

Public Protection & Credibility

By Minga Guerrero, DC
OBCE President

The credibility of a profession is wrapped up in the effectiveness of its licensing board. This is apparent in the recent controversies surrounding other health licensing boards in Portland area newspapers. If a board does not do its job in public protection, and the public is harmed, this becomes newsworthy. The OBCE's primary mission is public protection. We are accountable to the Governor and Legislature to fulfill this purpose.

PRESIDENT'S MESSAGE



Ethics, Jurisprudence & Boundaries. At the recent Federation of Chiropractic Licensing Boards meeting, Larry Spicer DC, director of the Minnesota board shared two new approaches to these issues. The first is a revamped Ethics and Jurisprudence ex-

amination which poses a true statement and then asks the applicant to identify the correct rule or law cite from a list of four choices. The exam then becomes more of a teaching tool about how to read the rules and laws (when was the last time you read ORS 684 or OAR 811?) Dr. Spicer's research showed a significant decline in complaints and disciplinary actions for new licensees following this change. He attributes this to the revamped examination. The second is the ProBE program (Professional/Problem Based Ethics), which is an intensive weekend seminar and group process for health professionals with boundary violations. The doctor attending this program must write an essay following instruction

on boundaries, ethics, accountability, and professional standards. The OBCE will be using this course as another tool to address the underlying issues involved with boundary violations.

Clinical Justification rule. In 2004, leaders in our profession approached the board with stronger language for the Clinical Justification rule. After testimony and considering all points of view, the Board adopted a modest version of the original proposal. This action sent a positive signal to legislators about our commitment to address excessive treatment issues and helped with a positive legislative program to preserve patients access to auto PIP coverage for chiropractic care.

However, this change proved to be controversial, especially the requirement for "evidence based outcomes management—for curative chiropractic care." Clearly,

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some had concerns as to what this really meant, and in January 2006, the Board responded to a new proposal for changes in this rule. Following a formal public comment period the Board received 503 written comments opposed to the changes and 65 in favor.

To address the concerns expressed by the minority opinion, the Board at their May meeting adopted policy language clarifying their meaning and intent of the January 2005 Clinical Justification rule changes. Since there was a sunset clause attached to those changes, this rule will be reviewed again in the Fall of 2007.

I want to thank all those who have taken the time to really consider and debate these issues. Hopefully, this has helped us to become stronger as a profession. Please know that those who donate time to our board and our associations, do so out of great love for our profession and respect for fellow DCs. We are all in this together.

Clinical Justification Policy **Adopted by the OBCE,** **May 18, 2006**

The following policy declarations further describe and explain the intent of OAR 811-015-0010 (4).

The requirement in OAR 811-015-0010 (4) for evidence based outcomes management for "curative chiropractic treatment" does not in-

clude maintenance or wellness care. The Oregon Chiropractic Practice & Utilization Guidelines (OCPUG) defines maintenance care as inclusive of both preventive care and supportive care. While preventive care may be considered similar to wellness care, supportive care "is appropriate for a patient who has reached maximum therapeutic benefit" and/or "is appropriate in patients who display persistent and/or recurrent signs of illness or impairment."

Nothing in OAR 811-015-0010 should be interpreted as requiring or implementing a "very restrictive cook book approach."

The term "evidence based" as it relates to outcomes measures is not a specific reference to the Educational Manual (EMEBC) or to "evidence-based medicine," nor "evidence based best practice."

There should be clinical literature and evidence supporting the outcome assessments utilized. "Evidence" means the whole body of professional knowledge. This includes the spectrum of evidence from randomized controlled clinical trials to less rigorous forms of evidence. Examples of less rigorous forms of evidence includes one or more well designed controlled observational clinical studies, clinically relevant basic science studies, descrip-

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

BackTalk is the official newsletter of the Oregon Board of Chiropractic Examiners. The Board's next meetings are July 20 in Bend and September 21 in Salem. Please call the Board office for locations or consult the OBCE web site at www.oregon.gov/obce.

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BackTalk

Kevin Shuba, new OBCE Board member

Salem attorney Kevin Shuba has been appointed by Governor Kulongoski as the newest public member of the OBCE, replacing Portland attorney Jim Hendry. Shuba was confirmed by the State Senate in early April. He entered private practice in 2004, with a focus on real estate and construction disputes. Previous to that he served thirteen years as an Oregon Assistant Attorney General and was the OBCE's legal

counsel for several years in the early 1990's.

In his appearance before the Senate Rules and Executive Appointments Committee, Shuba said, "I learned about the chiropractic profession and I enjoyed working with them and advising them as a lawyer. Now that I'm in private practice this is an opportunity for me to serve the public in a different role. I hope to bring some of the skills that I have and information

I gathered in those years to bear as a public member of this board and to help them regulate and unify the chiropractic profession." Shuba also said he was very familiar with how small licensing boards like the OBCE function.

Shuba joins four other new



New OBCE member Kevin Shuba following his appearance before the Senate Rules and Executive Appointments Committee.



OBCE President Guerrero presents outgoing public member Jim Hendry with the OBCE Plaque of Appreciation for his nine years of service on the OBCE.

OBCE members who have been appointed within the last year. These are Drs. Joyce McClure, Michael Vissers and Michael Megehee and public member Estelle (Cookie) Parker-Kent. Drs. Minga Guerrero and George Siegfried have been reappointed for their second term on the OBCE.



Peer Review



Peer Review Committee at its March 9 meeting (left, top and bottom). Above: Drs. Steve Koc, Christine Robinson, Elizabeth Dunlop, J. Michael Burke, David Corll, Todd Bilby and Bonnie Malone, with mascot Liza Lu Malone.

OBCE Advises Marketing Plan Violates Fee-Splitting Prohibition

The Oregon Board of Chiropractic Examiners advises that a chiropractic physician who participates in a marketing plan recently offered by ABS Health Center, Inc. based in Cincinnati, Ohio would be in violation of Administrative Rule 811-035-0015, prohibition on fee-splitting in the referral of patients for services.

ABS Health Center, Inc. attempted to enlist an Oregon chiropractic physician whereby they proposed to "...bill back a marketing fee of \$1,000 for every \$3,500 cash patient closed (29% if the amount collected is less than \$3,500)" in return for an agreement whereby ABS leases a spinal decompression device for the doctor's office and conducts direct mail & broadcast media to recruit patients to use this device.

Any Oregon chiropractic physician who agreed to this would be in violation of the Oregon Board of Chiropractic Examiner's Administrative Rule 811-035-0015 which states,

"Unprofessional conduct means any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable chiropractic prac-

tice; or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a Chiropractic physician:

"(24) Splitting fees or giving or receiving a commission in the referral of patients for services."

In a letter to ABS, Executive Director Dave McTeague also said, "We note that you have attempted to draw a distinc-

tion between Insurance/Medicare/Medicaid and cash pay patients, stating that fee splitting is OK if it involves cash pay patients. This letter is to inform you that the Oregon Board of Chiropractic Examiner's administrative rule does not make this distinction and that fee splitting for chiropractic patients of the magnitude proposed is illegal in Oregon."

For more information contact, OBCE Executive Director Dave McTeague at 503-378-5816 ext. 23.

Administrative Rule Update

Amendments to OAR 811-015-0005, Records clarifies that if the treating chiropractic physician is an employee or associate, the duty to maintain original records shall be with the chiropractic clinic/business entity that employed or contracted with the employee or associate doctor. This clarifies where the primary responsibility lies. However, it is highly recommended that employing chiropractors and employee/associates enter into written agreements to clarify their expectations and working relationship. If a former employee/associate DC needs to access patient records to respond to a complaint or legal action they need either a

records release or a subpoena.

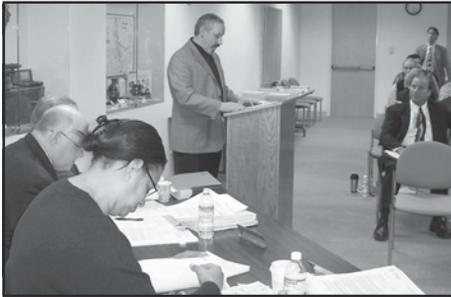
Another section was added which codified existing practice that the responsibility for maintaining original patient records may be transferred to another chiropractic physician or chiropractic business as part of a business ownership transfer.

New Administrative Rule 811-10-0084 implements legislation passed by the 2005 Oregon Legislature providing the OBCE with access to national FBI criminal history data. This is used to do thorough background checks for DC applicants as an important public protection screen. A \$52 fee covers the actual cost charged by the Oregon State

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Chiropractors and patients testified about the clinical justification rule at the January 19 OBCE forum



Clockwise from top left are Drs. Michael Miller, Jennifer Pitcairn, Judith Boothby, John Schmidt, Verne Saboe, Mitch Haas and Michael Sears.



Duty To Report

Oregon Revised Statute 684.200 says OBCE licensees “shall report to the board any suspected violations of this chapter” and Administrative Rule 811-010-0040 says, “It shall be the duty of every licensee to notify the Board’s administrative office — in order that the Board may take appropriate investigative and corrective or disciplinary action.”

The law and rule further provide that all information provided must be kept confidential (by the Board) and protects against any civil action for reporting.

The Duty To Report is especially critical in situations involving public or patient safety. Duty to Report is essential for doctors or assistants to protect their profession and their patients. A report may be as simple or easy as a phone call to the Board investigator or director. A more formal complaint form is always available from the Board office or from the Board’s web page. If you have a question or concern regarding any of this, please give the Board office a call. The investigator is at 503 378-5816, Extension 25.

Policy & Practice Questions & Answers

Question: May a chiropractic physician write a letter detailing back pain issues for a patient to give to their medical doctor, to assist in obtaining a prescription for medical marijuana.

Answer: Yes, of course. (Only the MD can write a medical marijuana card prescription.)

Question: May a chiropractic physician refer a patient to an attorney and visa versa?

Answer: Yes, but avoid any fee or commission for referral of a patient.

Question: May chiropractors perform prolotherapy? (injecting joints with a substance that provokes a healing response)

Answer: No. DCs may not break the skin for a therapeutic purpose unless certified to perform a minor surgery procedure, but may for a diagnostic purpose.

Question: May a chiropractic physician bring a LMT into his office (who has her own clients and also will receive referrals from the chiropractic physician) — she will bill for all her services directly to insurance and have a percentage of gross leasing arrangement.

Answer: Yes, the Board established a policy which says percentages of gross leasing arrangements are not a violation of the fee splitting prohibition, provided they are entered into prior to any patient base. See page 22 of the OBCE Guide to Policy & Practice Questions.

Question: May a chiropractic physician use a prescription drug as a topical used with ultrasound?

Answer: No.

Question: May a chiropractic physician utilize iontophoresis using ultrasound. Webster defines intophoresis as "the introduction of an ionized substance (as a drug) through intact skin by the application of a direct electric current"

Answer: Yes, as long as the substance is

non-prescription over-the-counter (OTC).

Question: A patient has requested original MRI films from the chiropractic physician's office. What should they do?

Answer: The doctor has several options. One, make a copy for the patient at a reasonable cost. Two, give the patient the originals with the expectation they will be returned per 811-015-0005 (4). The original patient records are the chiropractic physician or clinic's property; however the patient has a right to the patient file upon a signed written request.

Question: May a chiropractic physician authorize a safety belt medical exemption (using the prescribed form)?

Answer: Yes, the form can be found on the Oregon Department of Transportation web site. http://egov.oregon.gov/ODOT/TS/safetybelts.shtml#Safety_Belt_Exemption_Form

Question: May a chiropractic physician treat his 17 year old daughter who was in a car accident and bill for insurance coverage?

Answer: Yes. However the doctor should consider the pros and cons of treating family in this situation.

Question: May chiropractors use Rx homeopathic preparations in your state?

Answer: No, there is a statutory prohibition, which defines these as "drugs." However, homeopathic products sold as non-prescription over-the-counter (OTC) such as the Hyland's brand, may be used by Oregon chiropractic physicians.

Question: Are chiropractic physicians allowed to stock Rx and OTC homeopathic products?

Answer: No to Rx and yes to OTC.

Question: A chiropractic physician has requested a copy of their patient's IME report

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Policy & Practice Questions

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from the examining medical doctor as per OAR 811-015-0010. The report has not yet been released, shouldn't they receive the report?

Answer: The chiropractic physician still needs to send a signed written release form to the other health care provider who then will release the report. The OBCE rule needs clarifying language to that effect.

Question: New York Chiropractic College Career Development Division is presently in the process of updating our files regarding the use of nutrition counseling by licensed chiropractors in each state. Please advise us as to your state's regulations in this area.

Answer: Nutrition counseling is within the Oregon chiropractic scope of practice. Other than that we don't have any particular regulations.

Question: May chiropractic physicians use testimonials?

Answer: Yes, there is no prohibition or specific protocols, but having a signed statement would be a good idea.

Question: May a chiropractic physician charge interest on past due accounts.

Answer: Yes, see OAR 811-015-0000. Chiropractic physicians may charge interest on time payments or past due accounts, if the billing procedure is fully explained to the patient orally and in writing and complies with other applicable laws. The monthly rate of interest must be printed on the statement.

Question: A chiropractic physician is treating another doctor as a patient who is asking for "modifications" to his chart that would block out a portion of patient's history and add other notes to make the date of injury more recent.

Answer: This is totally inappropriate, not to mention illegal. Just say no and consider discharging the patient.

Question: Chiropractic physician has a follow-up question regarding a patient termination. He had sent a letter which authorized several more weeks of therapy and gave a date certain the patient-doctor relationship ends. The doctor is concerned since patient doesn't get the message and keeps requesting referrals to other health care providers (without being seen first by the DC) and has other erratic behavior. The doctor plans a final letter stating the patient-doctor relationship has ended.

Answer: The chiropractic physician appears to have done everything right. He should document everything including conversation with OBCE. He should consider checking in with his malpractice carrier as a precaution.

Question: Does the OBCE have a policy or prohibition on prescribing home ultrasound treatment?

Answer: There is no OBCE policy or rule prohibiting this. A similar situation exists with patients who use TENS at home. The doctor acknowledged there's a little more risk with this, but his experience is if it gets too intense the patient will react or stop. He said he would be careful about which patients were prescribed this home treatment.

Question: A chiropractic physician asked if her LMT employee can provide massage to her patients when she is not in the clinic?

Answer: Yes, since the LMT is fully licensed and she has prescribed this treatment.

OBCE Public Protection Update

Final and Proposed actions October 1, 2005 to May 26, 2006

Final Actions

Lynn Hakala DC, Stipulated Final Order. Three-month suspension (5-1-2005 through August 1, 2005), five-year probation, mentoring plan, AA, UA's, and 12 hours CE in chart noting. Violations of: ORS 684.100(1)(g)(A) and OAR 811-015-0010 for lack of re-examinations where indicated, billing for a re-examination for which there is no documentation; ORS 684.100(1)(A) and OAR 811-015-0005(1) for chart notes and treatment plans below minimum standard & chart notes that did not indicate the name or initials and signature of the treating physician nor the author of the notes; OAR 811-015-0005(1) for two different versions of the same ancillary chart notes for the same dates of service; ORS 684.100(1)(n), and OAR 811-035-0015(10) for allowing employees to perform the physiotherapy and massage duties without being licensed as a chiropractic assistant or massage therapist; OAR 811-035-0015(7) billing for services provided by unlicensed personnel; OAR 811-015-0010(1) (clinical justification) for use of the evaluation and management code level 99204 not substantiated by the records reviewed resulting in upcoding; ORS 684.100(1)(g)(A) and OAR 811-035-0015(7) for collection of money in excess

of amount of services rendered; ORS 684.100(1)(g)(A), OAR 811-015-0005(1) and OAR 811-035-0015(12) for altering chart notes; ORS 684.100(1)(A) and OAR 811-035-0015(7) and (12) for charging excessive amounts for durable medical goods provided to patients. (1/31/2006)

William Thoens DC, Letter of Reprimand, 12 hours CE in record keeping, file review. Board action follows Peer Review Committee interview and report. Board order states "...Licensee continually exhibited a pattern of chart notes below minimal competency and lack of clinical justification in the notes, past history, and examinations not meeting minimal competency, unprofessional conduct as to billing procedures, continuing treatment beyond the recognized standards, and lack of x-ray evaluation and diagnostic assessment within the minimal standard of care." Violations of ORS 684.100(1)(g)(A), OAR 811-010-0095(2)(b), 811-015-0000 (1), (2) and (4); 811-015-0010 (2), 811-015-0010(3), 811-015-0010, 811-015-0005 (1) and (1)(a); 811-030-0020(2), 811-035-0015(2), 811-035-0015 (5), and 811-035-0015(7). (4/3/2006)

Patrick Owen DC, Stipulated Final Order. Licensee agrees to make regular payments towards cost recovery owed in

1999 Final Order. (11/7/2005)

Jonathan Preiss DC, Final Order by Default, Letter of Reprimand and \$1,000 civil penalty. Violations of ORS 684.100(1)(g)(A) and OAR 811-015-0010(1), OAR 811-015-0005(1) OAR 811-035-0015 (7), (12) and 811-030-0030 (2)(d) and 811-030-0020(1)(2)(6) for below standard chart notes and clinical justification and inadequate justification for taking certain x-ray views. (12/5/2005)

Mario Tomaino DC, Final Order by Default, Letter of Reprimand and \$1,000 civil penalty. Unprofessional conduct, Violations of ORS 684.100 (1)(g)(A) and OAR 811-035-0015(1)(a). (1/12/2006)

Sara Jane Charpentier, CCA Applicant, Final Order by Default, License Denied. Applicant made misrepresentations in responses to questions regarding criminal convictions in violation of OAR 811-010-0110(14)(b) and OAR 811-010-0110(14)(c). (2/22/2006)

Teresa Faber, CCA Applicant, Final Order by Default, License Denied. Violations of: OAR 811-010-0110(14)(b) for misrepresentations in responses to questions regarding criminal arrests and convictions. (9/30/2005)

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George Edward Meredith, CCA Applicant, Final Order by Default, License Denied.

Violations of: OAR 811-010-0110(14)(b) for misrepresentations in responses to questions regarding criminal arrests and convictions. (10/10/2005)

Melissa Sue Heskett, CCA Applicant, Final Order by Default, License Denied

Violations of: OAR 811-010-0110(14)(b) for misrepresentations in responses to questions regarding criminal arrests and convictions. (12/8/2005)

Robert Sainz DC. Final Order by Default, \$1,000 civil penalty for unlicensed practice of chiropractic in Oregon.

(Respondent currently licensed as a Washington State DC, on probation.) Violations of ORS 684.020 (1), OAR 811-010-0005(4) and 811-035-0015(14). (5/18/2006)

Proposed Actions

Terry Womack DC, Proposed Revocation of License.

Notice alleges sexual misconduct and boundary violations with eleven female patients. (Licensee has previous disciplinary order for similar violations.) Violations of ORS 684.100 (1)(g)(A); and OAR 811-035-0015 and (1)(a) and (1)(c)(B). Notice originally issued 12/27/2005, 2nd amended Notice

issued 4/17/2006. Contested case hearing held.

Case # 2004-1036; 2004-3003.

Proposed Revocation of License. Licensee attempted to borrow substantial amounts of money from up to four patients. (Licensee has previous disciplinary order for charging patients' credit cards without their knowledge.) Violations of ORS 684.100 (1)(g)(A); and OAR 811-035-0015 (8). Contested case hearing has been requested. 1st Amended Notice issued 11/10/2005 adds second case with Peer Review findings of altered chart notes, and billings for services not provided. Violations of ORS 684.1(1)(g)(A) and OAR 811-035-0015(5) and (12), 811-035-0005(1). Contested case hearing scheduled.

Case # 2005-1045. Proposed \$1,000 civil penalty and Letter of Reprimand for chiropractic physician for unsupervised and unlicensed practice by an employee as a chiropractic assistant. Violations ORS 684.100 (1)(g) and (n); OAR 811-035-0015(3) and (10). (5/18/2006)

Adam Lopez DC, Proposed 30 day suspension, three years probation, \$5,000 civil penalty and ProBE ethic course for sexual misconduct and boundary violations. Violations of ORS 684.100 (1)(g)(A); and OAR 811-035-0015(1)(b)-(e). (5/18/2006)

Case # 2006-5000. Proposed \$250 civil penalty for violations of ORS 676.100 and OAR 811-015-0045 (3), Oregon Doctor's Title Act, for failing to identify chiropractor, chiropractic physician or chiropractic clinic on his advertising. (5/18/2006)

Case # 2005-3011. Proposed one-year mentoring plan to ensure acceptable examination, clinical justification, charting and billing practices, and 12 hours additional CE in clinical record keeping and chiropractic examination procedures. Violations of 811-015-0010 (1), (3), (4); 811-035-0005 (2), and 811-035-0015 (5). Board action follows Peer Review Committee report. (5/18/2006)

Case # 2006-5001. Proposed \$1,500 civil penalty for unlicensed and unsupervised practice of massage by doctor's chiropractic assistant, substandard history and examination, and altered or fabricated chart notes. Violations of ORS 684.100 (1)(g)(A) & (B), OAR 811-015-0010, 811-010-0110 (15), and 811-035-0015 (3), (4) and (12). (5/18/2006)

Dismissed Complaints

During this reporting period the OBCE made a determination of insufficient evidence (I.E.) on 6 cases; no statutory violation (N.S.V.) on 8 cases, and case closed on 23 cases.

National Meeting addresses documentation & NBCE

Portland Oregon was the scene of the annual Federation of Licensing Boards (FCLB) meeting May 3-6, 2006 attended by chiropractic licensing board members from around the country, Canada and even Australia. Most were also delegates to the annual National Board of Chiropractic Examiners (NBCE) meeting held in conjunction with the FCLB. Oregon's delegate and alternate were Drs. Minga Guerrero and Michael Megehee respectively. OBCE member Michael Vissers also attended.

Is Chiropractic in jeopardy of losing Federal approval for Medicare reimbursement?

Susan Vaughn DC, past president of the Texas chiropractic board and chair of the ACA Documentation Task Force spoke about the 2005 report from the US Office of the Inspector General. This report says a review of 2001 records showed 94% of chiropractic claims submitted to Medicare "lacked at least one of the supporting documentation elements" and 67% either did not meet coverage criteria (most maintenance care) or were miscoded or billed at the wrong level. The report also stated, "As chiropractic care extends beyond 12 treatments a year, it becomes in-

creasingly likely that individual services are medically unnecessary."

Some of the deficiencies included, but are not limited to:

- No documentation.
- Insufficient documentation.
- Medically unnecessary services.
- Incorrect coding used.
- Missing required elements to substantiate care.
- Missing evaluation; specifically PARTS.
- Evaluation but no PARTS.
- Maintenance Care. (not covered by Medicare)

Dr. Vaughn addressed actions that state regulatory boards could take. ACA is part of an OIG Task Force which includes the Association of Chiropractic Colleges, Congress of Chiropractic State Associations and the FCLB. The Task Force has a proposed Action Plan to address these issues and has encouraged licensing boards like the OBCE to consider mandated continuing education. More information can be found at:

http://www.cocsa.org/pubs/uploads/OIG_TaskForce_ActionPlan.pdf

(Please note the Oregon Educational Manual chapter on Record Keeping is still under review by the OBCE. Also the CE requirement for evidence-based outcomes assessment ad-

resses some of the Task Force recommendations.)

NBCE Reformers Win. Oregon delegates Minga Guerrero DC and alternate delegate Michael Megehee DC were supportive of reform efforts at the National Board of Chiropractic Examiners meeting. The end result was the election of new NBCE directors. The majority of new directors favor transparency of money earned with itemized accounts of each director's earnings, term limits, conflict of interest contracts and revision of bylaws allowing more checks and balances by the general delegate floor. Although this change did create heated discussion, the outcome will demonstrate a more diverse and accountable NBCE board of directors.

Best Practices, How will it affect you? Comment on Low Back:

Check out www.ccgpp.org for the current best practices documents created by the Council on Chiropractic Guidelines and Practice Parameters (CCGPP). They are now accepting comments on their Low Back document until July 10, 2006. This is a major effort to identify the evidence that supports chiropractic and make it available in a format accessible to practicing doctors.

New National Certification for CDL Physicals

OBCE member Michael Megehee DC recently addressed the Federation of Chiropractic Licensing Boards Portland Oregon meeting to explain the proposed National Registry of Certified Medical Examiners (NRCME). According to Megehee, since 1992 DCs have been included among the medical professions (ANPs, DOs, MDs, and PAs) authorized to perform the physical examination required for a commercial drivers license (CDL).

Dr. Megehee said, "That is not going to change. However, what is going to change is that to perform those CDL examinations once the NRCME is established, DCs, as well as all of the other professions, would be required to be listed on a National Registry. To be listed on the Registry, all medical examiners would have to complete required training and pass a certification test." DCs will be trained alongside MDs, DOs, PAs and ANPs on an equal status, even attending the same training program if desired.

While more than 95% of the 2-3,000,000 exams required each year are performed by physicians other than DCs, Megehee says many of those non-DCs will likely decide not to become certified. As a result, he sees an expanding role for chiropractic physicians in this area. The Federal

Motor Carrier Safety Administration (FMCSA) estimates that 50,000 Certified Medical Examiners will be needed nationally. A CDL physical can be performed within 30 minutes (including filling out the forms).

The FMCSA is looking for 1000 DCs to participate in a survey as part of the development of the NRCME program. If you have performed at least one CDL physical, please volunteer to help by going to the NRCME website listed above and click on the "contact NRCME" tab along the top banner.



Dr. Megehee addresses FCLB delegates.

Clinical Justification FROM PAGE 2

tive studies, case reports, or expert opinion published in refereed journals. Where such evidence is lacking professional field consensus is considered.

Lastly, the Board understands that some practitioners employ investigational or other varied (or non-traditional) chiropractic approaches addressing certain types of curative chiropractic care. It is not the Board's intent to discourage these approaches with the evidence based outcomes measures language of Section (4). Should an issue or complaint arise concerning treatment of this general type, the Board will first look to Section (1) language

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For additional information go to
www.nrcme.fmcsa.dot.gov;
the ACA Council on Occupational Health at
www.acacoh.com,
or contact Dr. Megehee at Megehee@wtechlink.net

Chiropractic Assistants & Regulatory Challenges

The Certified Chiropractic Assistant (CCA) program has been hugely beneficial to patients and chiropractors since (1990). Licensure of CCAs provides the public with assurance of minimum competency along with the chiropractic physician's responsibility to provide immediate and direct supervision. The formality of this arrangement has also allowed for third-party reimbursement for CCA services.

In recent years, we have seen increasing numbers of (CCAs), now totaling 871. Frequently, massage students are licensing as CCAs and using their new found skills. Some local occupational skills schools are also teaching the chiropractic initial training course putting these applicants into the market. Along with this growth have come additional regulatory challenges.

Challenge # 1. Some CCA applicants have arrest or conviction histories. Failures to report those or report them accurately on the application have led the Board to deny several applications. (See Pages 8 & 9) The OBCE now checks all CCA applicants against the Oregon Judicial Information Network

(OJIN) database, so an unreported conviction or arrest would trigger an investigation. In other cases, the Board has conditioned the license so that any employing chiropractor would have full knowledge of the CCA's record. Any chiropractor employing a CCA should practice due diligence in the hiring process (including actually reviewing the CCA's application before signing off on it).

Challenge # 2. The CCA may only see the chiropractor's patients. Only the chiropractor may establish the patient - doctor relationship. We have reports of patients (or clients) receiving CCA massage services without having been examined by the chiropractor, or in one case the patient (or client) was "visually examined" from afar. It's no secret that the Oregon Board of Massage Therapists (OBMT) considers this the unlicensed practice of massage therapy (at a chiropractor's office).

Any CCA performing massage not ordered by the chiropractor could face disciplinary action by the OBCE or a civil penalty from the OBMT. The supervising chiropractor could face disciplinary action by the OBCE.

Consider this sce-

nario. A person comes into a chiropractic clinic requesting a massage and demands to see the CCA. The front desk gives in to this demand and the CCA unwittingly performs the massage. Several violations have then occurred and board actions could be one result.

Here's another scenario. The CCA is also a massage student or has not yet gained his/her LMT license. The chiropractor performs the most perfunctory examination and then prescribes a full-body massage, doing this on a routine basis. If a complaint is lodged, then OBCE will investigate whether an appropriate examination occurred (while the Board of Massage may determine that this is the unlicensed practice of massage anyway).

Beyond that, the chiropractor may prescribe appropriate therapies for any wellness (or other) patient including massage. However, the chiropractor may be better off if he/she employs or contracts with a fully licensed massage therapist, as many have.

It is relatively easy to become a CCA. The initial training course must be at least six hours in length, four hours of which must be in physiotherapy, electro-

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PUBLIC NOTICE

OBCE Committee Openings

There is currently one opening on the OBCE's Peer Review Committee. The OBCE refers complaints to the Peer Review Committee for in-depth file reviews and personal interviews. Their primary role is investigatory and typically involves complaints regarding alleged violations concerning clinical justification, treatment, documentation, and billing.

The Peer Review Committee meets six to eight

times a year on 2nd Thursdays at the OBCE offices in Salem. Any Oregon chiropractic physician in active practice wishing to serve on this committee should submit a letter of interest and resume to the OBCE, 3218 Pringle Road SE #150, Salem, Oregon 97302, or fax 503-362-1260. If you have applied before, you are asked to provide a new letter and resume.

The Oregon Board of

Chiropractic Examiners is accepting applications for membership on the OBCE Administrative Rules Advisory Committee from both chiropractic physicians and lay public. The committee meets 3-4 times a year usually on a Thursday afternoon on an as needed basis to review proposed administrative rules and policy issues referred by the OBCE. The committee's recommendations are considered by the Board at their next meeting. A letter sent to the Board of office expressing interest and reasons is sufficient, and the appointment will then be considered by the Board at their next meeting.

If you have any questions, please call Dave McTeague, Executive Director, at 503-378-5816 ext. 23.

Chiropractic Assistants & Regulatory Challenges

CONTINUED FROM PAGE 12

therapy and hydrotherapy. The OBCE now allows chiropractors, many in remote areas, to teach this course themselves. The total fees for the application, open book exam and initial license amount to \$110.

CCA scope of practice is defined by Oregon Revised Statute Chapter 684 and Oregon Administrative Rule 811-010-0110 as the performance of "physiotherapy, electrotherapy and hydrotherapy" and "—shall be directly supervised by the Chiropractor at all times..." who must "...be on the premises." The CCA "scope of practice does not include performing physical examinations, taking initial histories, taking X-rays, interpretation of postural screening, doing manual

muscle testing or performing osseous adjustments or manipulations."

Wellness and preventive care has always been an important part of chiropractic health care. CCAs have an important role to play within our current laws and rules. It is important the chiropractors and CCAs be aware of these requirements.

With these articles, the OBCE is duly informing the profession that there are some issues. It is presumed that all chiropractic physicians and certified chiropractic assistants receive this newsletter and will read this article. An expressed ignorance of these laws and rules will be less of a defense in the future should a violation occur.

Clinical Justification FROM PAGE 11

which states, "Clinical rationale, within accepted standards and understood by a group of peers, must be shown for all opinions, diagnostic and therapeutic procedures."

(The policy above is for inclusion in the OBCE Guide to Policy & Practice Questions and does not need to be further promulgated as administrative rule. The Board will revisit OAR 811-015-0010 beginning in July 2007 as required by the sunset clause.)

Licensing and Continuing Education

By Kelly Bird

Hello doctors. I continue to be very happy with processing license renewals on a monthly basis; however, I have one disappointment. Most of you, my friends and licensees, continue to wait until the few days before, or the day of the renewal deadline to send in your payments and Renewal Notice/Affidavit. Please consider sending in your renewal requirements upon receipt of the OBCE's Notice. By doing so, you will not later receive an annoying, and sometimes alarming notice from me that I have not yet received your payment, and that a penalty is due. In advance, thank you for your consideration.



"...all physicians, physician assistants, nurses and nurse practitioners, psychologists, naturopathic physicians, chiropractic physicians, mental health professionals and palliative care workers."

Limited Active Status update

For those of you maintaining this status, the OBCE has proposed a 2007 legislative concept to change the license status (and misnomer) "Limited Active" to a new status titled, "Senior Active." This name change is a result of an informal survey I sent out. So thank you to those of you who responded, and for all of the excellent, clever and sometimes amusing suggestions. Our expectation is to begin using the new term sometime in the Fall of 2007. Until then we will continue to educate the public that there is NO practice limitation for someone with the "Limited Active" license status.

Continuing Education

I always have something to tell you about continuing education! At this printing, my focus is on the Pain Management CE Requirements. This requirement is a product of the 2001 legislature. In brief, the following health care professionals MUST complete a total of seven (7) hours CE by January 1, 2008 (one hour must be completed online):

I have been receiving intermittent calls asking where to find the required education. I had not heard of any particular offerings, so I began an internet search and came up with a number of options. I have put together these options in one document and uploaded it to the OBCE's web site. You can find them by visiting this web link: http://egov.oregon.gov/OBCE/pdfs/pain_mgmt_options.pdf (See the Note below.) (Western States is in the process of developing a pain management program as well and I have them listed as one of the resources.)

The Oregon Pain Commission sponsors the one hour of online education and it is available from this link: <http://www.oregonpain.org/Presentation.aspx>

IMPORTANT NOTE: Neither the State of Oregon nor the agency (OBCE) endorse or sponsor the products, services, or information as provided in the OBCE's "Information and Resources for Pain Management document" found on the agency website. The OBCE is providing this information for the public's convenience.

Chiropractic Assistant Corner

By Kelly Bird

Being a Certified Chiropractic Assistant is part of a growing profession; the OBCE's current number equals 871. I have seen an average and steady increase of about 100-125 new CCAs each year! Part of this growth is the result of various local occupational and medical colleges incorporating the CA program into their curriculum to give their students options in careers. Is this an acknowledgment that another faction of the public recognizes the need and importance for chiropractic?

Continuing Education

Finding continuing education for chiropractic assistants is an ongoing challenge. Since the OBCE dropped its pre-approval requirement for CE, the board office receives few announcements of upcoming education. I have a standard answer that I give inquiring CA's, but my ideas are only resource options, not actual classes. You can find my list on the OBCE's website from the Continuing Education page, under "Other Resources" http://egov.oregon.gov/OBCE/Assistant_Files/CA_CE_Options.pdf. If anyone IS aware of any upcoming CA seminars throughout the year, please feel free to let me know; email me at kelly.bird@state.or.us

Inquiring Minds Want to Know

Massage, massage, massage... the OBCE office receives questions on this issue almost daily. Here is one instance and one response:

What are the guidelines for CERTIFIED chiropractic assistants performing massage?

"CCAs can perform PT and massage under the DCs onsite supervision. If the DC is not on premise, that is a violation.

If a CCA is doing a massage without the DC's direction, that is a violation.

CCA's may do any kind of massage on the patient that is recommended by the DC. The DC has the responsibility to do an initial examination on the patient appropriate to the presenting condition."

Reminder: There is an email list serve for Chiropractic Assistants. To become a member visit this site <http://health.groups.yahoo.com/group/oregonccagroup> or email the listserve coordinator, Johna Hicks, at ancina@easystreet.com

Administrative Rule Update

CONTINUED FROM PAGE 4

Police for this service. This rule was initially adopted as a temporary six-month rule and will have to be readopted at the OBCE's July meeting.

New Administrative Rule 811-010-0130, Other Licensed Health Care Providers, states clearly that chiropractic physicians may include other licensed health care providers in their chiropractic clinic services.

"A chiropractic business entity or chiropractic physician, in accordance with decades long accepted scope of practice, may employ or contract for the services of other health care providers as part of their chiropractic practice for the purpose of providing care to patients, to the extent this does not conflict with other applicable state or fed-

eral laws. Other health care providers may include, but are not limited to, licensed massage therapists, physical therapists, athletic trainers, nurses, acupuncturists, naturopathic physicians, and physicians licensed under ORS 677. "

Amendments to OAR 811-010-0085 ensure that all initial DC licenses shall be effective for a minimum of six months with some initial DC licenses almost up to eighteen months.

An updated version of all OBCE Chapter 811 Administrative Rules and ORS 684 laws is available on the OBCE's website, <http://www.oregon.gov/OBCE/> These are also available from the OBCE office for free upon request.

BackTalk

Newly Licensed DCs

9/27/05 through 5/25/06

Richard D. Anderson
Michael C. Armatis
Greg K. Choi
Matthew E. Ciambarella
Cynthia M. Colwell
Matthew G. Cooper
Caleb J. Craig
Sara C. Croteau
Mark W. Davies
Megan F. DeJana
Adam E. Derr
Robert O. Dietz
Michael A. Duncan
Daniel R. Foss
Mica V. Foster
Christopher A. Fowler
Katanah R. Grossman
Benjamin L. Heath
David G. Higginson
C. Maria Intrieri
Timothy G. Irving
Brad E. Kitchens
Kimberly B. Klaar
Katherine L. Kohls
Nancy R. Lach
Anthony R. Ledesma
Blake E. Macnab
Ryan M. McDaid
Shad A. McLagan



OBCE members Jim Hendry (standing) and Joyce McClure, DC, (seated) address 40 newly licensed Oregon DCs on the subject of ethics and professional boundaries in Portland on March 2, 2006.

Dylan N. Milam
Michael P. Milanovich
Thomas D. Miller
Sam S. Moursalian
Jesse L. Nuttall
Jeffrey D. O'Flaherty
Jeffery D. Otto
Helen H. Pak
Viktor A. Palchikovskiy
Alys O. Pirtle
Theresa A. Pitcairn
Norman A. Price

Michael D. Raeburn
Anthony J. Saboe
Kenzie L. Satter
Christine Sawyers
Paul B. Schones
Radomir Senarsky
Amarjit K. Sidhu
Kelley C. Silon
Jeffrey W. Smith
Scott VanderWall
Teri Lyn Wright
Megan A. Ziskovsky

BackTalk

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