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**BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON**

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In the Matter of)	
)	NOTICE OF PROPOSED
Cascade Success Systems)	DENIAL OF CE HOURS
Aka James Warner DC)	
)	Case # 2009-6001
CE Vendor.)	

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The Board of Chiropractic Examiners (Board or OBCE) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. The OBCE is responsible to oversee chiropractic continuing education as per OAR 811-015-0025. James Warner DC (Vendor) is licensed by the Board to practice as a chiropractic physician in the State of Oregon. He provides chiropractic continuing education under the assumed business name of Cascade Success Systems (Vendor). The Board proposes to deny a portion of two continuing education course for the following reasons.

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In 2008 the OBCE received several complaints regarding Vendor's CE courses alleging the DVD video quality to be poor and alleging that Vendor spends much time speaking about his philosophy and his accomplishments. In response to complaints from chiropractic physicians regarding the quality of Vendor's course offerings the Board requested for its review, "...material that Cascade Success has offered or offers for 1. Evidence-Based Outcomes Management, 2. Pain Management..." Vendor responded by providing DVDs of these course offerings and related paperwork.

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On January 20, 2005 the OBCE amended the Clinical Justification Rule 811-015-0100 to say, "Evidence based outcomes management shall determine whether the frequency and duration of curative chiropractic treatment has been necessary. Outcomes management shall include both subjective or patient-driven information as well as objective provider-driven information..." At the same time the Board instituted a requirement for two hours continuing education for Evidence based outcomes management (EBOM) to be completed by all current active chiropractic physicians by January 1, 2008 and within two years for all newly licensed DCs. The OBCE may require specific CE hours under the provisions of OAR 811-015-0025.

3.

Also in 2005 the OBCE established criteria for the Evidence-Based Outcomes Management (EBOM) courses and communicated that by letter to CE vendors, notice placed on

1 the OBCE's web page, and with articles in four issues of the OBCE's BackTalk Newsletter. The
2 notice provided the criteria as follows:

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

- 6 • Identify "outcomes management" tools appropriate for curative chiropractic treatment.
7 This should include subjective or patient-driven information as well as objective or
8 provider-driven information.
- 9 • Identify and present the evidence that supports use of these tools, and comment on the
10 strength of this evidence.
- 11 • Present methods or protocols for use of these outcomes management tools, including
12 documentation that carries substance, offers specific treatment approaches, and proves or
13 not the need for ongoing care.

14 This should not be an advanced course on record keeping & chart noting.

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16 Examples of patient driven outcome management tools include *"Self Reporting*
17 *Psychometric Questionnaires*; such as the Revised Oswestry Low Back Questionnaire,
18 Rolland-Morris, and Neck Disability Index, etc. These patient-driven tools provide a
19 quantitative assessment of the patient's activity intolerance or disabilities. The Pain
20 Drawing provides a qualitative assessment, the Visual Analog Scale, and the Numerical
21 Pain Rating Box examples of patient driven tools that provide a quantitative assessment
22 of the patient's current level of pain.

23
24 Examples of objective provider driven outcome management tools include physical
25 examination procedures and physical performance testing. Physical examination
26 procedures may include static and/or dynamic palpatory findings, ranges of motion via
27 inclinometers and/or goniometers, functional radiology, various functional chiropractic
28 signs tests and maneuvers, and instrumentation such as the tissue compliance meter or
29 algometer. Physical performance testing may include measuring of specific muscle
30 groups for strength and flexibility and comparing the results with normative data tables.

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33 3.

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35 The Board's analysis of Vendor's two hour EBOM course demonstrates deficiencies in
36 the following manner:

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38 Vendor uses the majority of the two hours to present his various views on chiropractic,
39 basic patient management including initial assessment, initial and re evaluations, chart notes,
40 documentation, chiropractic science, art, and philosophy. He opines on numerous topics
41 including thermal scans, variety of chiropractic techniques and causes of subluxations and health
42 problems. He quotes B.J. Palmer and Dr. Mayo, addresses reasons why the profession, payers,
43 patients and others want positive outcomes, and tells various historical and personal stories.
44 Although Vendor attempts to tie some of this into the topic at hand, it is at best tangential to the

1 OBCE's criteria and expectations that chiropractors will be presented with various outcomes
2 management tools that could become useful in practice and assist practitioners in meeting the
3 new requirements of the Clinical Justification Rule (OAR 811-015-0010).
4

5 *Criteria # 1: Identify "outcomes management" tools appropriate for curative chiropractic*
6 *treatment. This should include both subjective or patient-driven information as well as objective*
7 *or provider-driven information.*
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9 Vendor does identify specific "outcomes management" tools, but does not do so until
10 1:33 (one hour 33 minutes) into the two hour program. At that time he discusses General Health
11 Questionnaires and their usefulness. From there he does list specific outcomes management
12 tools by name and category, however, he does so rapidly, and while his PowerPoint slides
13 provide interesting information they are available for viewing only briefly. He does not engage in
14 any kind of in-depth discussion about most, if any, of the specific tools mentioned. He shows a
15 stack of papers which he says is about 40 pages of supporting documentation. He says on the
16 video (taped June 2007) this will be available on his Web page, but there is no evidence any were
17 ever available on either of his web pages. There is no evidence he ever made this documentation
18 or his PowerPoint presentation available to the doctors who watched this two-hour CE video.
19

20 *Criteria # 2: Identify and present the evidence that supports use of these tools, and*
21 *comment on the strength of this evidence.*
22

23 Vendor does at times identify several studies in his PowerPoint slides and the references
24 are found there only. Although Vendor references a few studies in support of some of the
25 Questionnaires he mentions, he fails to address the relevance of these studies to the
26 measurement/management tools identified. He does not speak about or comment on the strength
27 of any evidence. The literature references are not used to address, support or refute the use of
28 any specific outcomes measurement/management tool. He draws a few quotes from several
29 literature references to support the concept of outcomes management generally.
30

31 *Criteria # 3: Present methods or protocols for use of these outcomes management tools,*
32 *including documentation that carries substance, offers specific treatment approaches, and*
33 *proves or not the need for ongoing care.*
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35 While he identifies a number of well known outcomes management tools, he only briefly
36 addresses methods for how these are used. Vendor's limited presentation of these tools is not
37 substantive. His video presentation includes little if anything that could be described as a
38 protocol. Although he asserts that evaluation is appropriate at the onset of care, there is no clear
39 discussion of appropriate time intervals or other checkpoints for re-evaluation of a treatment
40 plan. He does address several times the importance of diagnostic imaging at the initial
41 examination and follow up imaging to track progress utilizing "medical mensuration".
42

1 Another of the OBCE's criteria is, "This should not be an advanced course on record
2 keeping and chart noting." There is considerable generalized discussion about record keeping and
3 chart noting (documentation) throughout this video, but even that doesn't rise above obvious
4 statements, such as this is important, should be done regularly at initial visits and reevaluations,
5 and doctors should be consistent in using the measurement tools.

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7 4.

8 The OBCE also received complaints questioning the quality of Vendor's 6 hour Pain
9 Management CE course presented live and subsequently as a video course.

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11 As with the EBOM course, Vendor veers off topic into a wide array of disconnected
12 stories and personal opinions that do not directly address the topic of chiropractic pain
13 management.

14
15 Much of Vendor's presentation has little, or nothing, to do with the subject of pain
16 management education as mandated by the State of Oregon. Vendor's presentation style is to tell
17 stories that lead into lengthy, off- topic tangents. While the stories do, at times, deal with some
18 aspect of pain, Vendor will then take a significant amount of time, sometimes over a full hour, to
19 express a simple point that may need only a few minutes to explain, at the most. As a result, this
20 program contains very little content on the topic of pain management in regards to the curriculum
21 suggested by the State of Oregon Pain Management Commission.

22
23 The Board's analysis of this course show:

24 Disk 1 (3 hours) - contains approximately 15 minutes of information that is on-topic.

25 Disk 2 (3 hours) - contains approximately 25 minutes of information that is on-topic

26 Total time on-topic - approximately 40 minutes
27

28 It is not expected that a speaker should deliver only the cold, hard facts. A quality
29 seminar can be expected to include a moderate amount of filler, i.e. anecdotes, case histories,
30 personal stories, etc., to give the subject matter some context and to keep the audience's
31 attention. Considering this, the OBCE believes one could liberally extrapolate a total of two
32 hours of CE credits for pain management education contained in this entire six hour presentation.
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36 The OBCE has the responsibility to oversee chiropractic continuing education as per
37 OAR 811-015-0025. The requirements for the EBOM course were clearly articulated by the
38 Board. The requirement for the Pain Management CE was required by legislation passed in 2003.
39 A suggested curriculum is available from the Oregon Pain Management Commission on their
40 website. OAR 811-015-0025 states as follows in Section 8)(d):

41 (e) Continuing education hours for Board activities must assist in assuring the
42 competence and skills of the chiropractic physician, and

1 (f) Shall be quality courses or activities adequately supported by evidence or rationale as
2 determined by the Board.
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4 Section 15) states, "The Board shall maintain and make available through its WEB page
5 and mailings to licensees a list of disapproved courses, if any. The Board may disapprove
6 a course or CE activity after giving the sponsor and/or licensees the opportunity to
7 provide additional information of compliance with the criteria contained in this rule, and
8 opportunity for contested case hearing under the provisions of ORS 183.341 if requested.
9 Any CE sponsor or licensee may request the Board to review any previously disapproved
10 course at any time.
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14 Whereas the requirement for the EBOM two hour course and the six hour Pain
15 Management course is still in effect for all newly licensed chiropractic physicians, the OBCE is
16 proposing that, from this point forward:

- 17 A. Vendor's two-hour EBOM video course is approved for one hour of continuing
18 education credit and the remaining hour is disapproved.
19 B. Vendor's six-hour Pain Management video course is approved for two hours and the
20 remaining four hours are disapproved.
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22 7.
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24 Vendor has the right, if Vendor requests, to have a formal contested case hearing before
25 the Office of Administrative Hearings to contest the matter set out above. At the hearing,
26 Vendor may be represented by an attorney and subpoena and cross examine witnesses. That
27 request for hearing must be made in writing to the OBCE, must be received by the OBCE within
28 30 days from the mailing of this notice (or if not mailed, the date of personal service), and must
29 be accompanied by a written answer to the charges contained in this notice.
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31 8.
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33 The answer shall be made in writing to the OBCE and shall include an admission or
34 denial of each factual matter alleged in this notice, and a short plain statement of each relevant
35 affirmative defense Vendor may have. Except for good cause, factual matters alleged in this
36 notice and not denied in the answer will be considered a waiver of such defense; new matters
37 alleged in this answer (affirmative defenses) shall be presumed to be denied by the agency and
38 evidence shall not be taken on any issue not raised in the notice and answer.
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40 If Vendor requests a hearing, before commencement of that hearing, Vendor will be given
41 information on the procedures, rights of representation and other rights of the parties relating to
42 the conduct of the hearing as required under ORS 183.413-415.
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4 If Vendor fails to request a hearing within 30 days, or fails to appear as scheduled at the
5 hearing, the OBCE may issue a final order by default and impose the above sanctions against
6 Vendor. Upon default order of the Board or failure to appear, the contents of the Board's file
7 regarding the subject of this automatically become part of the evidentiary record of this
8 disciplinary action upon default for the purpose of proving a prima facie case.
9

10 DATED this 25th day of February 2009.
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12 BOARD OF CHIROPRACTIC EXAMINERS
13 State of Oregon

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15 Original signature on file at OBCE

16 By:

17 Dave McTeague, Executive Director
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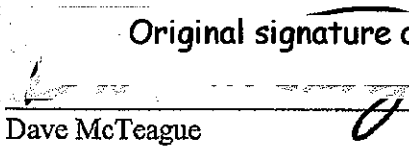
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Certificate of Service

I, Dave McTeague, certify that on February 25, 2009, I served the foregoing Notice of Proposed Denial of CE Hours upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

James Warner DC
Cascade Success Systems
4163 Cherry Avenue NE
Keizer, Oregon 97303

Original signature on file at OBCE



Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners