



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners

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PUBLIC SESSION MEETING

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

Salem, Oregon 97302

March 20, 2008

Members Present

Minga Guerrero, DC President

Michael Vissers, DC Vice

Joyce McClure, DC Secretary

Steve Koc, DC

Excused: Michael Megehee, DC

Cookie Parker-Kent, Public Member

Others Present: Rachel Nolin, new OBCE Budget Analyst and Brent Smith, DC

Staff Present

Dave McTeague, Executive Director

Kelly Edmundson, Administrative Assistant

Michael Summers, Investigator

Jane Billings, Administrative Assistant

Lori Lindley, Assistant Attorney General

Donna Dougan, Office Specialist

12:30 PM CONVENE

ADOPTION OF THE AGENDA - Accepted as presented.

IN THE MATTERS OF

Case #02-1031 Ben Gifford, DC

The Board proposed to amend the Stipulated Final Order provisions regarding the supervising psychiatrist. Joyce McClure moved to accept the Board's decision. Steve Koc seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Joyce McClure, aye; and Minga Guerrero, aye.

Christian Schuster, DC

Case #s 06-1032, 06-1033, 06-1034, 06-1035, 06-1041, 06-1042 and 08-5002, 08-5003, 08-5004, 08-5005

The Board proposed to assess a \$5,000 civil penalty for each egregious case, and \$1,000 for the less serious cases for failure to release records, inadequate record keeping, and failure to cooperate. The total civil penalty is \$42,000. In addition, the Board proposed a three-year suspension, 20 additional CE hours on record keeping and chart noting to be completed by the conclusion of the suspension. Steve Koc moved to accept the Board's determination; Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Joyce McClure, aye; and Minga Guerrero, aye.

Case #07-1034

The Board proposed no statutory violation. Minga Guerrero moved to accept the Board's determination. Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Joyce McClure, aye; and Minga Guerrero, aye.

Case #07-3010 J. Fischer, DC

The Board proposed to suspend the license for failure to provide records as requested. Michael Vissers moved to accept the Board's determination; Steve Koc seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Joyce McClure, aye; and Minga Guerrero, aye.

Case #07-3006

The Board proposed a determination of case closed w/cautionary letter to the licensee concerning his website advertising and the Doctors Title Act. Michael Vissers moved to accept the Board's determination; Minga Guerrero seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Joyce McClure, aye; and Minga Guerrero, aye.

Case #07-1035

The Board proposed a determination of case closed. Michael Vissers moved to accept the Board's determination; Steve Koc seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Joyce McClure, aye; and Minga Guerrero, aye.

DISCUSSION ITEMS

1. Final Performance Measure Report & Customer Satisfaction Survey

We reported the outcome of the Customer Satisfaction survey on our Annual Performance Progress report. Our Customer Service measure was very high at 90% on "helpfulness," and timeliness was 84%. Dr. Guerrero added that sometimes the timeliness of handling complaints is out of our control – there are delays in retrieving records, etc. These results are posted on our web page. Dr. McClure highlighted some recommendations in the survey for improvement of the web site, such as adding a new licensee query option, etc.

Dave added that the survey was mailed to all licensees, everyone else on our "public mail list," and to 100 complainants. Dr. Guerrero commented on some of the comments, which suggested the Board stay out of policymaking, etc.; however, this is one of the Board's assigned tasks.

2. Policy Issue: Legislative Concepts for 2009

The Board discussed the first proposed concept, restricting public access to traffic accident reports. "The OBCE seeks to restrict public access to these reports used for the purposes of marketing. Those entities or public bodies with a legitimate need such as for insurance purposes, investigations, statistical analysis, should still have access." A memo with our legislative concepts was posted on the web page; however, we received more comments from the posting on the OregonDCs listserv. Michael Smith's comments delineate the areas where some people have legitimate needs for the reports; that will help us in creating the legislation. At this point, the Board should decide if they want to move forward on this concept.

Dr. Guerrero noted that this was not a board-generated idea; it was important to consider due to the volume of complaints we have been receiving on this type of advertising over the past two or three years.

Brent Smith, DC asked if it is possible to limit a chiropractor's use of the (MVA) list. Dave added that once the list is a public document there are broad commercial free speech rights issues. Dr. Guerrero read into the record Dr. Hilary Bjornson's and attorney Chris Hill's from Portland; both support the concept. Dr. Beebe comments (in opposition) that he feels this is outside the Board's scope of authority. The Board will move forward on this concept.

A second proposed concept is mandatory malpractice reporting. The Board chooses to go forward with this concept also. We have not received any comment about the other proposed budget policy packages, including the board per diem increase request.

As per the board per diem proposal, Dave clarified the proposal was for \$250 per meeting.

Dave also reviewed the state of our current biennium's budget. We have a healthy cash balance at the beginning of the biennium, and anticipate a healthy ending cash balance. However, it appears that our expenditures may outstrip our revenues in 2009 – 2011. "Personal services" appears to be driving the increases, such as, cost of living increases, a management increase, etc. As an Other Funded agency, civil penalties, cost recoveries, sales of DC directories, all goes back into our budget. One item that is not fully reflected in the projected revenues is our outstanding collections on civil penalties and cost recovery, approximately \$60,000.

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

Dave presented the Board with two memos regarding these statistics; he re-ranked the cases by severity of discipline. The purpose in this discussion is to ask ourselves if we have been consistent in its discipline. How do these compare to the WA Disciplinary Guidelines and matrix, or the FCLB's matrix. Do we want to have our matrix, or refer to either or both of these others? Joyce finds the Washington State matrix can be helpful, but is mildly concerned about being "boxed in." She likes the (WA) Secretary's message, which outlines the principles on which the discipline is based.

Dr. Vissers asked Dave and the other board members if they would be interested in creating an *Oregon* document that combines parts of the FCLB and/or Washington Guidelines. Dr. McClure expressed a concern that any such matrix/document be a living document, so that decisions rendered based on its constructs remain consistent in a contemporary context. Dr. Vissers likes the idea of being able to fit a complaint into a matrix. After discussion, Board members agreed to move forward – plan a workshop to develop our own "consistency in discipline" document. Add billing/treatment, charting, advertising, etc.

Board members agree to share this packet of information with the Peer Review Committee.

4. Policy & Rule Issue: Radio-opaque substances for diagnostic X-ray

A licensee asked if it is in the chiropractic scope of practice to order dye contrast studies. The answer is yes, but that DCs lack the training to perform these tests. According to Western States Chiropractic, students are trained to interpret the results of the studies, but not to apply the dye, or perform the procedure. The current rule says that DCs may perform these x-rays using radio-opaque substance by mouth or rectum, but WSCC's Dr. Harger says this is no longer taught.

The Board reviewed draft language proposed by staff. Dr. McClure made some grammatical edits, and she asked that we find out if oral use of radio-opaque substances is still being used (i.e. in rural areas, etc.) before adopting the proposed language to remove it from our scope. Based on the contingency that nobody is using oral radio-opaque substances, Joyce McClure moved to go into permanent rulemaking to amend OAR 811-030-0020. Michael Vissers seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Joyce McClure, aye; and Minga Guerrero, aye.

5. Policy & rule Issue: CCA rules re dating patients & other violations

In reviewing the administrative rule, it is not clearly stated that CCAs are under the same provisions with regard to unprofessional conduct. For example, they should not be dating their patients; they may

not practice outside their scope, etc. Dr. Brent Smith suggested that it might be better to have the language within the full text of the CCA rule. The Board agreed and determined to amend the CCA administrative rule 811-010-0110 instead of the Unprofessional Conduct rule (811-035-0015).

With Dr. McClure's edits of today, she moved to go into permanent rulemaking for OAR 811-010-0110. Steve Koc seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Joyce McClure, aye; and Minga Guerrero, aye.

6. Staff Report

The May Board meeting is set for May 15 at Western States Chiropractic College, Hampton Hall. July's meeting is scheduled for July 24 in Salem, and September's meeting is tentatively scheduled for Pendleton (possibly the 3rd week).

We are making significant progress on posting disciplinary actions on the web; they should be up in the near future.

In closing and in relation to the Customer Survey results, Discussion #1, Dr. Vissers thanked staff; they were mentioned numerous times in the results "for their helpful, positive demeanor." Even though they were not mentioned by name, it likely included Lori Lindley and Michael Summers.

2:15 PM ADJOURN