

# Oregon Board of Chiropractic Examiners (OBCE)

## Public Notice & E-Newsletter Update

December 2018

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### President's Report



Well colleagues, my time has come. When the calendar turns at the end of the month, my final term as the president of the Oregon Board of Chiropractic Examiners will be over. My tenure on the OBCE will end in March of 2019. I'm finding it difficult to write this article because the past six years of board service has taught me much about public service, diplomacy, and my role in the chiropractic profession. What would I tell you about it?

I hope, that looking back on this experience, I will remember the great relationships and lessons I have learned. Being a member of the board doesn't make me special. I don't think that I'm a better chiropractor than any of you reading this. However, the experience is very special and I know it has made me a better chiropractor and person than I was six years ago.

All of our complaints we work on are confidential but I can share, in very general terms, what I learned from my involvement with the complaint process. One of the most inspiring experiences we would have as board members was to interview doctors who struggled with substance abuse and, after a process, managed to put themselves back on track and overcome addiction. These men and women display a level of perseverance, compassion, humility, and courage that is infectious. To all of you docs who think I may be talking about you, keep up the good work! If you are struggling with these issues, I hope you know that there are good people who want to help and your licensing board wants to help you too!

Early in my board career, I did something that was a little outside of the box and went to lunch with a licensee who had received multiple complaints. This was after the complaints against this individual had been resolved, but this doctor was worried that the OBCE had an agenda to put them out of practice. So, we went out and I just got a chance to listen and get the perspective of a person on the other end of this process. I don't even recall giving any advice or anything like that. I just listened. I learned how stressful this process can be for somebody who only wants to

help people out. It was a very valuable perspective to gain since I have never been in those shoes. It helped to guide my decision-making on the board and to have more empathy for people in general. I hope it was a good experience for the other doctor as well.

I have learned how important it is to have a good support system and manage stress in your life. A common denominator in the most egregious violations we see is that the doctor was dealing, poorly, with stressors in their life and this caused them to objectify their patient. By that I mean that they started to see patients as anything other than somebody they have a duty to help. These patients become a mark for money, attention, or sometimes even a sexual fantasy or involvement. This is incredibly damaging to patients, staff, families, the profession, and also to the doctor. Sometimes we interview doctors who are coming back from a suspension and I always ask about their plans to go back into practice. Often, somebody will tell me about how forgiving their spouse is, their involvement with church, or how they have learned their lesson and will never do what they have done again. I ask what they are going to do on the bad days when they are fighting with their spouse and the money isn't coming in and they have problems with their employees. The lesson is that it is easy to do everything right on your best days. When things start falling apart, we need to have plans in place to protect our patients from becoming objectified as well as to protect our own mental health. I recommend that none of us practice on an island. Join an association or group that you can use as a resource and support group for when times get tough. Surround yourself with other professionals you can feel accountable to and they will help you to steer clear of disaster.

As members of the chiropractic community in Oregon, I want to stress how important it is for all of us to become involved in the profession in our state. I don't just mean running your practice. I mean that you should care about the law and rules that are being made which affect you, your practice, and your patients. One of the most frustrating experiences was to hear the outrage of colleagues who opposed a change that may have been 18 months in the making on which they gave little, or no, input. Your licensing board turns like an aircraft carrier, not a speedboat. Rules don't change without hearings. If you want a say in how things are done, you just have to speak up - not after the fact in a social media forum - but during the process, and your voice will be heard.

Finally, I owe a tremendous debt of gratitude to the many people I have served with on committees and the board. One of the most beautiful things I have learned is that I can respect and value somebody highly even though I completely disagree with their ideas. That respectful disagreement between colleagues is essential to thoroughly exploring the opportunities placed before us. Thank you for those times when that respect was returned as well. I can't overstate the quality of work done by the OBCE staff, from the people working phones, managing databases, and making arrangements, to the investigators and the two great executive directors I have been privileged to work with. I am humbled by my association with all of you and I'm proud to call you my friends. Saving the best for last, thank you to my family. This experience did not come without a price for them. I lost time with them due to travel and having my focus elsewhere. Thank you for your love and supporting me.

“Don’t cry because it’s over, smile because it happened.” - Theodor Seuss Geisel

Sincerely,

*Jason Young, DC, MSHNFM*  
President, OBCE

## Executive Director’s Report



### Public Interest

### Board Membership and Leadership

A huge thank you to Dr. Paul Bjornson for his dedication and service during his 3 year term as an OBCE board member. We will miss your perspective and humor. As Dr. Bjornson’s term came to an end, we were fortunate enough to welcome Dr. Michelle Waggoner in Dr. Bjornson’s place. WELCOME, Dr. Waggoner! We look forward to the years ahead.

During its recent legislative days, the Senate’s Rules and Executive Appointments Subcommittee heard from Dr. Allen Knecht as to his interest in becoming an OBCE Board member and the full Senate approved that appointment. As of March 15, 2019, Dr. Knecht will join the OBCE’s membership. WELCOME, Dr. Knecht!

There will be another opening for a professional (DC) member for the Board as of June 1, 2019. For DCs outside of the Willamette Valley, especially those in Southern, Central, or Eastern Oregon, please strongly consider applying to become a member of the OBCE. We desire and welcome a full range of geographic, ethnic, and practice-type diversity on the board. For more information on Executive Appointments and the embedded interest form:

[https://www.oregon.gov/gov/admin/pages/how\\_to\\_apply.aspx](https://www.oregon.gov/gov/admin/pages/how_to_apply.aspx)

At its November board meeting, the OBCE held its executive committee elections for 2019. Congratulations to Dr. Franchesca Vermillion, President-elect; Dr. Ron Romanick, Vice President-elect; and Dr. Michelle Waggoner, Secretary-elect. Enjoy the rest of December and I look forward to an exciting new year.

### Mandatory CE

At its November 2018 board meeting, the OBCE voted to **not** require any additional continuing education credits other than the amounts required for regular DC and CA renewal for 2019.

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## **Fiscal Responsibility and Accountability**

With preparation for the 2019 Legislative Session about to start in January, our budget preparation for the 2019-2021 biennium (which begins July 1, 2019) is underway with no anticipated increase in licensee fees.

## **Due Process, Fairness, Transparent Governance**

We have begun implementing the [Civil Penalty Citation Policy](#) and issuing Civil Citations, pursuant to [OAR 811-035-0036](#). Please follow the linked policy and OAR for more information.

The OBCE meeting and location schedule for 2019 is as follows and can be found on our website ([www.oregon.gov/obce](http://www.oregon.gov/obce)):

January 23-24	McMinnville
March 14	Salem (OBCE office)
May 15-16	Eugene TBD
July 25	Salem (OBCE office)
September 19-20	Klamath Falls TBD
November 14	Salem (OBCE office)

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

Have a wonderful and safe New Year!

*Cassandra C. McLeod-Skinner, J.D.*

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## **Rules Updates and Policy Changes**

## **REMINDERS**

Beginning January 1, 2019, the FBI will be increasing their processing fee by \$1.25. This means that we must increase our background check fee from \$40.00 to \$41.25. This fee change will affect those who are applying for the Doctor of Chiropractic license, the Chiropractic Assistant certification, and those who must be fingerprinted for renewal.

The new fees will be:

DC Application: \$141.25

CA Application: \$176.25

Because of holiday closures and short staffing during this time, applications received after December 24, 2018 will not be processed until the week of January 2, 2019 and will be required to pay the increased fee.

Additionally, please do *not* send potential applicants for fingerprinting (using a saved OBCE code; we are experiencing this from clinics that certify numerous CAs) prior to receiving the approval email from the OBCE. If the applicant fails to submit their application and payment, the OBCE is charged the processing fee from the Oregon State Police and FBI.

*Donna Dougan*

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### **Chiropractic Assistants**

In April 2017, the Board amended rules which allow for fingerprint background checks at renewal. Effective January 1, 2019, the first round of CAs will be requested to undergo the process.

CAs who have a certificate with a January 31, 2019 expiration date will be requested by email at renewal time to submit fingerprints. **Exception:** If a CA has been fingerprinted as part of their initial application with the OBCE within the past six years, they will not be required to be printed for six years from that date; these CAs will not receive an email request.

Once the Board receives the background report, the CA will be invoiced for the \$41.25 cost of the report. A CA's certificate will not be renewed until the resulting background report is received by the OBCE and is paid in full.

### **All Licensees and Certificate Holders**

A summary of recent rule changes with links to the amended language, found below.

#### **Adopted November 15, 2018 and effective November 22, 2018**

- [OAR 811-010-0110](#) Chiropractic Assistants – language was corrected regarding the CA exam fee.
- [OAR 811-010-0120](#) Professional Corporation and Business Entity Majority Ownership – language was amended with regard to surrogate business owners.
- [OAR 811-035-0015](#) Unprofessional Conduct in the Chiropractic Profession – also amended in relation to surrogate business owners.

#### **Adopted October 4, 2018 and effective October 10, 2018,**

- [OAR 811-015-0005](#) Records - amends language to clarify what is required in a chart.

*Kelly Beringer*

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## From Our Investigators

Currently, the Oregon Board of Chiropractic Examiners has no administrative rules regarding products derived from marijuana or hemp, such as CBD. However, this is perhaps the number one question we receive each week. While we have provided guidance in the past, it bears repeating and offering some suggested guidance and rationale for the Board's current stance. Please consider this a guide for further study and research as you consider the landscape of CBD as it relates to your practice.

### **What is the situation in Oregon regarding CBD?**

Recreational marijuana and CBD products derived from hemp are regulated by multiple agencies, including the Oregon Department of Agriculture, the Oregon Health Authority (Oregon Cannabis Commission), and the Oregon Liquor Control Commission. Oregon law requires that CBD derived from hemp products contain no more than 0.3% THC.<sup>i</sup> The quantity of THC in the product must be tested and certified by a certified Oregon laboratory or tested under substantially similar requirements.<sup>ii</sup> Hemp derived products must have been tested in an Oregon lab, or under the same or substantially the same requirements in order to be sold legally in the state.<sup>iii</sup>

Many doctors who contact the Board report having been contacted by vendors offering CBD products. However, many of those products are not labeled, or labeled appropriately, as having been tested at an Oregon approved laboratory. The Board is in constant communication with the Oregon Department of Justice regarding such cases around the State. The potential danger is that such products will have more than the allowable quantity of THC, resulting in intoxication or adverse reactions. Understanding the requirement around proper laboratory testing and labeling is imperative.

### **Can an Oregon licensed Chiropractor sell CBD products?**

The Board will reiterate that it does not regulate marijuana or hemp derived products. We have been advised by OLCC that any sale or use of a CBD product "for consideration" requires a license from the State.<sup>iv</sup> In the past, the Board was advised by OLCC that sales would require a license and that the use of CBD in treatments, where the cost of the treatment would be the "consideration," would also require licensure. The variety of products are too varied for the Board to comment on or regulate. We recommend any interested parties to seek guidance from the relevant agencies and possibly also independent legal counsel.

### **What is CBD good for?**

Like many new entrants to the healthcare landscape, there is tremendous interest in CBD. With that interest comes a whole host of claims regarding its efficacy for a wide variety of conditions. CBD has shown some effectiveness as an anxiolytic, anti-inflammatory, antiemetic, and antipsychotic including some neuroprotective properties. Consequently, it could be used at high doses for the treatment of a variety of conditions ranging in psychiatric disorders such as schizophrenia and dementia, as well as diabetes and nausea.<sup>v</sup>

Currently, the only federally approved use of CBD is in the treatment of rare forms of childhood epilepsy. This is the only approved human treatment form to date.<sup>vi</sup> Such medications will briefly be discussed as they are outside the scope of chiropractic.

### **Are there side effects to CBD use?**

Research into CBD is ongoing. Some side effects have been observed in clinical research thus far, primarily in-vitro and in animal studies. “They include alterations of cell viability, reduced fertilization capacity, and inhibition of hepatic drug metabolism and drug transporters (e.g., p-glycoprotein).<sup>vii</sup> Consequently, more human studies have to be conducted to see if these effects also occur in humans. In these studies, a large enough number of subjects have to be enrolled to analyze long-term safety aspects and CBD possible interactions with other substances.<sup>viii</sup>” Early research showed few side effects, and that patients tolerated relatively high doses with little observable effect.<sup>ix</sup> Later research has documented commonly reported side effects including tiredness, diarrhea, and changes in weight/appetite.<sup>x</sup> A large portion of the ongoing research, however, focuses on psychiatric benefits.<sup>xi</sup> Practitioners should be conversant in the relevant literature, consider the early stage of research, and understand that most of the research conducted focused on area of practice outside the scope of chiropractic.

### **Is CBD legal at the federal level?**

It is helpful to keep in mind that these derived substances remain illegal at the federal level. The federal government recently issued guidance regarding marijuana prosecution noting that current federal laws “reflect Congress’s determination that marijuana is a dangerous drug and that marijuana activity is a serious crime.<sup>xii</sup>” The January 4, 2018, the U.S. Department of Justice issued a memo to all federal prosecutors reiterating the illegality of such materials and the criminal penalties associated therewith.<sup>xiii</sup>

The U.S. Food and Drug Administration (FDA) continues to ban the use of CBD in food products and restrict its use as a dietary supplement.<sup>xiv</sup> Based “on the evidence, FDA has concluded that THC and CBD products are excluded from the dietary supplement definition under sections 201(ff)(3)(B)(i) and (ii) of the FD&C Act, respectively. Under those provisions, if a substance (such as THC or CBD) is an active ingredient in a drug product that has been approved...or has been authorized for investigation as a new drug for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public, then products containing that substance are outside the definition of a dietary supplement. ...FDA is not aware of any evidence that would call into question its current conclusions that THC and CBD products are excluded from the dietary supplement definition under sections 201(ff)(3)(B)(i) and (ii) of the FD&C Act.<sup>xv</sup>”

On December 20, 2018, the Agriculture Improvement Act of 2018 was signed into law. As part of the new regulations, hemp was removed from the Controlled Substances Act. The FDA has continuing jurisdiction to regulate hemp and marijuana products. Of critical importance in this new area of regulation, “...the FDA requires a cannabis product (hemp-derived or otherwise) that is marketed with a claim of therapeutic benefit, or with any other disease claim, to be

approved by the FDA for its intended use before it may be introduced into interstate commerce.<sup>xvi</sup>

### **Where does that leave you?**

The OBCE has, thus far, declined to make any rules regarding CBD or product derived from marijuana. There are numerous regulatory bodies making changes to the existing law that leave this an unsettled matter, resulting in a regulatory landscape that would make it impractical for the Board to offer conclusive advice. The Board’s current rules, specifically clinical justification<sup>xvii</sup>, more than cover this rapidly developing area. We urge any doctor considering the use or recommendation of these products to consult the clinical justification rule and reflect on their use of any substance, supplement, or treatment, whether generally available or OTC, specifically:

What is that substance used to treat?

Is it generally accepted as a treatment for that condition?

Is there relevant medical research and literature to support that position?

What are the potential side effects of the substance, including possible medication interactions?

What’s the proper dosing of that substance for the condition being treated?

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<sup>i</sup> ORS 571.339

<sup>ii</sup> ORS 571.330

<sup>iii</sup> ORS 571.339

<sup>iv</sup> ORS 475B.227

<sup>v</sup> Iffland, Kerstin and Franjo Grotenhermen. “An Update on Safety and Side Effects of Cannabidiol: A Review of Clinical Data and Relevant Animal Studies” *Cannabis and cannabinoid research* vol. 2,1 139-154. 1 Jun. 2017, doi:10.1089/can.2016.0034

<sup>vi</sup> Dennis Thompson, *CBD Oil: All the Rage, But Is It Safe & Effective?*, (May 7, 2018)

<https://www.webmd.com/pain-management/news/20180507/cbd-oil-all-the-rage-but-is-it-safe-effective#1> (Last visited December 14, 2018)

<sup>vii</sup> Bergamaschi MM, Queiroz RH, Zuardi AW, et al. Safety and side effects of cannabidiol, a Cannabis sativa constituent. *Curr Drug Saf.* 2011;6:237–249

<sup>viii</sup> Iffland, Kerstin and Franjo Grotenhermen. “An Update on Safety and Side Effects of Cannabidiol: A Review of Clinical Data and Relevant Animal Studies”

<sup>ix</sup> Mateus Machado Bergamaschi, Regina Helena Costa Queiroz, Antonio Waldo Zuardi and Jose Alexandre S. Crippa, “Safety and Side Effects of Cannabidiol, a Cannabis sativa Constituent”, *Current Drug Safety* (2011) 6: 237.

<sup>x</sup> *Id.*

<sup>xi</sup> Crippa, José A et al. “Translational Investigation of the Therapeutic Potential of Cannabidiol (CBD): Toward a New Age” *Frontiers in immunology* vol. 9 2009. 21 Sep. 2018, doi:10.3389/fimmu.2018.02009

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<sup>xii</sup> Memorandum for All United States Attorney's, Attorney General Jefferson B. Sessions, January 4, 2018.

<sup>xiii</sup> *Id.*, and 21 U.S.C. § 801 et seq

<sup>xiv</sup> *FDA and Marijuana: Questions and Answers*,

[https://www.fda.gov/newsevents/publichealthfocus/ucm421168.htm#dietary\\_supplements](https://www.fda.gov/newsevents/publichealthfocus/ucm421168.htm#dietary_supplements) (last visited December 26, 2018)

<sup>xv</sup> *Id.*

<sup>xvi</sup> Statement from FDA Commissioner Scott Gottlieb, M.D., on signing the Agriculture Improvement Act of and the agency's regulation of products containing cannabis and cannabis-derived compounds,

<https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm628988.htm> (last visited December 26, 2018)

<sup>xvii</sup> OAR 811-015-0010