mission when needed. This includes legal costs, investigations, expert witnesses, and contested case hearing costs, which includes cost of the Administrative Law Judge. One big case can really cost a lot! Two or three big cases could bust the budget. Fortunately, we resolve most

CONTINUED ON PAGE 10

Educational Manual for Evidence-Based Chiropractic (EMEBC)

By Sunny Kierstyn DC

Eugene

I have participated in seed panels and on the Nominal Panel since 1999.

The EMEBC has been long in construction, certainly longer than we anticipated on that rainy day in 1999 when we first gathered. But

much has been accomplished since then and it has been accomplished with consensus! What a concept for the chiropractic world.



Despite a slow process, all of us appear to have gained from it. We have met, face-to-face, becoming better acquainted. We know names and faces and can put them to various areas of the state. We know who does what to a better degree, facilitating referrals throughout the state. We seem to have a much higher respect and tolerance for one another and our individual stances. Now, we know what is behind that stance. We have watched some of those stances soften



The Nominal Panel hard at work on the Record Keeping Chapter at their March 4, 2004 meeting. (clockwise) Drs. Sunny Kierstyn, Kelly Bird (staff), David Saboe, Kevin Holzapfel, Paula Conklin, Christine Olshove, Verne Saboe, Jim Bartley, John Noren and Steve Sebers (facilitating).

and shift.

Some of the docs going through the process have found they weren't doing things appropriately (according to generic health-care standards) in their office and were able to make corrections that allowed them to get paid more easily. Others found they were doing things better than they had suspected. Still others have found new and simpler or more effective ways to do things.

We have learned much more about the state of chiropractic literature. The quantity is abysmal. It seriously needs to be increased. Published evidence is needed at just about

every level: technique and philosophy, certainly, but personal experience, thoughts about office and business systems, patient experiences and challenges are sorely needed as well.

In writing this manual, using as many DCs as will volunteer, each chapter builds first through work by a Seed Panel. This group (usually 3 - 7 people) outlines what they want to put into each chapter and the topics & subtopics represented by that chapter. We read and research the published literature. The drafts are reviewed by the Seed Panel

CONTINUED ON PAGE 11

OBCE Budget Proposals

CONTINUED FROM PAGE 9

disciplinary proceedings through negotiation.

A public hearing will be held at the OBCE's Agency Request budget at its July 22 meeting.

Step Two is review by the Budget and Manage-

ment (BAM) division of the Department of Administrative Services. BAM budget analyst Valentina Fomenko will review the OBCE's budget and make recommendations. The Governor will accept, deny or modify the

agency's proposals.

Step Three is review and final approval by the 2005 Oregon Legislature. The OBCE's proposed law to enhance our criminal history background checks will also be considered. Legislative action from other sources also has the potential to affect the OBCE's budget.

Policy & Practice Questions

Telechiropractic

The Board was asked the following question, may an Oregon chiropractor make recommendations via telephone, email (or Web) to a person who supplies pertinent historical information and then asks for advice on a health issue, such as a nutrition or vitamin supplement question? It was determined that a patient-doctor relationship is being established in this scenario and the doctor would be responsible to make the correct determination in light of the patient's presenting condition. However, the Board is unable to determine if an Oregon chiropractic physician could do this over the

phone or through email with an out-of-state patient. In some cases the answer could be yes, and in other cases, perhaps no. The Board refers doctors to existing statutes, administrative rules in this state and the state the patient resides in and the Oregon Chiropractic Practices and Utilization Guidelines.

Donations to non-profits

The Board was asked if a non-profit organization (i.e. private school) could advertise to their members (i.e. parents) that if they utilize the services of a particular chiropractic physician, the physician will donate 10% back to the non-profit organization. The Board determined this is not "fee split-

ting" and does not violate the spirit of OAR 811-035-0015 (24) (11/20/2003)

S Corporations

The Board was asked if chiropractors could organize as S Corporations. The answer is no. An S Corporation is defined as a small business corporation with a statutorily limited number of shareholders, which has elected to have its taxable income taxed to its shareholders at regular income tax rates. Sisemore (1947 Oregon Supreme Court Decision) is case law which says corporations may not practice a profession. In the 1950's, Oregon Revised Statute Chapter 58 was enacted to

CONTINUED ON PAGE 12

Education Manual

CONTINUED FROM PAGE 10

again and again, until consensus is reached.

Once the chapter passes Seed Panel scrutiny, the Nominal Panel (15 Oregon DCs) goes to work to see if the Seed Panel draft is something with which they can agree. Here is where the dust, if there is to be any, will fly. It is all very friendly but, as you all know, we DCs can get pretty insistent that our version is the 'right' one. It has been great fun to watch us begin to tolerate our buddy's opinion...even to a point where it can be seen to be 'just as right' as our own. Consensus has been achieved

through a variety of high-tension subjects: boundary issues, imaging issues, legal issues, contraindication issues, philosophical issues, charting issues... Consensus has actually been reached on all of these topics.

Lastly, the Delphi Consensus completes the process. This level of consensus involves over 100 DCs in the state who receive the completed texts in the mail to agree or disagree with what has been written to that point. Once that consensus has been reached, the chapter will be posted on the OBCE website.

So what is this manual

really about? It is about defining and explaining what Chiropractic is...specifically, what Chiropractic in Oregon is. What is it that we do? Why do we do it that way? How is it different from what allopaths do? Is it different? The general populace doesn't yet understand structural care, much less the importance of it. That lack of understanding keeps the fear going. I still have patients asking me if I ever X-ray...in the 2000s! Telling them about us will give them information to jump over that fear.

This manual is being written to provide an instant reference to aid the doctor in

CONTINUED ON PAGE 15

Meet the New Peer Review Committee

Drs. J. Michael Burke (Tigard), Kimberly Privitera (Portland), Bradley Pfeiffer (Bend) and Michael Vissers (Canby) were recently appointed to the OBCE Peer Review Committee. They join Drs. Joyce McClure (Chair, Portland), Elizabeth Dunlop (Portland), and Bonnie Malone (Sisters).

Dr. Burke has been in practice since 1981, and is a Western States graduate. He is a Board Certified Chiropractic Orthopedist with expertise in chiropractic managed care and independent examinations.

Dr. Privitera has been in practice since 1998 and is a Western States graduate. She is currently President of Oregon Doctors of Chiropractic. Her pre-chiropractic experience includes work as a pediatric rehab aid, physical therapy aide and nurse's aid in the Boulder, Colorado Community Hospital.

Dr. Vissers has been in practice since 1990 and in Canby since 2001 and is a graduate of Northwestern Col-



OBCE Peer Review Committee (left to right) Drs. Michael Vissers, Joyce McClure, Ralph Holtby, Bonnie Malone, Elizabeth Dunlop, Bradley Pfeiffer, J. Michael Burke, and Kimberly Privitera.

lege of Chiropractic. He is very active in his community, serving as a board member for the Canby Area Chamber of Commerce and Canby Rotary Club.

Dr. Pfeiffer has been in practice since 1998 and is a Western States graduate. Following graduation he served as a Clinical Assistant at Western States and co-authored the clinic protocol, "Goals and Outcome Measures." He enjoys mountain biking, fly fishing and snowboarding.

Recent members, Drs. Michael Riemhofer (Bend) and

Ralph Holtby (Redmond), completed their terms on the Peer Review committee.

The Peer Review committee assists the OBCE with complaint investigations, particularly where personal interviews are needed for the respondent doctors and/or complainants. The committee typically reviews issues of appropriateness of treatment, utilization and documentation. Members may serve up to two three-year terms. The OBCE thanks all of these doctors for their selfless contributions!

Policy & Practice Questions

CONTINUED FROM PAGE 12

allow health care professions to operate as professional corporations (PC). Chiropractic clinics may also be organized as sole proprietors, limited liability companies (LLC) and partnerships.

Settlement Conferences

Upon request for contested case hearing (following issu-

ance of a Notice of Proposed Disciplinary Action), the OBCE may offer the respondent licensee a settlement conference to be convened within 60 days. The purpose of this is to provide an opportunity for the OBCE and respondent licensee to pursue resolution in a face-to-face meeting instead of pro-

ceeding to costly contested case hearing.

Advertising Review Policy
Chiropractic physicians or any other person under the jurisdiction of the OBCE must be able to support advertising with credible evidence. The OBCE recommends that this evidence be available for review upon request. (OAR 811-015-0045, ORS 684.100 (1)(j), (k))

LICENSING AND CONTINUING EDUCATION

By Kelly Bird

It is that time of year again, and we are STILL on a fiscal (August 1 to July 31) license renewal period; **all licenses (DCs and CCAs) must renew by July 31, 2004.**

The process is exactly the same as last year. You will renew your Oregon license by submitting the appropriate renewal fee and signed Renewal Notice and Affidavit by the July 31, 2004 deadline. The Affidavit is your statement that you completed the required number of continuing education hours within the designated time frame.

◆ *Do NOT sign the affidavit until you have completed the education.*

◆ *Do NOT send your CE certificates or Course Evaluation forms to the OBCE*

The renewal fee options, as indicated on your renewal notice, are:

◆ **Active** \$300

◆ **Limited active** \$225 (for DCs 60 years of age or greater, and been in practice 25 or more years; If you qualify, you should receive or will receive the Limited Active application with your license renewal notice. This is a one-time application. There is no "limit" to how much you may practice.

◆ **Inactive** \$175 (Only renew inactive if you are NOT intending to practice for the full license period August 1 through July 31, 2005)

Remember, (chiropractors only) for each CE



KELLY BIRD

activity, you must have a verification of attendance and a completed OBCE Course Evaluation form in your CE file. Get a copy of the form from the web www.obce.state.or.us or contact the OBCE office.

New Oregon Continuing Education Requirements for Pain Management. Visit the Oregon Department of Human Services' website for the Commission on Pain Management at www.dhs.state.or.us/

CHIROPRACTIC ASSISTANT CORNER

By Kelly Bird

This is a new column for Chiropractic Assistants (CCA). I am accepting ideas for topics of discussion. The topics should directly affect CCAs or indirectly, their supervising DC. Topics I hope to discuss include, but not be limited to, are CA certification, scope of practice, ethics, continuing education, etc. If you have ideas, please feel free to contact me at the OBCE administrative office, or email Kelly.bird@state.or.us. If you have an idea for a column name, feel free to offer that as well!

The logical topic for

publichealth/pain/pmc_nav.htm for additional information, and to view the mandatory CE course curriculum. See more on this new requirement in this and future BackTalk issues.

Lastly, the OBCE will be sharing more information about the switch to the **BIRTH MONTH** renewal cycle later this year, likely in September or October. For now, and in brief, you should plan to renew your Oregon license in June and July of 2005, BUT expect the OBCE to prorate the renewal fee and CE credit hours for a partial, full, or longer-than-one year renewal period. Chiropractic Assistants are NOT switching to birth month renewal.

this issue is CCA certificate renewal and continuing education. The CA renewal fee is \$50. **Everyone** who had their initial certificate prior to June 1, 2004 must pay the \$50 fee if they wish to continue providing therapies. **Most of you** will *also* report six (6) hours of continuing education (by signing the Renewal Notice and Affidavit). About 50 CCAs who initially certified between March 1, 2004 and May 31, 2004 are exempt from the continuing education hours this year (again, you must pay the renewal fee).

CONTINUED ON PAGE 14

OBCE Public Protection Update

Final and Proposed actions October 17, 2003 to May 28, 2004

Final Actions

Denise Asgian DC. License suspended for failure to release records and failure to cooperate with an investigation by the OBCE. Violations of OAR 811-035-0015 (19), OAR 811-015-0006 (1) and ORS 684.100 (1)(t). Licensee's status is presently Inactive/Suspended. (10/29/2003)

Benjamin Gifford DC. Stipulated Final Order, 60 day suspension (stayed), permanent license requirement for monthly contact with treating psychiatrist and periodic contact with supervising psychiatrist, reporting. Boundary crossings with female patient. Violations of ORS 684.100(1)(g)(A) and OAR 811-035-0015(1)(a). (12/31/2003)

James Gabrielson, CCA Applicant. Final Order by Default. Certified Chiropractic Assistant application

was denied for alleged misrepresentations on application and for unprofessional conduct related to revocation of applicant's Oregon chiropractic license in 1990. (2/18/2004)

John C. Helton DC, License suspended for failure to pay State of Oregon taxes (effective June 1, 2004), adoption of Administrative Law Judge's proposed order. Violations of ORS 305.385(4)(c). This statute requires the OBCE to suspend license, following contested case hearing, upon request from the Oregon Department of Revenue (DOR). License was reinstated on June 18, 2004. (5/21/2004)

Cynthia Martinez, Certified Chiropractic Assistant, Condition on License. Under the provisions of ORS 684.100

(1)(d) and ORS 670.280, licensee must disclose conviction history to any and all prospective chiropractic employers. (5/21/2004)

New Actions

David J. Shipley ND, Case # 2004-1001, 1006. Proposed \$10,000 civil penalty for alleged unlicensed practice of chiropractic during the performance of independent medical examinations in Oregon and advertising violations. Violations of ORS 684.015 (a), (c), (d) and ORS 684.100 (1) (j) (5/18/2004)

Stephen Liston DC, Case # 2004-3001. Proposed \$10,000 civil penalty for alleged unlicensed practice of chiropractic during the performance of independent medical examinations in Oregon

CONTINUED ON PAGE 15

Chiropractic Assistant Corner

CONTINUED FROM PAGE 13

Continuing education can be difficult to find, but these are resources I often suggest for starters.

- ◆ Western States Chiropractic College
- ◆ State Associations
- ◆ Community Colleges
- ◆ Local hospitals
- ◆ Massage schools
- ◆ Online education (such as <http://www.theceu.com/> and <http://www.chirocredit.com/>)
- ◆ American Heart Association or Red Cross (to renew

CPR/First Aid certification)

Keep your continuing education certificates in a file. You do NOT need to send them to the Board with your renewal fee. The Board will contact you if your name is drawn later in the fall as part of the random draw check for CE verification.

Lastly, make note, **CCAs will NOT be switching to a birth month renewal system** in 2005. Most supervising DCs arrange, and pay for the continuing

education of their CCAs. The professional input received was that it is easier to make arrangements for all the CCAs at one time.

Q&A

Q. As a Certified CA may I perform massage on a "walk-in" client without the chiropractor first examining the person?

A. No. The chiropractor must perform an appropriate examination, and create a diagnosis and treatment plan on each person prior to the start of any therapies, including massage.

BackTalk

Public Protection Update

CONTINUED FROM PAGE 14

. (This doctor is an inactive Oregon DC and active State of Washington DC). Violations of ORS 684.100(g), 684.020 and OAR 811-035-0015(14). (5/20/2004)

Pamela Johnson DC, Case # 2003-3015. Proposed three month license suspension, three-year probation with conditions, counseling, chaperone, mentoring plan, NBCE Ethics and Professional Boundaries Exam. Permanent restriction on the license is that chiropractic patients may not be professional counseling clients (doctor is dual licensed as a professional counselor) and counseling clients may not be chiropractic patients. Boundary violations with patient, competency issues as a result of a competency evaluation. Violations of ORS 684.100(1)(g)(A) and, OAR 811-035-0015(1)(a). Competency issues pursuant to ORS 684.100(5)-(7). (5/20/2004)

Mauro A. Civica DC, Case. # 2003-3016. Proposed 3 month suspension and extension of probation/conditions beginning at new effective date, for violations of Stipulated Final Order entered December 14, 2001, not having a board approved chaperone when treating female patients and not having chaperone present at all required times. Violations of ORS 684.100(1)(g)(A) and, OAR 811-035-0015(23). (5/20/2004)

Lynn Hakala DC, Temporary Stipulated Order. Licensee agreed to voluntarily withdraw from active chiropractic practice pending further order of the Board, and agrees enter into evaluation and treatment for substance abuse, random tests, pursuant to ORS 684.100 (6), (7) and (8). (5/28/2004)

Other Actions

Patrick Boyd. Revoked Oregon DC wrote letter requesting reinstatement. OBCE denied request. (11/20/2003)

Agreement of Voluntary Compliance (not a disciplinary action) for one-year mentoring plan to meet the minimum standards of the chiropractic profession, including, but not limited to the following: Taking of case histories and past histories, performing and recording examination procedures,

presenting subjective complaints and rendering an examination within minimal standards, formulating and recording treatment plans, rendering diagnoses consistent with the history/findings and creating legible, intelligible daily chart records. Successful completion will result in a finding of insufficient evidence. (2/18/2004)

Dismissed Complaints

During this reporting period the OBCE made a determination of insufficient evidence (I.E.) on twenty-one cases; one case closed, one no statutory violation; and one stipulated agreement.

~~~

In all orders, the Board proposes to recover costs associated with the disciplinary proceeding as allowed by ORS 684.100(9)(g). This report covers the October 15, 2003 to May 28, 2004 period.

---

### Education Manual

CONTINUED FROM PAGE 11

the field in those moments, in the office or in a patient relationship, when something touchy, perplexing, frustrating or new comes up. It provides helpful information in an easy to find manner: checklists (if you will) of the things we all need to think about during any particular occurrence...half of which I too often seem to forget until 2 hours later.

Two (huge) completed

chapters have been published on the OBCE website. Three others are still working their way through the 3 levels of processing. Several others are yet to be started. (More volunteers would move this along at a faster pace.) Then the manual will be finished! We are that close. It has been an excellent growing experience for Oregon DCs. When finished, it will be a solid aid for chiropractic in Oregon.

## BackTalk

### Diversity and Chiropractic: Current Status

African-Americans and Hispanic/Latinos are under-represented in the ranks of Oregon chiropractic physicians, with .6% and 1.8% respectively, compared to Oregonians over all. However Asian & Pacific Islander chiropractors are better represented with 4.6%. White/Caucasian chiropractors account for 92.5% of the total.

Certified Chiropractic Assistants (CCAs) in Oregon are considerably more diverse with Hispanic/Latinos accounting for 8% of the current total.

This is based on returns of 726 DC and 492 CCA responses to the OBCE's Race, Ethnicity, and Language skills Questionnaire collected over the last year. This is given to all licensees when they apply or renew.

It can be found at the OBCE's Web page at [www.obce.state.or.us](http://www.obce.state.or.us)

SB 786, passed by the 2001 Oregon Legislature following a report issued by the Governor's Racial and Ethnic Health Task Force. It requires health professional licensing boards to establish programs to increase representation of people of color and bilingual people on the boards and in the professions they regulate, and maintain records on the racial and ethnic makeup of applicants and licensees.

According to Sen. Avel Gordly of Portland, sponsor of SB 786, "...people of color are over-represented in populations faced with the greatest barriers to health...SB 786 is a policy direc-

tive for all boards to develop cultural competence for the consumers and clients their professions serve and to develop future talent inclusive of people of color."

SB 786 is a challenge to the chiropractic profession to address diversity issues. The OBCE needs the advice and help of the associations, college, and students in this area. Recently the OBCE issued a public notice regarding the open position on the OBCE to encourage diversity in the applications to the Governor's office. The OBCE also wants to encourage diversity on all its committees.

A link to the Governor's Racial and Ethnic Health Task Force Report can be found on the OBCE's Web page ([www.obce.state.or.us](http://www.obce.state.or.us)).

| <b>OBCE Diversity Statistics</b> |                       |                        |                           |                       | <b>NBCE Job Analysis National Survey</b> |                         |       |
|----------------------------------|-----------------------|------------------------|---------------------------|-----------------------|------------------------------------------|-------------------------|-------|
|                                  | 2004<br>Oregon<br>DCs | 2004<br>Oregon<br>CCAs | 2000<br>Oregon<br>Census* | 2000<br>US<br>Census* | YEAR                                     | Chiropractic Physicians |       |
|                                  |                       |                        |                           |                       |                                          | 1991                    | 1998  |
| African-American                 | 0.6%                  | 1.0%                   | 1.6%                      | 12.3%                 | African-American                         | 0.5%                    | 0.6%  |
| Asian/Pac. Islander              | 4.6%                  | 1.8%                   | 3.4%                      | 3.7%                  | Asian/Pac. Islander                      | 0.8%                    | 1.8%  |
| Hispanic/Latino                  | 1.8%                  | 7.3%                   | 8.0%                      | 12.5%                 | Hispanic/Latino                          | 1.6%                    | 1.7%  |
| Native American                  | 0.6%                  | 1.2%                   | 2.5%                      | 0.9%                  | Native American                          | 0.2%                    | 0.8%  |
| White/Caucasian                  | 92.5%                 | 88.6%                  | 86.6%                     | 75.1%                 | White/Caucasian                          | 93.5%                   | 93.5% |
|                                  |                       |                        |                           |                       | Other                                    | 1.4%                    | 1.6%  |
| * Some report more than one.     | 100%                  | 100%                   | 102.1%                    | 104.5%                |                                          | 100%                    | 100%  |

### BackTalk

Oregon Board of  
Chiropractic Examiners  
3218 Pringle Road SE, Suite 150  
Salem, OR 97302-6311  
[oregon.obce@state.or.us](mailto:oregon.obce@state.or.us)

BULK RATE  
U.S. POSTAGE  
**P A I D**  
PERMIT NO. 81  
SALEM, OR