

Oregon Board of Chiropractic Examiners (OBCE)

Public Notice & E-Newsletter Update

August 15, 2017

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President's Report



Hello, colleagues! Oregon is a great place to be a chiropractor. Besides the fact that we live in such a beautiful place, there are several great advantages to practice here. We have a broad scope of practice, one of the top chiropractic schools in the world, and expanding opportunities to integrate our expertise into mainstream healthcare. For example, Jordan Graeme, DC, MSHNFM, practices chiropractic at the premiere health care facility in the state, Oregon Health Science University. A few short decades ago, an opportunity like that would have seemed impossible.

Today, more is expected from chiropractors than ever. Great strides are being made sharing the benefits of chiropractic to more members of the public but there are still many critics. They use words like “pseudoscience,” “quackery,” “scams,” and “dangerous.” These criticisms frequently center on the, now obsolete, theories that were popular in the infancy of chiropractic such as the monocausal theory of disease. From this infancy, over the last 100+ years, chiropractic has started to mature into a more science-based approach to treating neuromusculoskeletal disease through manual, drug-free, non-surgical methods. In addition, we have matured in our skills and training with regards to diagnosis and other types of treatment, including nutrition, physiotherapy, rehabilitation, etc.

Though I have mentioned the influence of critics, the greatest threat to the practice of chiropractic comes from within the profession. There are some chiropractors who embody some of the criticisms that are hurled at the profession. They ignore current standards of care in favor of a preferred technique system or a business model that puts the needs of the practitioner above the needs of the patient.

For example, we have seen practitioners who use radiographic imaging as a screening tool rather than a diagnostic tool. Remember that radiographic imaging must be done with discretion and based on the needs of the patient. The fact that a chiropractic physician uses a technique that calls for radiographs is not sufficient clinical justification to perform the study. The doctor's obligation is to the patient, not the technique. Also, the fact that the doctor may have had a significant incidental finding in the past does not justify performing radiographs on the rest of his patients as a screening tool. These decisions to perform imaging must be based on the patient's history or presentation in a physical examination.

One inappropriate practice we have seen is to have a patient sign a waiver stating that the chiropractor only detects and corrects vertebral subluxation and does not treat or diagnose any other conditions. A waiver like this does not excuse the doctor from the responsibility to perform adequate history, physical, and orthopedic examinations, and any special tests that may be needed. There is also no option to limit your diagnosis to vertebral subluxation only, without attention to any other differential diagnosis.

If this isn't clear then let me give you a hypothetical example. Let's suppose you have a patient come in for treatment who has had a month of neck and arm pain with numbness and tingling in the hand. The problem is progressively getting worse. You, as a provider, cannot just tell the patient that you only treat subluxations, adjust her neck and upper back, and then hope for the best. Without a proper history, examination, special tests, and a reasonable working diagnosis, simply treating the subluxations (even if they are present) is technically malpractice.

This is not an assault on anybody's philosophy. You are welcome to hold whatever opinion you would like about vertebral subluxation. However, we don't get to abandon 21st-century knowledge for a 19th-century practice model of chiropractic. You owe it to your patient to give them the best possible care you can provide. If you can't provide what they need, then your obligation is to refer them to a provider who can help them.

My hope is that even the best of us will strive to do a little bit better. Chiropractors today are better trained and have more tools for diagnosis and treatment than ever before. The responsible practice of chiropractic has a significant impact on the public health of our communities and our state. We have the potential to become so much more.

If you have further suggestions or insights, we invite your feedback.

Sincerely,

Jason Young, DC, MSHNFM
President, OBCE

Executive Director's Report



Public Interest

At our most recent meeting, the Board voted to change the policy regarding the chiropractic assistant's ability to provide myofascial release for patients as part of their clinical duties. The Board reviewed the previous rationale for excluding this from the chiropractic assistant scope, which was, essentially, that the technique required knowledge of anatomy that exceeded the training of most chiropractic assistants. Since that time, training requirements for chiropractic assistants have changed to include some basic muscle anatomy. In addition, the Board discussed the fact that myofascial release is a component of many of the manual modalities that are a part of the chiropractic assistants' scope (assisted stretching, soft tissue work, etc.). After discussion and consideration, the Board voted to rescind the policy that excluded

myofascial release as part of the chiropractic assistant scope. In doing this, the Board reminds all licensees that any chiropractic assistant must be properly trained in safety, indications, contraindications, and the application of any therapy they provide.

Fiscal Responsibility and Accountability

Our budget for the 2017-19 biennium, which took effect July 1, 2017, was signed into law on May 17, 2017, with a maximum limit for payment of expenses set at \$2,065,164. However, the end of session budget reconciliation bill reduced our budget by \$51,085, for a total of \$2,014,079. This reduction will not affect current licensee fees.

Due Process, Fairness, Transparent Governance

As DCs know, part of your requirements for continued licensure is signing and attesting to completion of 20 or more hours of chiropractic continuing education taken and completed during the preceding licensure period. OAR 811-015-0025(2). What you may not know or realize is that the OBCE audits a minimum of 10% of renewing licensees for compliance with this CE requirement. OAR 811-015-0025(11). Not fulfilling your CE requirements and/or not providing proof of completion are violations of the administrative rules and may lead to disciplinary action against your license. Please complete your annual CE requirements in a timely manner, be honest in your attestation, and, if audited, respond promptly and provide proof.

If we can be of help to you or your staff in any way, please don't hesitate to contact us.

Take good care,

Cassandra C. McLeod-Skinner, J.D.

Executive Director, OBCE, 503-373-1620, cass.mcleod-skinner@oregon.gov

Public Notice - OBCE September Board Meeting and Schedule

The OBCE will hold its next regular business meeting on Thursday and Friday, September 21-22, 2017, at the Best Western, 1 Sunridge Lane, Baker City, OR. There will be a meet-and-greet for area practitioners prior to the meeting. The start time for public session is yet to be determined, however, a Public Notice will be posted on the OBCE's website (www.oregon.gov/obce). The public is welcome to attend and licensees are allowed two hours CE credit for at least that length of a stay.

The Board's Executive Session is also scheduled for Thursday and Friday, September 21-22, 2017, to review health professional license investigations (ORS 192.660(2)(j)), contested cases, personnel matters, and receive legal advice (ORS 192.660(2)(h)). The Board will vote in Public Session on "In the Matters Of."

The meeting schedule and locations for the rest of 2017 are as follows:

Nov. 16 OBCE Salem office

Administrative Rules and Policy Changes

REMINDERS

Proposed and Adopted rule changes affecting Chiropractic Assistants:

1. In July 2017, the Board proposed to make a rule change to delegate the CA examination to be proctored by the National Board of Chiropractic Examiners. A rulemaking hearing will be held at the Board's September meeting.
2. In March 2017, the Board adopted a rule change, mandating fingerprint background checks at renewal, effective January 1, 2018. The Board will determine the frequency of the checks.
3. In March 2017, the Board adopted a rule change to transition to a birth month renewal system, effective January 1, 2018.

CA Renewal: Two changes will be implemented during the next CA renewal in June/July 2018:

- 1) The Board will be transitioning the CA renewal from one renewal date (July 31) to a birth month renewal, mirroring DC renewal timeframes.
- 2) The Board is developing an online CA renewal application and process, also mirroring how DCs renew online, with the intention of having it up and running by the end of the year.

During the transition process, the CA renewal fees will be prorated. Continuing education will not be prorated. The fee proration will be broken down into three fees, as follows. To plan for your 2018 CA renewal, review the chart below:

Birth Month	Fee	CE due by July 31, 2018	Expiration Date upon Renewal	License Period (# months; dates)
January	\$25	6	Jan 2019	6 months; Aug 2018 to Jan 2019
February	\$25	6	January 2019	7 months; Aug 2018 to Feb 2019
March	\$25	6	February 2019	8 months; Aug 2018 to Mar 2019
April	\$25	6	March 2019	9 months; Aug 2018 to Apr 2019
May	\$50	6	April 2019	10 months; Aug 2018 to May 2019
June	\$50	6	May 2019	11 months; Aug 2018 to Jun 2019
July	\$50	6	June 2019	12 months; Aug 2018 to Jul 2019
August	\$50	6	July 2019	13 months; Aug 2018 to Aug 2019
September	\$75	6	August 2019	14 months; Aug 2018 to Sept 2019
October	\$75	6	September 2019	15 months; Aug 2018 to Oct 2019
November	\$75	6	October 2019	16 months; Aug 2018 to Nov 2019
December	\$75	6	November 2019	17 months; Aug 2018 to Dec 2019

You will receive more information in the coming months about the process. Everything about the transition and online renewal will be posted on the OBCE's website under License Renewal for DCs and CAs.

We are continuing to process the recently submitted CA renewals. You will be contacted, or have been already, if any part of the renewal is incomplete. There are three parts to renewal:

1. A completed Renewal Notice,
2. The fee; and
3. Completion of the Oregon Health Authority's Healthcare Workforce Questionnaire.

For some of you, proof of the CE hours you claimed in 2016 for the vitals training will also need to be submitted.

If the OBCE does not have any part of the above requirements, you will be contacted. Please respond when you receive that communication.

Kelly Beringer
503-373-1573, kelly.beringer@oregon.gov

Peer Review Committee

We are currently recruiting to fill three positions (one member and two alternate members) on the Peer Review Committee. If interested, please submit a letter requesting consideration and the reason you would like to serve on the committee along with a current CV to the OBCE.

What is Peer Review?

The Peer Review Committee is an advisory body to the OBCE and is subject to public meetings laws under ORS 192.610(4). It is comprised of 7 chiropractic physicians that have been in practice 5 years or more. The PRC evaluates the efficiency and appropriateness of health care and services based on medically accepted standards. The records reviewed by PRC are confidential or privileged. The committee can go into executive session, under ORS 192.660(1)(f), to consider reports not subject to public disclosure. The records are not subject to public disclosure because of the exemption in the public records law (ORS 192.502(8)) for records which are confidential due to another state law; in the case of the OBCE, that law is our enabling statute, ORS 684.185(6).

ORS 684.185:

“...The members of a peer review committee shall be appointed from among those in the profession who are in active practice with five or more years of practice representing various geographic areas in this state. Members shall be representative of affiliated and nonaffiliated chiropractic physicians and representative of various aspects of the practice of chiropractic. To be appointed a member must receive at least four votes from members of the state board. Members shall serve three-year terms. No member may serve more than two consecutive terms.”

From Our Investigators

As the Board's investigators, we are tasked with the investigation of all aspects of a complaint, from both the complainant's perspective and from the Licensee's perspective. When a complaint comes to the OBCE, we first determine the circumstances within the complaint and investigate the validity of the allegations. The Licensee is then notified of the complaint from the Board and allowed to respond to the allegations in the complaint. During the investigative process, there are normally several interviews of witnesses and finally of the Licensee. The evidence is correlated and a report is presented to the Board at its regularly scheduled meeting to deliberate on the complaint and vote on an outcome. This is standard process. All parties' legal rights are observed as the OBCE performs its due diligence in dealing with a complaint to the Board.

Also as investigators, we are required to monitor trends in complaints and complaint types. If there is an unusual upsurge in a type of complaint, we attempt to determine if there are any

commonalities in these complaint types. If we are able to determine the issues that lead up to the complaint types, whenever possible, we put together an article for E Blast for the field to read, possibly identify similar factors that may be occurring in your own offices. Then you can alter or eliminate what could potentially generate a complaint, thus avoiding often a very costly, stressful, time-consuming, and, in some cases, a career-ending, complaint.

In this issue, we highlight the increasing trend in boundary complaints. The complaints range from allegations of inappropriate comments to rape. As a Doctor or CA just going about your duties in your practices, you are probably saying “well, that does not pertain to me or my staff - that is not an issue,” because it is unsavory to deal with or hear about. We hope you read on, because this issue affects all of us as a profession, as well as our patients, and how we are perceived by the public, various “industries,” and agencies.

The very nature of chiropractic practice and all of its various forms in Oregon is a hands-on, more intimate form of health care. It's what makes us an increasingly more popular type of healthcare and is attracting a public that may be consulting a chiropractor for the first time in their lives. All too often, this new patient is not familiar with the demonstrative nature of this type of healthcare and, without a thorough explanation of the examination process and prospective treatment and what to expect, it is possible they can misconstrue an appropriate chiropractic evaluation for a sexual advance. This misconception can occur even if the patient is fully clothed, not just during an examination or treatment while the patient is gowned or dressed down. A comment on the patients' anatomy, dress, or tattoos, something as simple as “what a great tattoo!” or “you appear very fetching today” can be taken the wrong way by even the most open-minded if it is said by their doctor or the doctor's assistant. It is a very fine line between being an approachable healthcare provider and being considered a predator.

Every provider knows, or should know, that there is no such thing as consensual sex between a doctor and a patient. Every provider knows, or should know, that there must be a good, valid reason for the provider to examine, palpate, or touch a patient's more intimate regions, or even to discuss their intimate relationships or thoughts. If there is a causal relationship between these areas (physical or emotional) and their reason for consulting you, you need to discuss this during your PARQ and obtain their verbal and, preferably, signed consent to include this in your examination or treatment process and document that in your records. If your practice includes male or female reproductive health related issues and you intend on evaluating these issues that require invasive examination or treatment, I strongly recommend you have a very concise and detailed consent form and have the patient read and sign it prior to initiating this procedure. We also strongly recommend you have a staff member as a chaperone/assistant in the room with you during these procedures. Have the assistant sign the records. Documentation is everything.

If you perceive a patient has become enamored with you, “The Doctor,” or if the patient makes suggestive comments or gestures, have one of your staff in the room during examination and/or treatment. Document the comments or gestures and your feelings about it. Assess the potential ramifications if this went unchecked. If you feel you cannot proceed comfortably and efficiently in providing care to this patient, refer this patient to another provider - give them 3 providers to choose from and effectively discharge the patient, providing them continuity of care until they

establish with another chiropractor. Document everything. If you yourself feel attracted to a patient, physically or emotionally, follow these same procedures before beginning (or attempting to begin) any other type of relationship. If a situation arises that you and your patient have a mutual attraction, physically or emotionally, you must follow these same procedures. In Oregon, if you and your patient are mutually attracted, you must follow the appropriate referral and discharge of the patient procedures (in cases such as this one, discharge the patient prior to engaging in any physical or emotional intimacy). In Oregon, there is no official “cool down period” before you can pursue a relationship. We recommend in cases like this, the longer the time between the doctor-patient relationship and some other form of relationship, the better.

It is best to remember when you walk into that room, you are the Doctor. You have all of the responsibility. There are no laws against a patient trying to seduce the doctor or staff but there are very well-defined boundaries for a Doctor or a CA, with no exceptions. The patient is vulnerable to the doctor’s suggestions and position of authority, actual or perceived. It is part of our responsibility as healthcare providers to never forget this. First and always “do no harm,” and document everything.

I realize that all of you get tired of me saying “an ounce of prevention is worth pound of cure” or “err on the side of caution,” but it is very true. Boundary issues are taken very seriously by the Board. If you have been in practice 40 days or 40 years, no one is exempt from a complaint. Just because you are 70, been in practice 40 years, and have never had a complaint against you, you still need to consider everything I just mentioned.

Frank Prideaux, D.C.

OBCE Healthcare Investigator

503-373-1848, frank.prideaux@oregon.gov

Sadly, some recent cases the Board has had to address have become the subject of media reporting. The Board’s work with law enforcement on these cases suggest that doctors’ staff may have had concerns regarding irregular behaviors and inappropriate boundary issues with doctors. In many cases, especially in larger clinics where there are multiple employees and doctors, Board or law enforcement investigations often reveal significant staff concerns that were never reported to the clinic’s owner, or addressed before becoming serious enough to trigger outside involvement. Doctors who employ multiple staff are encouraged to ensure that staff are reminded and feel welcome to bring concerns to them. Inadvertently creating a culture in an office where staff feel that bad behavior towards and around patients is the norm or encouraged, often leads to boundary violations going unchecked. Patients reciprocating or mimicking inappropriate banter, or opting into behaviors with staff, also all too often are precursors to a deteriorating culture that lead to boundary violations. Establishing and maintaining a level of professionalism in the office helps to combat the slow creep toward misunderstood comments and actions as Dr. Prideaux described above. Training, reminders, and encouraging a culture of professionalism help avoid such issues. This is one area where we especially hope to help everyone avoid. The unintended consequences of such actions sadly reverberate through offices, patients and their families, and professional circles.

Boundary issues also offer the opportunity to review methods of preventing these issues and reporting requirements on behalf of Chiropractors and Chiropractic Assistants. All licensed professionals generally have a reporting requirement to their licensure Boards or other state agencies. Everyone hopes they can successfully navigate a career without coming into contact with a situation that needs reporting. Recent cases that have garnered media attention have also resulted in some very difficult conversations from licensees reporting that conduct and seeking guidance from the Board on how to navigate the aftermath of such actions with patients. Reporting also offers the opportunity to address and correct behaviors before they go too far. You are welcome to contact the Board regarding questions about when and what to report, or if such situations should be reported to other agencies or organizations. All too often, the Board collects reports of suspicions and concerns that come to light only after significant escalation and harm to patients. We are always saddened to see such cases and hope that they can be used as opportunities to review rules around boundaries and reporting, and ultimately, prevention. Unfortunately, such actions dissuade people from seeking care, and have the effect of impacting the entire Chiropractic community and the general public.

George Finch

OBCE Investigator

503-373-1615, george.finch@oregon.gov