



Oregon

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Oregon Board of Chiropractic Examiners

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PUBLIC SESSION MINUTES

3218 Pringle Road SE #150, 2nd Floor Conference Room

Salem, Oregon 97302

January 17, 2008

Members Present

Michael Vissers, DC Vice (Acting Chair)

Joyce McClure, DC Secretary

Steve Koc, DC

Cookie Parker-Kent, Public Member

Michael Megehee, DC (teleconferenced)

Staff Present

Dave McTeague, Executive Director

Kelly Edmundson, Administrative Assistant

Michael Summers, Investigator

Jane Billings, Administrative Assistant

Lori Lindley, AAG

Excused: Minga Guerrero, DC President

Others Present: Drs. Judith Boothby and James Aungst; and teleconferencing: Drs. Lee Cowan, Sharon Fuchs, and Lester Lamm

1:30 PM CONVENE

ADOPTION OF THE AGENDA The annual election of Board officer is added to the agenda.

DISCUSSION ITEMS

1. 2007 Complaint Statistics and Draft Performance Measure Report

Dave McTeague reported to the Board. The OBCE took 23 actions in 2007, up from 19 in 2006; this includes four cease and desist letters. This report shows all received complaints by type; some are still pending. Regarding our performance measures, we have made progress on KPM #1 – the average amount of time complaints are open is reduced to 134 days in 2007. The small number of complaints on sexual misconduct boundaries were closed within the 180 day timeframe. In addition, we are in the midst of mailing out our Customer Service Survey, and those responses will be measured. There is a new Key Performance Measure mandated by the Legislature - the Best Practices Self-Assessment measure. Dave suggested the members all take a critical look at the list of “best practices,” complete the assessments, and turn them in to Dr. Vissers. Dr. Vissers thanked staff for closing the cases under the mandated 180 days. The Board then reviewed the Best Practices worksheet. Dave pointed out several actions taken in regards to this (financial reports, Ex. Dir. performance review-just completed). They agreed that the OBCE is meeting 100% of the listed items.

1: 40 PM Dr. Megehee logged on at this time.

Added Discussion: Board Officer Elections

Dr. Vissers asked for nominations. Joyce McClure nominated Minga Guerrero for the President’s position. Steve Koc seconded the motion. No other nominations were made for president. Guerrero (in absentia) accepted the nomination. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye.

For the Vice-President position and Secretary's position, Michael Megehee nominated the current holders respectively, Michael Vissers (Vice) and Joyce McClure (Secretary). Cookie Parker-Kent seconded the motions. No other nominations made. Both Vissers and McClure accepted the nominations. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye.

Michael Vissers moved to re-appoint Dr. Guerrero as the FCLB and NBCE delegate and Dr. McClure as the alternate delegate. Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye.

IN THE MATTERS OF

2007 Continuing Education Audit Results

CE Audit #A - The Board proposed to close the case with a letter of concern. Michael Vissers moved to accept the board's determination; Steve Koc seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

CE Audit #B - The Board proposed a \$250 civil penalty, and \$50 per hour (2.5 hrs) for failure to complete three hours of CE by her renewal date, as claimed on the Renewal Notice Affidavit. Michael Vissers moved to accept the determination; Joyce McClure seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye. *(Note: Upon receipt of additional information, the Board withdrew this proposed order.)*

Jeffrey Nelson, DC

The Board proposed a \$250 base and \$50/hr (14 hrs) civil penalty for CE not completed as claimed on the Renewal Notice Affidavit; and licensee must be subject to the CE checks for the next five years. Joyce McClure moved to accept the Board's determination; Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

CE Audit #D - The Board proposed case closed, with a letter of concern to the licensee. Michael Vissers moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

CE Audit #E - The Board proposed case closed, with a "Stayed" letter of concern to the licensee; a temporary time extension was allowed while the licensee is out-of-country. Michael Vissers moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

CE Audit #F - The Board proposed to deny the Shamanic Healing Apprenticeship program for future CE credit. Credit is allowed this time for the licensee's renewal credit. Michael Vissers moved to accept the determination; Cookie Parker-Kent seconded the motion. Michael Vissers, aye; Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye. Joyce McClure, aye.

Gwendolyn Willmon, DC

The Board proposed a \$250 base and \$50/hr (13 hrs) civil penalty for failure to complete CE as claimed on the Renewal Notice Affidavit. Cookie Parker-Kent moved to accept the determination; Joyce

McClure seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Christine Adler, CA applicant - The Board proposed to deny CA licensure for prior convictions. Cookie Parker-Kent moved to accept the board's determination; Steve Koc seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Lynn Hakala DC

The Board approved the offer of a supplemental agreement which removes the supervision requirement; In return she must submit to file reviews for the rest of her probation (about three years); and she must pay all back-rent to the supervising DC and monies owed the insurance company. Cookie Parker-Kent moved to accept the determination. Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Regarding Analgesic Health Care's advertising a fee-splitting offer, the Board agreed to send a second Cease and Desist to Analgesic Health Care, and an alert to all Oregon chiropractors via the "OregonDCs" listserve, public notice mailing, and BackTalk

Case #2007-1018 The Board proposed insufficient evidence to find a violation however, a letter of concern will be sent. Michael Vissers moved to accept the determination; Joyce McClure seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2006-1055 The Board proposed case closed. Michael Megehee moved to accept the board's determination; Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Cases #2007-1040 and #2007-1041

The Board proposed no statutory violation, however, a Letter of Concern will be sent. Michael Megehee moved to accept the board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2007-1042 The Board proposed insufficient evidence to find a violation, however, a Letter of Concern will be sent. Michael Vissers moved to accept the board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2007-1044 The Board found no statutory violation. Joyce McClure moved to accept the determination; Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2007-1046 The Board found no statutory violation; however, a Letter of Concern will be sent. Steve Koc moved to accept the Board's determination; Joyce McClure seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2007-3012 The Board proposed no statutory violation. Cookie Parker-Kent moved to accept the determination; Joyce McClure seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2007-2007 Richard Crokin, DC

The Board reviewed the Peer Review Committee's report and proposed to add this to, and amend the Notice for Civil Penalty on Case # 2007-2002. This will now become a notice for a 9-month suspension and civil penalty for \$7500. Michael Megehee moved to accept the determination; Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2008-5001 Lawrence K. Nelson, DC

The Board proposed a civil penalty of \$2500. Michael Megehee moved to accept the board's determination; Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2007-2003 The Board proposed insufficient evidence to find a violation with a Letter of Concern. Steve Koc moved to accept the determination; Joyce McClure seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2007-3005 The Board proposed insufficient evidence to find a violation. Michael Vissers moved to accept the determination; Joyce McClure seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2007-3011 The Board proposed insufficient evidence to find a violation. Michael Vissers moved to accept the determination; Joyce McClure seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2007-1043 The Board proposed no statutory violation. Michael Vissers moved to accept the board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Case #2008-5000 Michael Arnot, DC

The Board proposed a \$250 civil penalty for violations of the Doctors Title Act and misleading advertising. Michael Vissers moved to accept the determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye.

This concludes the In the Matters of.

The Board returned to the conclusion of Public Discussion #1.

2:00 PM Dr. Megehee disconnected from the conference call.

Dr. Vissers opened the floor to Discussion #4

4. Policy Issue: ETSDP rule review (2:00 p.m.)

Teleconferencing are Drs. Lee Cowan, Sharon Fuchs, and Lester Lamm.

Present were: Dr. Judith Boothby and Dr. James Aungst.

Dave McTeague recapped the decision from the November 07 meeting: At the last meeting the Board determined that it would discuss the ETSDP process as Dr. Boothby requested – how it has worked and how it might be improved. Dave provided the Board Dr. Boothby's previous correspondence, and he notified the ETSDP and Rules Committee about this meeting so they might participate.

Dr. Boothby stated that she is here today to talk about the ETSDP *process*, and will only refer to the EPFX-SCIO as a sample device. As the head of the committee that wrote and had the ETSDP rule passed, she had a different vision of what was going to happen, and what did happen. She is prepared to show the Board how her suggestions can be incorporated.

She said we've seen lots of examples where the cultural norm is less than what individual people can accomplish. So just trying to go for a standard of normalcy is not enough in her opinion. We need to make investigational devices accessible, and we need to do it in a manner that is ethical to protect the public. As she said at the last meeting, and Dave confirmed, there have been zero complaints of harm due to investigational devices.

As part of the ETSDP process, the Board has a specific set of questions and, she would expect, that the Committee would answer those and send them back to the Board. This matter got caught up in the "inflammation." She was hoping to talk to the Rules Advisory Committee today, so we could review this and set up a process where we reduce the inflammation. As she proposed earlier, this can be accomplished in a matrix – so we know where the status of each question is.

For example, Dr. Burns thought that her device was a biofeedback device; it measured something from the body and fed something back in. She said, "We weren't aware of the correct definition of biofeedback." When Dr. Boothby discovered the classical definition of biofeedback, she took the initiative to call people prominent in institutions to study subtle energies, and who did biofeedback, to find out what the correct definition is. It shows that she was looking at issues and through a different process, validating or not validating them. If we have that matrix, we can take each point one at a time and agree/disagree.

Dr. Vissers stated that the Board understands the concept of a matrix. The difficulty for the board is to try to restructure our process, which doesn't have support from the Committee members. Also, the ETSDP has been used twice in the past few years, and the process was effective.

Dr. Vissers answered that the Board did review the evidence. Some of our basic questions about the machine were, "Who was the inventor? Where did he get his knowledge? What is the information base for his software within this machine?" Nobody knew these answers (more was revealed in the Seattle Times than from anywhere else).

Dr. Vissers redirected the conversation back to "process" and asked Dr. Boothby what she wants, specifically. Dr. Boothby wants the ETSDP Committee to adopt her matrix, and secondly, she wants a means for ethical and credible doctors to use these devices in an ethical way.

Dr. Vissers asked if there are any others present who want to comment.

Dr. James Aungst commented that there is talk about the ethical and credible use etc., but this one device has minimal to no credibility. He thinks the Board and ETSDP Committee made the right decision. In closing if full information about this device is brought forward and there is further review, he is in favor of using a matrix as Dr. Boothby suggests.

Dr. Sharron Fuchs asked Dr. Boothby if she is trying to set up an investigational study and/or IRB. Dr. Boothby feels that the Board is not supporting their efforts to do a study. Dr. Fuchs commented that she can't imagine the Board not supporting the setup of a research study. Dr. Vissers responded that that is the issue. There was never any structure designed on how this research or investigational process was going to work; it is basically, "Let's say it's investigational, and we will start treating our patients and feed back the case histories to you (the board) and tell you how these people got better."

Dr. Koc added that the board has its charge and setting up research studies is not within that. If something is brought to us, we can give opinions or make decisions. Dr. Koc reminded Dr. Boothby that he had made a motion in an earlier meeting that the Board reconsider the SCIO device if additional information were brought back to us.

Dr. Boothby insisted that the Board deem the device high risk and cite the rule that says "do a research project." Dr. McClure reiterated that she understood the ETSDP Committee's collective decision was the machine did not fit the criteria as an investigational device within the chiropractic scope of practice. Amongst everyone who discussed it, everyone agreed, that it (device) does not meet the investigational standard.

Dr. Lee Cowan spoke. All seven members of the ETSDP Committee felt that the machine was "bogus." He feels that Dr. Boothby is now attempting to circumvent the existing ETSDP procedure.

Dr. Lester Lamm stated even though he provided his insights to the Board previously, some bear repeating. It is the responsibility of the proponents of the device to demonstrate the efficacy of that device, not the Board's or the Committee's. Dr. Lamm quotes the rule, "A chiropractic physician may use any diagnostic and/or therapeutic ETSDP that has met the criteria of subsections two A, B and C (being taught at a school, etc.)..." and "It must show potential merit for effectiveness and be of acceptable risk" The EPFX did not demonstrate potential for merit, and it is not of acceptable risk, especially in light of the way it is proposed to be used. Dr. Lamm appreciates Dr. Boothby's enthusiasm for bringing forth therapeutic and treatment phenomenon, but that is merely nothing more than testimonial, and doesn't rank very high on the scale of relative value when one is trying to consider research or evidence. There was plenty of information that was immediately available to (the committee), and it was not a single website, but numerous websites where one can access information regarding the SCIO machine. He understands why the IRB issue is a hot button for those who wish to conduct certain kinds of investigative procedures. An IRB takes considerable amount of thought to ensure accountability, and protects those who are "guinea pigs." In this particular incident, this device is fraudulent in its use or application. Dr. Lamm, personally, recommends the Board distance itself from this, and further, discussions. There is nothing wrong with the rule, it doesn't need a matrix. The process is working just fine.

Dr. Vissers made closing comments. Dr. Boothby shared her opinion today, and it was not positive regarding our Board's approach or evaluation of this machine. It's difficult when one talks about process, but keeps referring back to the one process episode (SCIO-EPFX) that led to Dr. Boothby's

dissatisfaction of the process. Dr. Vissers asked if any other board members have any question regarding the ETSDP process. Dr. Koc repeated that in ten years only one device has ever been denied, or disallowed, so it sounds like the process is working. Dr. McClure added that if something else comes before the ETSDP committee, and people are having difficulty working together, that might be the time to bring it up as a modus operandi. Dr. McClure is not feeling the need to change the rule; otherwise, the matrix may be a useful tool for future instances.

It is the consensus of the Board that the ETSDP process works well. Dr. Vissers polled the Board members: Dr. Koc, no change; Dr. McClure, no change; Dr. Vissers, no change; and Cookie Parker-Kent, no change. With no further comments, Dr. Vissers thanked Dr Boothby for coming.

For the record, Dr. Charles Simpson submitted written comment supporting the Board's decision to disallow use of the SCIO-EFPX in the scope of chiropractic; and he urged the Board to retain the ETSDP rule in its current form. Dr. Jay Harris submitted written comments supporting the Board in its decision to disallow use of this machine in its entirety.

2. Policy Issue: Non-disciplinary board orders, public disclosure issues

Staff is in the process of uploading board disciplinary actions to the web site; and as we were unsure as to whether we should post those non-disciplinary actions, such as Competency Orders, we asked for the AAG's advice. After review of that advice, Dr. Vissers moved to post on the web those "Complaint cases in which a Proposed Notice of Discipline (a public document) was issued, but the final resolution was not disciplinary." and the "Complaint cases in which a Proposed Notice of Discipline (a public document) was issued, but there was no final resolution so the Board closed the case with an 'Other Order' or similar document." Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee opposed.

3. Policy Issue: Consistency in disciplinary actions (boundaries, DC & CCA applicant cases)

Dave presented recommendations to the Board to improve consistency in disciplinary actions. In addition he provided both the FCLB's and the State of Washington Disciplinary Guidelines. Members felt they could process this matter better if the information were presented in a matrix, or table. Return to this policy issue in March 2008.

(Discussion #4 addressed earlier)

5. Legislative Concepts for 2009

Proposed concepts include mandatory malpractice reporting and an increase to Board members' per diem. Dr. Vissers favors mandatory malpractice reporting in light of the public's benefit. Lori Lindley added that only those matters that resolve in a money judgment or settlement for the plaintiff, or a finding of liability can be posted on the web (be made public). Also, if a claim is settled before it is filed in court, it may not be posted online. Michael Vissers moved to pose the mandatory malpractice reporting as a legislative concept for 2009; Steve Koc seconded the motion. All in favor. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye

Secondly, board members favor an increase to the allowed per diem. Currently, the Board of Medical Examiners' members receive \$250 per day, and the Board of Nursing members receive \$150, but the Chiropractic Board members receive \$30 (as are all other boards). Dave added that other boards are expecting to group together on this issue; Dave recommends the Board join the group effort. Any increase would be part of the budget policy package. Michael Vissers moved to add a legislative concept to change the per diem from \$30 to \$250 for board members and to \$100 for Peer Review

members. Steve Koc seconded the motion. Michael Vissers, aye; Joyce McClure, aye, Steve Koc, aye; Cookie Parker-Kent, aye; and Michael Megehee, aye.

Lastly, the Board discussed the practice of using police reports for “ambulance chasing” and marketing. Is this something for which the Board wants to draft a concept making it illegal? This is a discussion in progress.

6. Workers Compensation Physical Medicine Documentation

Joyce McClure requested this discussion be brought up. The CPT code guidelines require documentation of start and stop times of each time-based procedure; it is not reflective of how many minutes the procedure is actually performed on the patient. She doesn't think the requirement is understood by the profession. What can the board do? Dave added that the Workers Compensation Division has an annual, or periodic, rule review process. Board members may want to consider submitting a written recommendation; a few years ago, the board's comments had some impact on the WCD's decisions. Secondly, we could mention the requirement in the BackTalk, but how much do we want to get into the billing and insurance arena? Dr. McClure offered to draft some proposals to the WCD.

7. Ethics & Jurisprudence exam update

While attending an FCLB meeting a couple years ago, Dr. Larry Spicer, a Minnesota board member, announced that they had made some changes to their Ethics and Jurisprudence exam which they thought were instrumental in reducing complaints. Dave drafted some exam questions in the same style (numeric rule and statute citations are the answers and distracters) for the Board's review. The exam is open book and the candidates read the regulations to find out which citation is the correct answer. The Board supports changing the Oregon Ethics and Jurisprudence exam to this format. Move forward.

8. Policy Issue: Out-of-state Chiropractic Assistant applications

Staff drafted a memo to the board outlining concerns about out-of-state applicants for Chiropractic Assistant certification. After some discussion, Board members agreed to add to the certificate a statement that the certificate is valid in Oregon only; hopefully avoiding any misuse of the license.

9. Committee Appointments

There are no recommendations at this time.

10. Staff Report

Most of the issues on the Staff Report have already been addressed throughout today's meeting. Regarding the July 2008 board meeting date, Dave proposed to move the meeting from the third Thursday (July 17) to July 24. The board briefly discussed the possibility of a September meeting in Pendleton.

4:00 PM ADJOURN