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WRITTEN EXAMINATIONS

September 2011 Examinations

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Applicant Eligibility

Eligibility rules vary for each of the NBCE written examinations.

- [Part I and Part II](#)
- [Part III](#)
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Part I: Eligibility

Student Eligibility

A student currently enrolled in one of the [colleges listed on this website](#) is eligible to take Part I in his or her sophomore year with authorization by the dean or registrar of that college.

An applicant may take Part II in his or her junior year upon proper authorization by the dean or registrar. The NBCE strongly recommends that college representatives approve only the applications of students who have satisfactorily completed courses in the subjects being tested.

The courses must be completed by the application late cutoff date. Individual chiropractic colleges may establish additional requirements, provided they inform the NBCE.

While enrolled in a chiropractic college, examinees may take the examinations as many times as they choose, as long as published eligibility and application requirements are met; however, examinees are advised that individual states may impose different or additional requirements or restrictions. Once all examinations in Part I, Part II, Part III, Physiotherapy and Acupuncture have been passed, an individual may not retake these examinations without special requirement of a state licensing authority.

Doctors of Chiropractic Eligibility

Class I

Class I refers to a doctor of chiropractic who has graduated less than six months prior to the examination date and has never applied to take Part I or Part II while attending chiropractic college.

Class I applicants may establish eligibility by submitting an application that is authorized by the dean or registrar of the college from which the degree was granted.

If an individual previously registered for Part I and/or Part II, the NBCE does not require the signature of a college official for that part. The completed application may be mailed directly to the NBCE offices.

Class II

Class II refers to a doctor of chiropractic who has graduated at least six months prior to the examination date and has never applied to take Part I or Part II while attending chiropractic college.

Class II applicants may establish eligibility by providing documentation of their graduation from a chiropractic college whose students are eligible to take the NBCE examinations. This may be in the form of:

- the registrar's signature on the eligibility line of the application

- a letter stating the date of graduation from the registrar of the attending college bearing the chiropractic college seal
- an official college transcript
- a copy of a doctor of chiropractic degree

Class III

Class III refers to a doctor of chiropractic or a student of chiropractic who has successfully passed all subject examinations.

Class III applicants are NOT eligible to retake any previously passed examination, except upon the written request or requirement from a state licensing authority. Scores from retake examinations based on this criteria do not void the original passing scores.

Most states accept passing NBCE scores regardless of the date of completion. Though some states require that historical scores be submitted, examinees are advised that only the most recent scores will be provided to licensing authorities upon receipt of a transcript request form.

Final decision for licensure of graduates from any chiropractic educational institution rests with individual state licensing boards.

Part I and Part II Retakes

Examinees who fail THREE OR MORE subjects in Part I or Part II will be required to retake the entire part. An examinee who fails one or two subjects per part is entitled to retake only the failed subjects in each part.

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Part III: Eligibility

Student Eligibility

A student currently enrolled in one of the [colleges listed on this website](#) is eligible to take the Part III Examination when they have completed Part I and are within nine months of graduation prior to the time of the examination. The NBCE withholds release of official Part III transcripts until the examinee has passed Part II.

Initial Part III eligibility requires that applications be signed by the dean or registrar of the examinees' respective colleges.

Final decision for licensure of graduates from any chiropractic educational institution rests with individual state licensing boards.

Doctor of Chiropractic Eligibility

A doctor of chiropractic who holds a valid license to practice chiropractic issued after Dec. 31, 1988, must first pass Part I to take the Part III Examination. The NBCE withholds release of official Part III transcripts until the examinee has passed Part II.

A doctor of chiropractic who holds a valid license to practice, issued on or before December 31, 1988, is eligible to take Part III upon submission of a notarized letter from an authorized representative of a state board which has licensed the applicant. The letter must verify that the applicant is licensed by that agency, that the applicant's license is not currently under suspension, and that there is no known disciplinary action in effect or pending.

Part III Retakes

The NBCE does not limit the number of times an examinee may retake Part III prior to passing; however, individual licensing authorities may place restrictions on how many times a licensure applicant is allowed to retake Part III. Once a passing score is achieved, examinees will not be permitted to retake Part III without a written request or requirement from a state licensing authority.

See [Links to State Boards](#).

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Physiotherapy: Eligibility

General Requirements

To be eligible to take the Physiotherapy Examination, an applicant must have successfully completed 120 hours of instruction in physiotherapy, prior to the application late cutoff deadline. This physiotherapy instruction must be taken at and/or recognized by one of the chiropractic colleges whose students are currently eligible to take the NBCE examinations.

Physiotherapy may be taken individually or in conjunction with other NBCE written examinations. A separate fee is required to take the Physiotherapy Examination. Final decisions for licensure of graduates from any chiropractic educational institution rest with individual state licensing boards.

Student Eligibility

To establish initial student eligibility for the Physiotherapy Examination, the application must be signed by the registrar of the college, or the applicant must provide documentation showing

completion of 120 hours of physiotherapy instruction.

Doctor of Chiropractic Eligibility

A doctor of chiropractic who has never taken the Physiotherapy Examination must provide documentation specifically stating the completion of 120 hours of physiotherapy instruction or obtain the signature of a college official. A copy of one's doctor of chiropractic degree does not meet this requirement.

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Acupuncture: Eligibility

General Requirements

To be able to take the Acupuncture Examination, an applicant must have successfully completed 100 hours of instruction in acupuncture, prior to the application late cutoff date. The acupuncture instruction must be taken at and/or recognized by:

- one of the chiropractic colleges whose students are currently eligible to take the NBCE examinations
- a college or university accredited by an accrediting body recognized by the U.S. Department of Education

A separate fee is required to take the Acupuncture Examination. The Acupuncture Examination may be taken individually or in conjunction with other written examinations, as scheduling allows. Final decisions for licensure of graduates from any chiropractic educational institution rest with individual state licensing boards.

Student Eligibility

To establish initial student eligibility for the Acupuncture Examination, the application must be signed by the dean or registrar of the college.

Doctor of Chiropractic Eligibility

To establish eligibility to take the NBCE Acupuncture Examination, a licensed chiropractor may:

- submit an NBCE application to the college from which he or she graduated for an official signature
- submit a letter from one of the U.S. or international chiropractic colleges whose students are currently eligible to take the NBCE examinations, stating that the candidate has completed 100 hours of acupuncture instruction
- submit a letter from a college or university accredited by an organization recognized by the U.S. Department of Education stating that the candidate has completed 100 hours of acupuncture instruction

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[NBCE Directors' SharePoint](#)
[NBCE Directors' E-mail](#)

National Board of Chiropractic Examiners
901 54th Avenue • Greeley, Colorado 80634
• 970-356-9100 • nbce@nbce.org

International Board of Chiropractic Examiners
901 54th Avenue • Greeley, Colorado 80634
• 970-356-9100 • www.ibce.org

TESTIMONY AND STATEMENT OF THANE TIENSON IN
OPPOSITION TO ADOPTION OF PROPOSED DRY NEEDLING RULE

My name is Thane Tienson. I am an attorney and partner in the law firm of Landye Bennett Blumstein, 1300 SW 5th Avenue, Ste. 3500, Portland, Oregon 97201.

In order to adopt any rule, a public agency, including the Oregon Board of Chiropractic Examiners, must ensure that the proposed rule is within the existing statutory authority of the agency.

The proposed rule concerning dry needling, which is the subject of this proceeding today, is not within the existing statutory authority of the agency and is therefore invalid. Moreover, this absence of statutory authority has been recognized by the Oregon Board of Chiropractic Examiners itself for many years and the Board's effort today to nonetheless attempt to proceed with the adoption of such rule is in clear violation of the law. Dry needling is acupuncture as the ~~Oregon Medical Board states and as this Board has acknowledged several times in the past,~~ including most recently in the September 2009 meeting, the minutes of which I have attached to my written testimony and marked as Exhibit "A."

Allowing insufficiently trained chiropractic physicians to perform acupuncture as this proposed rule will, presents a clear danger and threat to the public safety and health of Oregon's citizens. Acupuncture/dry needling is not "taught in approved chiropractic colleges" as the law requires and is not part of the core curriculum of approved chiropractic colleges. What little course offerings and training sessions are or will be made available in acupuncture/dry needling for chiropractic physicians are extremely limited, not clinically based and wholly inadequate to allow them to engage in such practices.

ORS Chapter 684 contains the statutory provisions governing chiropractors and provides, in pertinent part, that “chiropractic” is “the employment of all rational therapeutic measures as taught in approved chiropractic colleges.” ORS 684.010(2)(b). In addition, 684.025(2) expressly provides that “Neither this section nor ORS 684.010” (the “definitions” section of the law governing chiropractors) “authorizes the administration of any substance by the penetration of the skin or mucous membrane of the human body for a therapeutic purpose.”

ORS 684.035 provides that “Nothing in this chapter (ORS Chapter 684) shall be construed to interfere with any other method or science of healing in this state.”

Finally, ORS 677.759(1), governing the practice of acupuncture, provides that “no person shall practice acupuncture without first obtaining a license to practice medicine and surgery or a license to practice acupuncture from the Oregon Medical Board except as provided in subsection (2) of this section” (which allows for the issuance of license to practice acupuncture to individuals who are licensed to practice in another state or territory of the United States).

The proposed adoption of this rule governing dry needling violates all four of the above statutory provisions.

First, as this Board has recognized itself, dry needling or acupuncture is not taught in approved chiropractic colleges. The phrase “taught in approved chiropractic colleges” means what it says and what this Board interpreted it to mean. That any therapeutic measure performed by chiropractic physician, to be lawful, must be taught in—not through but in “approved chiropractic colleges” which the Board, correctly, has previously understood to mean that it is part of the core curriculum of those approved chiropractic colleges. There is no evidence that dry needling or acupuncture is presently taught in approved chiropractic colleges nor is it part of core curriculum at those colleges, because it is not.

Instead, a single approved chiropractic college, the University of Western States (formerly Western States Chiropractic College) here in Portland either has or intends to add a short twelve hour dry needling continuing education online course taught in Maryland with no clinical practice requirement. If this rule is adopted, the proposed rule simply provides that in order to practice dry needling chiropractic physicians simply must complete a “minimum of twelve hours of education with practicum specific to dry needling within the curriculum of an accredited chiropractic college, or through postgraduate continuing education on dry needling approved by the Oregon Board of Chiropractic Examiners.” This provision of the proposed rule exceeds the statutory authority of the Board which very expressly requires that remedial practices utilized by chiropractors must be taught in approved chiropractic colleges, not simply be part of a twelve hour postgraduate continuing education course “approved” by the Board “within the curriculum of an approved chiropractic college” without regard to the statutory requirement that it be taught in an approved colleges which this Board has always historically interpreted to mean part of the core curriculum for chiropractic physicians.

Secondly, as this Board itself has recognized in disciplining chiropractic physicians in this state, the performance of the technique referred to as “dry needling” on patients in a chiropractic clinic by inserting a dry needle directly into the skin of patients located in parts of the body such as the neck, shoulder and scapula in trigger point areas is contrary to the statutory provisions governing both the practice of chiropractic physicians in the State of Oregon and of acupuncture and constitutes a violation of ORS 684.010(2)(a),(b), ORS 684.035 and ORS 684.100(1)(g) and (B), as set forth in the matter of James Olshove, D.C., License No. 2764, Case No. 2003-1002, a copy of which is attached to my written testimony as Exhibit “B.” In that 2003 decision this Board expressly determined that a chiropractic physician performing dry needling

on a patient constituted a violation of the definition of “chiropractic” as defined in ORS 684.010(2)(a) and (b), and interference with another method or science of healing in this state contrary to ORS 684.035. There have been no changes to those statutory provisions since the date of that decision that would allow for a different result today.

The only difference between then and today or between September 2009 and today is the makeup of the chiropractic board itself and a seeming determination on the part of the Board to significantly expand the scope of chiropractic treatment in this state beyond that allowed by the law, with little regard for public health or safety and in complete disregard of existing statutory provisions, prohibiting interference with other methods of healing and prohibiting the practice of acupuncture by those unlicensed and uncertified to do so by the Oregon Board of Medicine, a board which also is on record as opposed to this rule because it exceeds the existing statutory authority of the Board of Chiropractic Examiners.

If chiropractic physicians in the State of Oregon wish to practice dry needling, which this Board has previously acknowledged is essentially identical to the practice of acupuncture, they may do so, but they may do so only by first obtaining a license to practice medicine and surgery or a license to practice acupuncture from the Oregon Medical Board, undergoing the same substantial and rigorous training, including clinical training, required to practice acupuncture in this state in order to ensure that public health and safety is protected.

The Board’s proposed action today is a clear violation of the law and should be rejected. If adopted, it will be challenged.

BackTalk

Newsletter of the Oregon Board of Chiropractic Examiners ~ Summer 2010

FEDS ISSUE NEW GUIDE ON TESTIMONIALS

By Lori Lindley, Assistant Attorney General

If you use endorsements or testimonials in your clinic advertising, you should pay special attention to the Federal Trade Commission Act. The FTC recently updated its Guides Concerning the Use of Endorsements and Testimonials in Advertising, as they were last updated in 1980.¹ The Guides are administrative interpretations of the law intended to help advertisers comply with the federal law.

What is covered? Any advertisement using endorsements and testimonials for a product, service, company or industry. *Under the revised guidelines, advertisements that feature a consumer and convey his or her experience with a service as typical,*

when that is not the case, will be required to clearly disclose the results that consumers can generally expect. This contrasts from the disclaimer such as "results not typical" that was permissible prior to these changes.

If an advertiser refers to findings of a research organization that conducted research sponsored by that advertiser, the advertisement must disclose the connection between the advertiser and the research organization. And a paid endorsement; like any other advertisement, is deceptive if it makes false or misleading claims.

Examples given in the materials provided by the FTC are an ad for an acne treatment which features a dermatologist who claims that the product is "clinically proven" to work. Before giving the endorsement, the dermatologist received a write up of the clinical study in question, which indicates flaws in the design and conduct of the study that are so serious that they preclude any

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New OBCE Board members, Daniel Cote DC, Huma Pierce DC

New OBCE Board Members

Drs. Daniel Cote and Huma Pierce joined the Board in March 2010 replacing Drs. Steve Koc from Salem and Michael Megehee from Pendleton.

Dr. Cote has practiced in Silverton since 1997 after graduating from Parker College of Chiropractic. He has served on the Patient Safety Seed Panel and assisted with writing exam questions for the Ethics & Jurisprudence test. In his application he stated,

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ETSDP

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Dry needling. The OBCE has received pro and con testimony as to whether dry needling could be used by chiropractic physicians as a physiotherapy modality. Advocates say this is distinct from acupuncture since the needle application is to trigger points and not to traditional acupuncture points. At their March meeting, the OBCE heard from representatives of the Medical Board's Acupuncture Committee and the Acupuncture state association in strong opposition saying this is all acupuncture. The Oregon Physical Therapy Board has said dry needling is an advanced physical therapy technique, but would require additional training and certification. Currently no U.S. chiropractic college teaches dry needling as part of their core curriculum, though one or two sponsor a CE course. The OBCE's current position is this should be taught in chiropractic college core curriculum prior to being accepted in the Oregon scope of practice.

Zyto (& other EPEX-SCIO type devices)

The OBCE receives periodic inquiries regarding so-called "energy" medicine devices which purport to use: "quantum mechanics" or "quantum biofeedback" or "nano-technology" or claims in any way to have thousands of "preprogrammed scenarios and library references organized into defined groups, which create quick and manageable patient assessments."

These are presumed to be outside the Oregon chiropractic scope of practice until such time the specific device is reviewed by the OBCE under the provisions of OAR 811-015-0070 (ETSDP rule) and determined to be either standard or investigational.

This includes the "Zyto" device, Quantum QXCI Bio-Resonance Device, and any other devices which are similar in operation to the EPEX-SCIO device (which was previously evaluated and found to be unacceptable).

Cryoprobe

This device uses compressed nitrous oxide gas to freeze to a depth of 5mm on the human skin. On March 18, 2010, the OBCE approved this (and similar devices) as standard in a minor surgery procedure.

Ellman SS Pelleve (or similar units)

This is a high frequency low temperature radiowave unit, "utilized to tighten collagen within the skin non invasively." Although this is not a laser procedure, it may be similar to the laser treatments for cosmetic purposes. On March 18, 2010, the OBCE referred this issue to the ETSDP committee for review, pending an application from proponents. Previously in September 2009, the OBCE determined a similar device, Lam Probe 4000, was not to be used.

Contact Reflex Analysis (CRA)

CRA was reviewed in 2009 and its current position as standard was not changed. It was noted the CRA manual said this was an "adjunctive" procedure. The Board also said that any technique is not a stand-alone procedure.

NOTE: ETSDP stands for Examinations, Treatments, Substances, Devices and Procedures, see Oregon Administrative Rule 811-015-0070. The OBCE evaluates ETSDPs to determine if they are standard, investigational or may not be used. The ETSDP application is found on the OBCE web page as Appendix A of the Policy & Practice Question Guide. ■

Policy & Practice Questions

Question: *As a massage therapist, I was involved with a clinic that did both chiropractic and biomedical acupuncture. The pain relief and functional benefits were very impressive. Since this is dry-needling based on a biomechanical model and not TCM, is there a possibility of getting this in our scope of practice in Oregon? Oregon DC.*

Answer: The Board has previously interpreted "dry needling" as "acupuncture" or breaking the skin for a therapeutic purpose, both of which are outside the scope of chiropractic practice in Oregon. The acupuncture association would likely be strongly opposed. Scope of practice issues like this would have to be addressed through legislation. This would have to be a priority for the professional associations who represent chiropractic in the Legislature.

Question: *May a Chiropractor licensed in Oregon practice Rolfing® structural integration under the Chiropractic license?*

Answer: Yes. (ORS 684.010) Rolfing is a form of massage therapy albeit one that requires additional training, massage therapy is commonly provided by chiropractic physicians as part of chiropractic health care. Massage is both taught at chiropractic colleges and is a physiotherapy modality, both of which are recognized by ORS 684.010 (2) (a) & (b).

Question: *Can DCs provide x-rays for acupuncturists?*

Answer: Yes, as far as the OBCE is concerned. L.Ac.'s may differentially diagnose and provide a broad range of treatments related to acupuncture and Chinese/oriental medicine.

Question (from insurance claims rep.): *Can a chiropractor treat a family member as a patient who has been in a MVA?*

Answer: Yes, there is no prohibition on DCs treating family members.

Question: *Can chiropractic assistants perform colonic therapy?*

Answer: No.

Question: *Does a course on Rapid Eye Technology (RET) procedure qualify for CE?*

Answer: No. RET is not well-researched or scientifically substantiated. The sponsors of this technique were offered the opportunity to provide additional studies, but no information was forthcoming.



Drs. Steve Koc, David Corll (Peer Review chair), Minga Guerrero and Jane Billings (staff) at April new doctors meeting.

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2011, I served the foregoing **TIENSON AFFIDAVIT IN SUPPORT OF MOTION FOR STAY PENDING JUDICIAL REVIEW** on the following individual(s):

Ann Goldeen DC, President
Oregon Board of Chiropractic Examiners, Respondent
3218 Pringle Road SE, Suite 150
Salem, Oregon 97302

Daniel Cote DC, Vice-President
Oregon Board of Chiropractic Examiners, Respondent
3218 Pringle Road SE, Suite 150
Salem, Oregon 97302

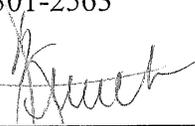
Huma Pierce DC, Secretary
Oregon Board of Chiropractic Examiners, Respondent
3218 Pringle Road SE, Suite 150
Salem, Oregon 97302

John Kroger, Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

via certified mail, return receipt requested.

I hereby certify that on July 7, 2011, I efiled the foregoing **TIENSON AFFIDAVIT IN SUPPORT OF MOTION FOR STAY PENDING JUDICIAL REVIEW** with:

State Court Administrator
Oregon Court of Appeals
1163 State Street
Salem, OR 97301-2563



Jeri G. Zwick, Legal Asst. to Thane W. Tienson
Landye Bennett Blumstein LLP
1300 SW 5th Avenue, Ste. 3500
Portland, OR 97201
503.224.4100 / 503.224.4133 (facsimile)
Of Attorneys for Petitioners

IN THE COURT OF APPEALS OF THE STATE OF OREGON

COPY

**OREGON ASSOCIATION OF
ACUPUNCTURE AND
ORIENTAL MEDICINE;
ALFRED THIEME; and E.
CHRISTO GORAWSKI,**

Petitioners,

v.

**OREGON BOARD OF
CHIROPRACTIC EXAMINERS,**

Respondent.

Appellate Court No. A148924

**DECLARATION OF ALFRED
THIEME IN SUPPORT OF
PETITIONERS' MOTION FOR
STAY PENDING JUDICIAL
REVIEW**

OREGON BOARD OF
CHIROPRACTIC EXAMINERS

JUL - 8

RECEIVED

I, ALFRED THIEME, declare as follows:

1. I am a petitioner in this action, and I make this Declaration in support of Petitioners' Motion for Stay Pending Judicial Review and on the basis of personal knowledge and belief.

2. I am a member of the Board of Directors of petitioner Oregon Association of Acupuncture and Oriental Medicine (OAAOM). The Association is a non-profit organization that has about 250 members, all of whom are licensed acupuncturists in the State of Oregon. OAAOM represents about 25% of the licensed acupuncturists in Oregon. OAAOM is a professional organization designed to represent and protect the practice of acupuncture and oriental medicine in the State of Oregon, provide business support and legal reference for practitioners of acupuncture and oriental medicine, and to build a supportive community that collaborates with other health care practitioners to promote public health. As the professional association for licensed acupuncturists in Oregon, OAAOM is entrusted with defending the high standards of training and professionalism required for the practice of acupuncture.

3. I testified at the public hearing held by the respondent Oregon Board of Chiropractic Examiners (OBCE) on May 17, 2011, and a copy of my written statement which I presented to the OBCE in conjunction with my oral testimony is attached hereto and incorporated by reference as Exhibit "A". I concur with the list of complaints contained within the OAAOM letter to the OBCE dated May 16, 2011, a copy of which is attached and marked as Exhibit "B".

4. My acupuncture practice and career will be negatively impacted by the adoption of OAR 811-015-0036, as will the practices of other licensed acupuncturists in the State of Oregon because of the certain and likely rapid expansion of the number of medical professionals authorized to practice acupuncture in this state without adequate training or experience. This proposed rule is an attempt by the chiropractic profession in Oregon to expand its scope of practice to include acupuncture without proper education and training. The rule requires only 24 hours of training, and requires no clinical experience in "dry needling" or acupuncture in order to practice. Medical professionals who want to practice "dry needling" or acupuncture need to expand their training to well beyond the 24 hours established by this new rule in order to become competent practitioners of this medical modality, as there are many potential risks of harm to patients from inexperienced or untrained practitioners. Those potential harms, which are well-recognized, include, but are not limited to, pneumothorax (punctured lung); infections from needles; minor bleeding and hematomas.

5. The act of trigger point dry needling involves intense stimulation of acupuncture points repeatedly. Important acupuncture points involved in this practice lie over and above the lung. Specifically, Gallbladder 21 (GB 21) sits at the apex of the lung and if stimulated too deeply by inexperienced practitioners of acupuncture, can lead to pneumothorax or a collapsed lung. In particular, GB 21 would be used very frequently by chiropractors since it is important in dealing with

cervical issues, neck pain, whiplash, etc. These type of issues are very common in the practice of a chiropractor since many of them focus the majority of their practice on the auto accident patients or personal injury claims that fall under automobile insurance medical claims. In fact, the chiropractor industry is well-known for pursuing these type of patients due to the large fiscal returns from these patients. Hence, with these patients, there is a high probability that chiropractors would cause a pneumothorax at or near GB 21. With only 24 hours of total training, at least eight hours will need to be devoted to clean needle technique certifications. This fact essentially reduces the actual dry needling training that Oregon chiropractors will undergo to 16 hours. As a consequence, Oregon chiropractors will not be adequately trained to provide safe, dry needling/acupuncture to the public.

6. The proper education for persons who want to practice acupuncture in Oregon is from a college or university that provides the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) prescribed training and curriculum for acupuncture. *See* OAR 847-070-0016. That training devoted to acupuncture is at least 1,365 hours of acupuncture education, excluding the 45 hours of biomedicine training that chiropractic physicians presumably would not need. That 1,365 hours includes 705 hours devoted to acupuncture theory and 660 hours of clinical practice.

7. Six states in the United States have determined that chiropractors must receive the full ACAOM-certified acupuncture training to be able to practice acupuncture. They are Hawaii, Georgia, Michigan, Rhode Island, Wisconsin, and Washington. There are two existing national organizations that provide certification for chiropractors to practice acupuncture. They are the National Board of Chiropractic Acupuncturists (NBCA, which requires 100 hours of training, and the American Board of Chiropractic Acupuncture (ABCA). The

ABCA has expanded its educational requirements for its acupuncture certification exam to 300 hours (*see Ex. B attached*), which still falls well short of the 1,365 additional hours of acupuncture education, training, and experience prescribed by the ACAOM for medical practitioners, and which I and all other licensed acupuncturists in the State of Oregon were required to undergo before becoming licensed to practice acupuncture in Oregon.

8. With just a 24-hour acupuncture (“dry needling”) training requirement, the number of chiropractors practicing acupuncture in the State of Oregon could easily reach several hundred. There are slightly over 1,100 licensed acupuncturists in the State of Oregon. The addition of this many chiropractors into the pool of practitioners that could practice acupuncture in Oregon will result in financial harm to the acupuncture profession in Oregon, and to me and other licensed professional acupuncturists in this state. Licensed acupuncture practitioners will now be faced with increased competition (based on the lesser standards and expense required to obtain a license to perform dry needling) that immediately and irreparably dilute the value of their extensive training and specialized skills, in turn harming not just individual acupuncturists, but also the entire profession

9. More importantly, with only 24 hours of training in order to become certified in the practice of dry needling/acupuncture, the opportunity for patients to suffer adverse effects from the administration of these needles into the body will increase substantially. Recognized adverse effects from acupuncture include pneumothorax (punctured lung); infections from improperly sterilized needles; and minor bleeding and hematoma. There is literally no way that a chiropractor with only 24 hours of training devoted to the practice of acupuncture will have enough knowledge or experience to understand the proper practice of acupuncture and increased adverse effects from patients treated by such inexperienced and inadequately trained practitioners are therefore likely to occur. The increased

likelihood of adverse effects, if publicized, will clearly damage the reputation of highly-trained acupuncturists, the practice of acupuncture, and persons like me who have devoted their professional career to the practice of acupuncture.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and are subject to penalty of perjury.

DATED this 7th day of July, 2011.

/s/ Alfred Thieme
ALFRED THIEME

May 17, 2011

Oregon Board of Chiropractic Examiners (OBCE)
3218 Pringle Road SE
Salem, OR 97302

Dear OBCE,

I represent myself as an individual licensed acupuncturist in the state of Oregon. I will be harmed by the adoption of the proposed Oregon Board of Chiropractic Examiners (OBCE) administrative rule on "dry needling", OAR 811-015-0036. I concur with the list of complaints in the Oregon Association of Acupuncture and Oriental Medicine (OAAOM) letter to the OBCE dated May 16, 2011. I also reference and reserve the right to utilize any of the documents that the OAAOM and any other party have entered into the public record with regards to this administrative rule, at all hearings on the proposed rule OAR 811-015-0036 including the May 17th, 2011 OBCE final hearing on the proposed "dry needling" rule.

My acupuncture practice and career will be negatively impacted by the adoption of the dry needling rule. Additionally, the acupuncture practices of other licensed acupuncturists in the state of Oregon will be negatively impacted by the proposed dry needling rule.

This proposed rule is another attempt by the chiropractic profession to expand its scope of practice without proper education and training. Over the past 30 years, the chiropractic profession has attempted to convince state legislatures, and the public that the profession is licensed and trained to perform acupuncture. Now that the acupuncture profession has matured in the United States, it has become clear that chiropractors, physical therapists and other medical professionals that receive minimal education in acupuncture need to expand their training to become competent practitioners of this medical modality. The proper education for acupuncture is, unequivocally, from a college or university that provides the Accreditation Commission (ACAOM) prescribed training and curriculum. Furthermore, the National Board of Chiropractic Examiners (NBCE) should not be administering its own acupuncture exam. The NCCAOM is the organization that should be administering the national certification exams related to acupuncture. Even the American Board of Chiropractic Acupuncture (ABCA) has expanded their educational requirements for their acupuncture certification exam to 300 hours, which still falls well short of the 1365 additional hours prescribed by the ACAOM for medical practitioners.

There has been a trend of the chiropractic community to unnecessarily expand its scope of practice in different states to include acupuncture. In 16 states chiropractors can perform acupuncture with either 100 hours of training, or no additional training. Mostly, these decisions have been made because of the financial strength of the chiropractic profession has allowed them to hire lobbyists and attorneys to override the opposition of the licensed acupuncturists, who until recently have been less organized and less well-funded for many reasons. The political strength and wealth of the chiropractic profession should be taken into consideration when examining whether or not it is appropriate for the chiropractic profession to include non-chiropractic treatment modalities in their scope of practice in different states, and particularly in Oregon. Simply because they have the financial means to hire lobbyists, political strategists, and attorneys, does not mean it is in the best interest of the public to receive acupuncture treatments from minimally-trained chiropractors. To this end, six states in the United States have determined that chiropractors must receive the full ACAOM certified acupuncture training to be able to practice acupuncture (Hawaii, Georgia, Michigan, Rhode Island, Washington, and Wisconsin). So despite the political and legal power of the chiropractic profession, some states have been able to see the truth in this issue.

According to the NBCE approximately 70,000 chiropractors have active licenses in the United States, and of these 7.7% or 5390 are not actively practicing as of 2009. Essentially, there are 64,610 chiropractors practicing in the United States as of 2009. The NCBE estimates 13% of these chiropractors, or 8,400 chiropractors are practicing acupuncture. Based on this model we can extrapolate for Oregon where there are approximately 1300 chiropractors in the state, that if chiropractors were allowed to practice acupuncture at a 100-hour educational requirement then 170 chiropractors would begin practicing acupuncture. With a 12-hour acupuncture (“dry needling”) requirement, we can easily assume that the number of chiropractors practicing acupuncture would double or triple to 340 to 510 chiropractors practicing acupuncture, since the 12-hours of educational training would then be less than 1/9th of the 100-hour requirement of the NBCE, creating a much lower barrier to entry into the acupuncture profession for chiropractors in the state of Oregon. The addition of this many chiropractors into the pool of practitioners that could practice acupuncture in Oregon would result in financial harm to the acupuncture profession in Oregon.

I urge the OBCE to not adopt the proposed dry needling rule. The OBCE does not have the authority to make statutory changes such as proposed by OAR 811-015-0036. I request that the OBCE approach this type of change through the legislature instead of attempting to subvert both the ORS Chapter 684 and the intent of the legislature by administratively changing the scope of practice in ORS Chapter 684.

Sincerely,

Al Thieme, LAc, MAOM
Licensed Acupuncturist
Portland, Oregon



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Exam Requirements

Summary of the Diplomate Acupuncture Examination:

While the requirements to sit for the examination include successfully completing 300 hours of acupuncture training from a CCE accredited college or state association, programs and seminars being taught vary in structure and training. Please refer to the 2008 JOB ANALYSIS BREAKDOWN for a complete listing of acupuncture topics and data that will be covered in the Diplomate exam.

The examinee will be expected to take a two part examination:

- 200 multiple choice question comprehensive written acupuncture exam.
 - There will be no "all of the above" or "none of the above" answers.
 - There will be one correct answer per question.
 - Three (3) hours will be appropriated for the written exam. Four and one half (4½) hours will be appropriated for those who have provided the necessary documentation to substantiate need.
 - Examinees will not be given extra time to review their test at the end of the designated time allowed. It is important to carefully read each question and give your answer to the best of your knowledge.
- Oral/Practical acupuncture exam.
 - Examinee will move through three (3) stations with two (2) proctors per station.
 - Fifteen (15) minutes will be allowed per station.
 - Station 1: Point Location – choose one of several cards. Each card will have 12 acupoints listed. Examinee will choose 10 of 12 acupoints and demonstrate point location on themselves.
 - Station 2: Clean Needle – examinee will bring their own clean needle kit with them and demonstrate on themselves the ability to perform clean needle technique.
 - Station 3: Case Study – examinee will choose one of several cards with a case study reflecting chiropractic acupuncture. The examinee is responsible for diagnosing the condition in chiropractic and chiropractic acupuncture terminology. Examinee will then describe how they would treat the case, explain how they chose the particular acupuncture points and treatment plan.

The ABCA will send test scores and certification status to state licensing bodies for a fee of \$50.

Failure to Pass Diplomate Examination/Additional Training Requirements:

If a doctor of chiropractic fails his/her initial attempt of the two part examination, they will be allowed to retest within a 12 month period. Candidate will only be required to retest the portion of the exam he/she did not pass. If failure occurs after the second attempt of the two part examination, the candidate will be required to take 48 additional hours of chiropractic acupuncture training at an accredited college, state association or accredited post-graduate course. Candidate will be required to submit proof of these 48 additional hours of training to the ABCA board before retaking the Diplomate examination again.

Examination Appeals:

If a candidate is convinced there is an error in any of the questions on the examination, their grievance must be submitted in writing to the ABCA within 30 days of the mailing of the test scores. There will be a

\$75 fee for grievance to review score sheet. There will be a \$150 fee for grievance to review test. NO EXCEPTIONS. Each appeal must include:

1. Candidates name and address
2. Test date and location
3. Portion of Exam (Written or Oral/Practical)
4. Detailed description of the challenged grievance
5. All grievances will be reviewed by the ABCA Appeals and Disciplinary Committee (ADC). A decision will be made and the candidate will receive a written explanation to their grievance by the U.S. Postal Service within 60 days of receiving the grievance. THE ABCA DOES NOT ALLOW CANDIDATES TO REVIEW EXAMINATION QUESTIONS IN THIS APPEALS PROCESS.

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CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2011, I served the foregoing **THIEME DECLARATION**
IN SUPPORT OF MOTION FOR STAY PENDING JUDICIAL REVIEW on the following
individual(s):

Ann Goldeen DC, President
Oregon Board of Chiropractic Examiners, Respondent
3218 Pringle Road SE, Suite 150
Salem, Oregon 97302

Daniel Cote DC, Vice-President
Oregon Board of Chiropractic Examiners, Respondent
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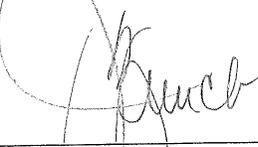
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John Kroger, Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

via certified mail, return receipt requested.

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State Court Administrator
Oregon Court of Appeals
1163 State Street
Salem, OR 97301-2563



Jeri G. Zwick, Legal Asst. to Thane W. Tienson
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1300 SW 5th Avenue, Ste. 3500
Portland, OR 97201
503.224.4100 / 503.224.4133 (facsimile)
Of Attorneys for Petitioners

IN THE COURT OF APPEALS OF THE STATE OF OREGON

COPY

**OREGON ASSOCIATION OF
ACUPUNCTURE AND
ORIENTAL MEDICINE;
ALFRED THIEME; and E.
CHRISTO GORAWSKI,**

Petitioners,

v.

**OREGON BOARD OF
CHIROPRACTIC EXAMINERS,**

Respondent.

Appellate Court No. A148924

**DECLARATION OF E. CHRISTO
GORAWSKI IN SUPPORT OF
PETITIONERS' MOTION FOR
STAY PENDING JUDICIAL
REVIEW**

OREGON BOARD OF
CHIROPRACTIC EXAMINERS

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I, E. CHRISTO GORAWSKI, do declare as follows:

1. I am a petitioner in this action, and I make this Declaration in support of Petitioners' Motion for Stay Pending Judicial Review and on the basis of personal knowledge.

2. I am a long-time licensed acupuncturist in the State of Oregon. I am also a member of the petitioner Oregon Association of Acupuncture and Oriental Medicine (OAAOM). I testified before the respondent Oregon Board of Chiropractic Examiners (OBCE) in conjunction with the May 17, 2011 public hearing it held prior to its decision to adopt the rule authorizing chiropractors in Oregon to practice "dry needling," OAR 811-015-0036, and all of the statements I make in this Affidavit are part of the record on review. Attached to this Affidavit as Exhibit "A" is a copy of the written remarks I submitted to the OBCE at the May 17, 2011 public hearing.

2. I personally contacted the following chiropractic colleges to inquire about the existence of dry needling or acupuncture courses at the colleges:

/////

- Cleveland Chiropractic College
- Life Chiropractic College (two campuses)
- Logan College of Chiropractic
- National University of Health Sciences Chiropractic
- New York Chiropractic College
- Northwestern Health Sciences University Chiropractic
- Palmer College of Chiropractic (three campuses)
- Parker College of Chiropractic
- Southern California University of Health Sciences Chiropractic
- Texas Chiropractic College
- University of Bridgeport Chiropractic
- Western States University of Chiropractic

3. Absolutely none of those chiropractic colleges offer any courses related to “dry needling” in their curriculum. Regarding coursework relating to dry needling, I was told to contact the acupuncture school or to take the 105-hour post-graduate Doctor of Chiropractic’s (DC) acupuncture program that is offered to in addition to the core-curriculum. Western States University of Chiropractic here in the Portland area was the only school that I contacted that had any plans to offer any such courses. The School official I spoke with said it would be offering a post-graduate continuing education class on dry needling, but the class would not start until July 2007 after it was anticipated the Oregon Board of Chiropractic Examiners would pass or adopt a rule allowing chiropractors to practice dry needling.

4. Presently, Western States is accrediting a weekend, 12-hour continuing education dry needling course taught in Rockville, Maryland. The proposed rule to require only a 12-hour weekend class on acupuncture “dry needling” was dangerously inadequate. The new requirement contained in the OBCE’s rule of

24 hours training is still highly inadequate and presents a danger to the public. Inadequately trained persons performing acupuncture or dry needling can cause serious and life-threatening adverse effects on patients. Recognized adverse side effects during acupuncture include small bleedings, hematoma, dizziness, fainting, nausea, an increase in pain symptoms, pneumothorax, as well as additional problems arising from unsterile needles. Clearly, the risk of adverse effects will increase if chiropractors in Oregon are allowed to practice acupuncture (“dry needling”) with only 24 hours of training. This can only result in harm to the public, the acupuncture profession, to professional acupuncturists like me, and to the reputation of acupuncture.

5. Dry needling is acupuncture. There is almost a 100% correlation between trigger points and acupuncture points and, like acupuncture, dry needling is therapeutic, not diagnostic. Prior to the adoption of this rule, the Oregon Board of Chiropractic Examiners has consistently recognized dry needling as acupuncture and beyond the scope of practice authorized by the legislature for Oregon chiropractors.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and are subject to penalty of perjury.

DATED this 7th day of July, 2011.

/s/ E. Christo Gorawski
E. CHRISTO GORAWSKI

Evidence In The Case That "Dry Needling" Is Not In The Oregon Chiropractic Scope Of Practice

May 17, 2011

Oregon Board Of Chiropractic Examiners Administrative Rules:

In SECTION I, Devices, Procedures, and Substances, under

ACUPUNCTURE page 3, it states:

"The Board has determined that needle acupuncture is outside the Oregon chiropractic scope of practice. (ORS 684.035, Chapter not applicable to other methods of healing) "

TRIGGER POINT INJECTIONS (MYOFASCIAL) page 9, it states:

"Are Oregon licensees who have completed the postgraduate certification in minor surgery able to perform myofascial trigger point injections?"

"The Board determined that injection of myofascial trigger points is a ~~therapy, and as such is not within the Oregon chiropractic scope of practice.~~ In addition, the injection is more than "superficial" and thus is not covered by the minor surgery provisions. (12/11/02)"

- Trigger Point Dry Needling is also a "therapy" and thus, is not within the Oregon chiropractic scope of practice.
- Trigger Point Dry Needling is also more than "superficial" and thus is also not covered by the minor surgery provisions.

In the "Oregon Backtalk" Newsletter of the Oregon Board of Chiropractic Examiners Fall 2007 issue, page 14, under "Policy & Practice Questions" an Oregon DC asks: "As a massage therapist, I was involved with a clinic that did both chiropractic and biomedical acupuncture. The pain relief and functional benefits were very impressive. Since this is dry needling based on a biomedical model and not TCM, is there a possibility of getting this in our scope if practice in Oregon? Oregon DC."

"Answer: The Board has previously interpreted "dry needling" as

"acupuncture" or breaking the skin for a therapeutic purpose, both of which are outside the scope of chiropractic practice in Oregon. The acupuncture association would likely be strongly opposed. Scope of practice issues like this would have to be addressed through legislation. This would have to be a priority for the professional association who represent chiropractic in the Legislature."

[In fact, on March 17th, 2003, the Board of Chiropractic Examiners found James Olshove, DC, guilty of performing dry needling on his patients. In their "CONCLUSIONS OF LAW" stated:

"The Board finds that the above conduct is contrary to recognized standards within the practice of Chiropractic in Oregon. This is in violation of ORS 684.010 (2)(a)(b) and OAR 811-035-0015(4), OAR811-015-0005(1), ORS 684.035 and ORS 684.100(1)(g)(B)..." Signed by Dave McTeague, Executive Director. (See "Olshove" full document attached)

Also In SECTION I, Under VENIPUNCTURE page 9 it states:
"Chiropractors are allowed to draw blood (venipuncture) for diagnostic testing purposes. (10/24/96)

This diagnostic testing procedure is taught in approved chiropractic colleges all over the United States.

ORS 684.010(2)(b) defines "Chiropractic" as "The chiropractic diagnosis, treatment and prevention of body dysfunction; correction, maintenance of the structural and functional integrity of the neuromusculoskeletal system and the effects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic **diagnostic** procedures and the employment of all rational therapeutic measures as taught in approved chiropractic colleges."

ORS 684.025(2) states: "Nothing in this section or ORS 684.010 shall be interpreted as authorizing the administration of any substance by the penetration of the skin or mucous membrane of the human body for a therapeutic purpose."

Further legal advice from the Oregon Attorney General confirms that "Chiropractic physicians are accordingly authorized by law to withdraw blood or other fluid samples for diagnostic purposes in connection with the practice of chiropractic." (9/9/70)"

Nothing about "dry needling" is "diagnostic". Everything about dry needling is "therapeutic".

As recently as last Summer, 2010, In "Oregon Backtalk", Newsletter of the Oregon Board of Chiropractic Examiners, page 6, under "ETSDP Device and Procedure Update" it states under:

"**Dry needling.** The OBCE has received pro and con testimony as to whether dry needling could be used by chiropractic physicians as a physio-therapy modality. Advocates say this is distinct from acupuncture since the needle application is to trigger points and not to traditional acupuncture points. At their March meeting, the OBCE heard from representatives of the Medical Board's Acupuncture Committee and the Acupuncture state association in strong opposition saying this is all acupuncture. The Oregon Physical Therapy Board has said dry needling is an advanced physical therapy technique, but would require additional training and certification. Currently no U.S. chiropractic college teaches dry needling as part of their core curriculum, though one or two sponsor a CE course. The OBCE's current position is this should be taught in chiropractic college core curriculum prior to being accepted in the Oregon scope of practice."
(My emphasis)

I fully concur after contacting the following chiropractic schools in the US, that none of them offer "dry needling" in their DC programs. I was told to either contact an acupuncture school or or take the 105 hour post-graduate DC acupuncture program that is offered in addition to the core-curriculum. Western States was the only school that indicated it had a post-graduate CE class on "Dry Needling" that would start this July of 2011, once the Oregon Board passed its inclusion at this final ruling meeting. Presently, WSU is accrediting a weekend 12 hour CE Dry Needling course taught in Rockville, Maryland.

Cleveland Chiropractic College
Life Chiropractic College (2 Campuses)
Logan College of Chiropractic
National University of Health Sciences Chiropractic
New York Chiropractic College
Northwestern Health Sciences University Chiropractic
Palmer College of Chiropractic (3 Campuses)
Parker College of Chiropractic
Southern California University of Health Sciences
Chiropractic
Texas Chiropractic College
University Of Bridgeport Chiropractic
Western States University of Chiropractic

And once more from Summer 2010, Oregon Backtalk: "The OBCE's current position is this should be taught in chiropractic college core curriculum prior to being accepted in the Oregon scope of practice."

"Dry needling" by the OBCE's own numerous interpretations of its statutes and rules, is clearly found ~~not to be in the Oregon chiropractic scope of~~ practice. Furthermore, the Oregon Chiropractic Association has been absent from the last three OBCE meetings on "Dry Needling" and, as has been evidenced, the Oregon Board of Chiropractic Examiners, in violation of its statutory duties and Mission Statement which reads:

"The mission of the Oregon Board of Chiropractic Examiners is to serve the public, regulate the practice of chiropractic, promote quality, and ensure competent, ethical health care. (Rev. 09/07)",

is also acting as an advocacy group in collaboration with Western States University to move this scope of practice change, duplicitously, through the rulemaking process to circumvent the appropriate legislative process to reduce quality, and undermine competent, ethical health care" with an unthinkable, and dangerously minimal 12 hour weekend class on acupuncture "dry needling".

E. Christo Gorawski L.Ac.

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2011, I served the foregoing **GORAWSKI DECLARATION IN SUPPORT OF MOTION FOR STAY PENDING JUDICIAL REVIEW** on the following individual(s):

Ann Goldeen DC, President
Oregon Board of Chiropractic Examiners, Respondent
3218 Pringle Road SE, Suite 150
Salem, Oregon 97302

Daniel Cote DC, Vice-President
Oregon Board of Chiropractic Examiners, Respondent
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John Kroger, Attorney General
Oregon Department of Justice
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via certified mail, return receipt requested.

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Of Attorneys for Petitioners

IN THE COURT OF APPEALS OF THE STATE OF OREGON

COPY

**OREGON ASSOCIATION OF
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ORIENTAL MEDICINE;
ALFRED THIEME; and E.
CHRISTO GORAWSKI,**

Petitioners,

v.

**OREGON BOARD OF
CHIROPRACTIC EXAMINERS,**

Respondent.

Appellate Court No. A148924

**DECLARATION OF DAVID
WHEELER IN SUPPORT OF
PETITIONERS' MOTION FOR
STAY PENDING JUDICIAL
REVIEW**

OREGON BOARD OF
CHIROPRACTIC EXAMINERS

JUL - 8

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I, DAVID WHEELER, do declare as follows:

1. I make this Declaration in support of Petitioners' Motion for Stay Pending Judicial Review and on the basis of personal knowledge and belief.

~~2. I am a licensed chiropractor in the State of Oregon and have been since~~
1983. I have a totally clean record and have had no disciplinary action taken against me by the Oregon Board of Chiropractic Examiners (OBCE) at any time for any reason.

3. I attended the November 18, 2010 public meeting of the OBCE, at which the issue of dry needling was discussed. At that meeting, I heard OBCE Chair, Dr. Michael Vissers, state that by re-labeling acupuncture as "dry needling," the OBCE was able to authorize its practice by chiropractors, even though it was, in fact, the same thing. At the November 18, 2010 meeting, Dr. Vissers publicly stated that the only difference between dry needling and acupuncture is the terminology. He further acknowledged that the procedure was exactly the same and the OBCE had the right to call acupuncture by another name to avoid having it exclusively regulated and licensed by the Oregon Medical Board.

4. Dry needling is defined by the OBCE as a technique used to treat myofascial trigger points to relieve pain and improve function. By definition, the practice exceeds the scope of the statutory definition of chiropractic set forth in ORS Chapter 684, *i.e.*, that system of adjusting with the hands the articulations of the bony framework of the human body and the employment and practice of physiotherapy, electrotherapy, hydrotherapy, and minor surgery.

5. OBCE, by authorizing dry needling, is incorporating the practice of acupuncture into the practice of chiropractic. Interestingly, the OBCE prohibits trigger point injections (myofascial) on the basis that it is therapy and not within the scope of practice of Oregon chiropractors.

6. I believe that OBCE's intrusion into the regulated area of acupuncture is not only beyond its statutory authority; I believe that in allowing dry needling, it will create confusion in both the medical and chiropractic professions, as well as for the public. By allowing the practice of dry needling by chiropractors with only 24 hours of training, it exposes the public to needless risk of harm by inexperienced and inadequately trained chiropractors engaged in the practice of acupuncture.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and are subject to penalty of perjury.

DATED this 7th day of July, 2011.

/s/ David Wheeler
DAVID WHEELER

CERTIFICATE OF SERVICE

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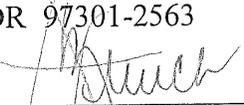
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