



Oregon

John A. Kitzhaber, MD, Governor

Board of Chiropractic Examiners

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OBCE PUBLIC SESSION MEETING

University of Western States
2900 NE 132nd Avenue - Hampton Hall
Portland, Oregon 97230

January 23, 2014

Members Present

Daniel Côté DC, President
Ann Goldeen DC Vice-President
Glenn Taylor, Secretary - Excused
Christine Robinson DC
Jason Young DC
Lisa Kouzes DC
Doug Dick, Public Member

Staff Present

Dave McTeague, Executive Director
Kelly Beringer, Admin Assistant
Donna Dougan, Admin Assistant
Tom Rozinski, Investigator
Lori Lindley, AAG
Shari Barrett, Office Specialist
Others: Joseph Pfeifer DC, Will Evans DC, Minga Guerrero DC and Lori Persons (NICB)

CONVENE 1:00 PM

ADOPTION OF THE AGENDA Add discussion regarding the Executive Director application process and public notification. Moved, and seconded. All in favor. A second item was added under Correspondence – OCA petition regarding functional neurology.

BOARD OFFICER ELECTIONS:

- President: Doug Dick nominated Daniel Côté DC for a 2nd term as Board President. Dr. Côté accepted the nomination. Unopposed.
- Vice-President: Dr. Côté nominated Ann Goldeen DC for a 2nd term as Vice-President. Dr. Goldeen also accepted the nomination. Unopposed.
- Secretary: Current secretary, Doug Dick is retiring from the Board in June, so Dr. Côté nominated Glenn Taylor; Glenn accepted the nomination in absentia. Unopposed.

The Board voted in favor of the above nominations: Robinson, aye; Kouzes, aye; Young, aye; Dick, aye; Côté, aye; and Goldeen, aye.

FCLB & NBCE DELEGATES:

- FCLB and NBCE Delegate: Dr. Goldeen volunteered to serve as the FCLB and NBCE delegate. No others were nominated or volunteered. Dr. Côté moved that Dr. Goldeen be the delegate; Doug Dick seconded the motion. The Board voted all in favor.
- FCLB and NBCE Alternate Delegate: Dr. Côté volunteered to serve as the Board's alternate delegate. Dr. Goldeen moved that Dr. Côté be the alternate. Dr. Lisa Kouzes seconded the motion. All members voted in favor.



The Board also voted all in favor for the above (FCLB and NBCE) nominations: Young, aye; Robinson, aye; Côté, aye; Dick, aye; Kouzes, aye; and Goldeen, aye.

Board Liaisons for Continuing Education, Rules Advisory, ETSDP, and Peer Review Committee:

Dr. Kouzes was appointed as the CE liaison; Glenn Taylor was re-appointed as the Rules Advisory Committee liaison; Dr. Kouzes was also appointed as the ETSDP liaison; and Dr. Côté was appointed as the Peer Review Committee liaison.

DISCUSSION ITEMS

1. Public Hearing on Proposed Amendments and possible adoption of OAR 811-035-0015 (clinic owner responsibilities)

Dr. Côté opened the rule hearing. No public attendees signed up to comment. Dr. Jason Young asked to read his proposed language (as submitted to the Board).

Dr. Goldeen referred to a previous board draft and made comment that she preferred the stronger use of the word "shall" instead of "presumed to be..." In contrast, Dr. Young's language said "may be held responsible..." The Board focused on Dr. Young's draft. Lori Lindley suggested that the use of the word "control" (two instances) be removed. Members agreed. In addition, Dr. Côté would like to include the draft "Policy and Intent Statement" in the Policies and Practice Guide in relation to this rule amendment. Dr. Young moved to adopt the language as proposed (without two uses of "or control") and read the language; Doug Dick seconded the motion. The language reads as follows:

811-035-0015 (25) Chiropractic physicians holding an ownership interest as described in OAR 811-010-0120 may be held responsible, entirely or in part, for supervised staff (listed below) who provide patient services. This includes a responsibility to render adequate supervision, management and training ~~or control~~ of ancillary staff or other persons including, but not limited to, chiropractic physicians, student interns, chiropractic assistants and/or others practicing under the licensee's supervision ~~or control~~. Chiropractors with supervised staff may be held responsible, entirely or in part, for undue influence on staff or a restriction of a supervised chiropractic physician from using their own clinical judgment.

Discussion: Dr. Joseph Pfeifer asked about UWS President, Dr. Joe Brimhall's proposal which would make it clear that this rule does not apply to accredited chiropractic colleges. Drs. Pfeifer and Brimhall feel the term "undue" is too vague; who determines "undue?" The Board's legal counsel provided a generally accepted definition of the term. Dave added that he does not believe that the college itself falls under this rule since the college is not a business entity organized as per OAR 811-010-0120. The Board will add a mention in the policy statement that this rule is not intended to regulate teaching institutions.

Dr. Côté closed the hearing. A motion to adopt and a second has been made. All in favor. Dr. Robinson, aye; Dr. Young, aye; Dr. Goldeen, aye; Doug Dick, aye; Dr. Côté, aye; and Dr. Kouzes, aye.

Ann Goldeen further moved to adopt the Policy and Intent Statement as amended; Jason Young seconded the motion. All in favor. Doug Dick, aye; Dr. Robinson, aye; Dr. Goldeen, aye; Dr. Côté, aye; Dr. Young, aye; and Dr. Kouzes, aye.

2. Policy issue: Rulemaking priorities

Dave McTeague reviewed other rule concepts discussed at the Board's September 2013 planning retreat, including the improvements to the rule just adopted. What is the next rulemaking priority? The Board discussed improving the (clinical) Record Keeping rule (OAR 811-015-0005), Professional Corporation and Business Entity Majority Ownership rule (OAR 811-010-0120) in relation to certain franchise operations, the scope and training of Chiropractic Assistants (OAR 811-010-0110), and the Practices and Utilization Guidelines which are "woefully" outdated (the OCPUG is referenced in OAR 811-015-0010 Clinical Justification and other OARS). The Chapter V treatment parameters were written in 1991.

Dr. Côté suggested we begin with the Majority Ownership rule and simultaneously look at the Practice and Utilization Guidelines. Changes to the OCPUG requires participation of the Oregon Chiropractic Association and University of Western States. Dr. Goldeen agrees that the Majority Ownership rule is top priority. Re: record keeping, she would like to create a check list, similar to Nevada's. It would be a great tool for licensees and would help practitioners to make sure that we have all the necessary parts.

Dr. Young agrees that the majority ownership rule is our first priority. Regarding the CA program, he has multiple concerns including 1) CAs taking vitals (versus recording them), and 2) CAs performing massage; there are other issues too. Dr. Young would support a "super CA" license or certification. Dr. Côté recommends Dr. Young check the FCLB for other states' models before we "reinvent the wheel."

Dr. Kouzes: regarding the CA program, can we make a statement right now whether we think the CAs are qualified to perform massage? Dr. Côté suggested that we create other options before we cut CAs off (from massage). Also, to consider, depending on what approach the board takes, statute may/may not need to be changed. Dr. Goldeen does not want the CAs taking the history.

Doug Dick asked the Board if its ready to review draft language already submitted in relation to the Clinic Majority Ownership rule. Dr. Côté responded that we will keep working on the language. Dr. Kouzes agrees with the importance of the Majority Ownership rule. She also thinks we should get started on reworking the OCPUG. Lori Lindley reminded the Board that any amendments to the Majority Ownership rule would need to "dovetail" with current law (Ch. 58). Dr. Christine Robinson supports acting on the majority ownership and the CA rules.

Dr. Young moved to enter into rulemaking on the Clinic Ownership, Record keeping, and CA rules; Lisa Kouzes seconded the motion. All in favor. Dick, aye; Goldeen, aye; Robinson, aye; Côté, aye; Young, aye and Kouzes, aye. Discussion: Dr. Côté will take on the task of drafting the intent statement for new clinic ownership rule language; Dr. Young will do the same with the CA rule; and Dr. Kouzes will work on the record keeping rule (referring to the Nevada language). (The Rule Advisory Committee will be convened on March 14th to review these concepts and possibly help draft proposed rule language.)

3. New Doctors meeting, schedule and board members

The board chose Friday, April 4th for the next New Doctors meeting. Drs. Young and Côté will be the Board's presenters on the panel. Staff will reserve a lecture hall at University of Western States for an expected large group.

4. Initial budget and budget policy packages for 2015-17 Agency Request Budget

Dave McTeague previewed what is to come. He suggests the Board change the healthcare investigator position from a ½ time position to a ¾ time or full time position. In addition, Dave will propose, for one Administrative Assistant and/or the Office Specialist, an increase from ¾ time to full time. We need more money for professional services; we've spent almost \$10,000 in expert witness fees so far this biennium, and we need more for administrative hearing costs. We also need to budget for merchant fees (credit card charges) once the online license renewal application is up and running. He said a supplemental budget request for the current biennium is a distinct possibility.

5. Staff Report

Our Online Renewal Application is set for a go-live date in March. Recently, the Secretary of State's office requested information about our CE audits. We crunched the numbers and found we have not been performing general CE audits as often as we intended; so, we are planning to audit 15% of the last six months renewals (Aug 2013 to Jan 2014) and 15% of the next six months. He noted we have focused on compliance for the required subjects of boundaries (2012) and record keeping (2013).

We are behind in producing the BackTalk newsletter. Board members agree to draft articles – Ann Goldeen, documentation - including her idea of a check list; Dr. Young, networking and getting involved (in associations, list-serves, Facebook groups, connecting with colleagues) to share best practices; Dr. Côté, "PIP mills." Members should send something to Dave within two weeks.

Added discussion #6 Public Notification and Planning for an Executive Director Replacement

Dr. Côté reviewed the proposed plan of action. Between now and March 3, 2014 we will have a public board meeting/teleconference; the meeting will last than 30 minutes. The only items on the agenda will be to explain the public meeting law, take public comment, adopt a final recruitment plan and job posting, and determine the screening panel lead and membership.

Between March 3 and 31, 2014 we will open the job post nationwide. Between March 31st and April 3, the State Executive Recruiter will process the applications and summary. By April 7th, the screening panel, with the Executive Recruiter, will rank and select the candidates. We will develop the interview questions and select the first round of interviewees (5-8 candidates) by April 21st. The same day we will pick the top two/three applicants. The Executive Recruiter will check references. In the May 22, 2014 Board meeting, we will interview the top 2-3 candidates before the full board, and select our choices. We will make the job offer the following week. We hope to have our new Administrator by June 15th. Dave McTeague will be with the Board until July 1. For three weeks thereafter, Dave will be a consultant or on temporary assignment to assist the Board as needed.

CORRESPONDENCE

The Board received a petition from Oregon Chiropractic Association members requesting that functional neurology be approved as a standard chiropractic technique, as per the ETSDP rule, Dr. Kouzes moved to send the issue to the ETSDP committee, who will then report back to the Board for their March meeting. Dr. Goldeen seconded the motion. All in favor. Doug Dick, aye; Lisa Kouzes, aye; Jason Young, DC, Ann Goldeen, aye; Daniel Côté, aye; and Christine Robinson, aye.

IN THE MATTERS OF

Case 2011-2003 et. al. John Platt DC

The Board proposed disciplinary action for failure to cooperate with an investigation, for failure to come to a Peer Review Committee meeting as requested, and many other instances of failure to cooperate. The Board proposed a \$10,000 civil penalty and an indefinite license suspension until Dr. Platt has fully cooperated with the Board's investigation. Doug Dick moved to accept the Board's determination; Jason Young seconded the motion. Lisa Kouzes recused. Goldeen, aye; Côté, aye; Dick, aye; Robinson, aye; and Young, aye.

Case # 2013-2014, 2013-2027, Kimberly Privitera DC

The Board proposed disciplinary action for failure to cooperate with an investigation, for failure to come to a Peer Review Committee meeting as requested, and many other instances of failure to cooperate. The Board proposed a \$10,000 civil penalty and an indefinite license suspension until Dr. Privitera fully cooperates with the Board's investigation. Doug Dick moved to accept the Board's determination; Jason Young seconded the motion. Again, Lisa Kouzes is recused. Robinson, aye; Côté, aye; Young, aye; Goldeen, aye; and Dick, aye.

Scott Wallace DC

The Board proposed to issue a Stipulated Final Order which allows the doctor to return to practice under certain conditions specified in the order. Daniel Côté moved to accept the proposal; Jason Young seconded the motion. Robinson, aye; Young, aye; Dick, aye; Côté, aye; and Kouzes, aye. Ann Goldeen, opposed.

Executive Agenda Item #10

The Board approved release of confidential complaint information to law enforcement. Ann Goldeen moved to accept the determination; Christine Robinson seconded the motion. Dick, aye; Kouzes, aye; Robinson, aye, Côté, aye; and Goldeen, aye. Jason Young, opposed.

2013 Record Keeping Compliance Report

As noticed in the memo dated January 22, 2014 there are 18 chiropractic physicians (including licensee DS; and exempting licensee NE for medical reasons), who have not completed their record keeping continuing education. The Board proposed to assess a \$250 civil penalty for each doctor. If the licensees do not complete the education and submit it to the Board by March 1, 2014, their license will be suspended. Daniel Côté moved to accept the board's determination; Doug Dick seconded the motion. All in favor. Robinson, aye; Côté, aye; Young, aye; Dick, aye; Kouzes, aye; and Goldeen, aye.

Executive Agenda Item #14

The Board approved the sharing of confidential information from a number of cases with law enforcement. Ann Goldeen moved to accept the determination; Jason Young seconded the motion. Dick, aye; Robinson, aye; Côté, aye; Goldeen, aye and Young, aye. Lisa Kouzes was recused.

Case #2013-3001

The Board voted to withdraw the Notice of Proposed Discipline. Daniel Côté moved to accept the determination; Jason Young seconded the motion. All in favor. Dick, aye; Goldeen, aye; Kouzes, aye; Côté, aye; Robinson, aye and Young, aye.

Case #2013-2013 Kristen Brennan DC

The Board proposed a \$1,500 civil penalty for poor documentation; the Board also proposed six (6) hours CE in record keeping and six (6) hours CE in clinical justification; the hours are in addition to the annual CE. The Board proposed file pulls for two years (and include at least one file in which children were treated). Complete the CE and make payment in 90 days. Lisa Kouzes moved to accept the determination; Doug Dick seconded the motion. All in favor. Robinson, aye; Côté, aye; Young, aye; Dick, aye; Kouzes, aye; and Goldeen, aye.

Case #2013-2028 The Board proposed case closed. Lisa Kouzes moved to accept the determination; Jason Young seconded the motion. All in favor. Robinson, aye; Côté, aye; Young, aye; Goldeen, aye; and Dick, aye.

Case #2013-2029 The Board proposed a contingent case closed provided the licensee agrees to one file pull – three files, including one in which a child was treated. Lisa Kouzes moved to accept the determination; Doug Dick seconded the motion. All in favor. Dick, aye; Goldeen, aye; Kouzes, aye; Côté, aye; Robinson, aye and Young, aye.

Case #2013-2020 The Board proposed case closed with a letter of concern. Christine Robinson moved to accept the determination; Lisa Kouzes seconded the motion. All in favor. Dick, aye; Young, aye; Côté, aye; Goldeen, aye; Robinson, aye and Kouzes, aye.

Case #2013-2009 The Board proposed case closed with a letter of concern. Christine Robinson moved to accept; Ann Goldeen seconded the motion. All in favor. Côté, aye; Dick, aye; Kouzes, aye; Goldeen, aye; Robinson, aye; and Young, aye.

Case #2013-2010 The Board proposed case closed with a letter of concern. Daniel Côté moved to accept; Christine Robinson seconded the motion. All in favor. Dick, aye; Kouzes, aye; Goldeen, aye; Robinson, aye; Côté, aye; and Young, aye.

Case #2013-1036 The Board proposed no statutory violation. Daniel Côté moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Dick, aye; Kouzes, aye; Goldeen, aye; Robinson, aye; Côté, aye; and Young, aye.

Case #2013-3024 The Board proposed no statutory violation. Doug Dick moved to accept the determination; Lisa Kouzes seconded the motion. All in favor. Robinson, aye; Young, aye; Kouzes, aye; Côté, aye; Dick, aye and Goldeen, aye.

Case #2013-5017 The Board proposed case closed with letter of concern. Christine Robinson moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Dick, aye; Goldeen, aye; Kouzes, aye; Côté, aye; Robinson, aye and Young, aye.

Case #2013-1044 The Board proposed no statutory violation. Jason Young moved to accept; Christine Robinson seconded the motion. All in favor. Dick, aye; Goldeen, aye; Côté, aye; Young, aye; Kouzes, aye; and Robinson, aye.

Case #2013-1042 The Board proposed insufficient evidence to find a violation. Jason Young moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Dick, aye; Goldeen, aye; Kouzes, aye; Côté, aye; Robinson, aye and Young, aye.

In relation to the licensee in the above case, the Board proposed to open a new case for issues related to clinical justification and poor charting. Jason Young moved to accept the determination; Lisa Kouzes seconded the motion. All in favor. Robinson, aye; Côté, aye; Young, aye; Dick, aye; Kouzes, aye; and Goldeen, aye.

Case #2013-3017 The Board proposed to withdraw the proposed notice of disciplinary action and issue a letter of concern. Doug Dick moved to accept the determination; Jason Young seconded the motion. All in favor. Robinson, aye; Côté, aye; Young, aye; Dick, aye; Kouzes, aye; and Goldeen, aye.

Case #2013-2026 The Board proposed case closed. Ann Goldeen moved to accept the determination; Jason Young seconded the motion. All in favor. Dick, aye; Goldeen, aye; Kouzes, aye; Côté, aye; Robinson, aye and Young, aye.

Case #2013-1024 Frank Hurd DC

The Board authorized the issuance of the Stipulated Final Order as discussed. Ann Goldeen moved to accept the determination; Jason Young seconded the motion. All in favor. Dick, aye; Kouzes, aye; Goldeen, aye; Robinson, aye; Côté, aye; and Young, aye.

Case #s 2013-3011, 2013-3012, and 2013-3020

The Board proposed a conditional withdrawal of the Notice of Proposed Disciplinary Action if the licensee agrees to take and pass the PRoBE course within six months. Jason Young moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Robinson, aye; Côté, aye; Young, aye; Dick, aye; Kouzes, aye; and Goldeen, aye.

Case #2013-2019 The Board proposed a contingent case closed with a letter of concern provided the licensee agrees to take 12 hours continuing education in clinical justification, and billing and coding; the hours may be part of the annual 20 hours. Lisa Kouzes moved to accept the determination; Jason Young seconded the motion. All in favor. Dick, aye; Kouzes, aye; Goldeen, aye; Robinson, aye; Côté, aye; and Young, aye.

Case #2013-3018 The Board proposed no statutory violation, and will refer the medical doctor in this case to the Oregon Medical Board. Daniel Côté moved to accept the determination; Jason Young seconded the motion. All in favor. Goldeen, aye; Kouzes, aye; Dick, aye; Robinson, aye; Young, aye; and Côté, aye.

In the matter of the above case the Board proposed to release confidential information to the Oregon Medical Board. Daniel Côté moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Dick, aye; Kouzes, aye; Goldeen, aye; Robinson, aye; Côté, aye; and Young, aye.

Case #2013-2005 The Board proposed a contingent case closed provided the licensee take six hours continuing education on pediatric clinical justification within 60 days, and agrees to a file pull (including treatment of a child). Lisa Kouzes moved to accept the determination; Jason Young seconded the motion. All in favor. Côté, aye; Dick, aye; Goldeen, aye; Kouzes, aye; Robinson, aye; and Young, aye.

Case #2013-1039 The Board proposed no statutory violation. Lisa Kouzes moved to accept; Doug Dick seconded the motion. All in favor. Robinson, aye; Côté, aye; Young, aye; Dick, aye; Kouzes, aye; and Goldeen, aye.

Case #2013-5019 The Board proposed case closed. Ann Goldeen moved to accept the determination; Jason Young seconded the motion. All in favor. Dick, aye; Kouzes, aye; Goldeen, aye; Robinson, aye; Côté, aye; and Young, aye.

Case # 2013-5023 The Board proposed insufficient evidence to find a violation. Christine Robinson moved to accept the determination; Jason Young seconded the motion. Dick, aye; Kouzes, aye; Côté, aye; Young, aye; and Robinson, aye; Ann Goldeen is recused.

Case # 2013-3009 The Board proposed insufficient evidence to find a violation. Doug Dick moved to accept the determination; Jason Young seconded the motion. Dick, aye; Kouzes, aye; Côté, aye; Young, aye; and Robinson, aye; Ann Goldeen is opposed.

Case # 2013-1041 The Board proposed insufficient evidence to find a violation. Jason Young moved to accept the determination; Ann Goldeen seconded the motion. Dick, aye; Kouzes, aye; Côté, aye; Young, aye; Ann Goldeen, aye; and Robinson, aye.

Case #s 2013-5020, 2013-3026, 2013-5021, and 2013-3025 The Board proposed to refer these cases to the Peer Review Committee. Jason Young moved to accept the determination; Doug Dick seconded the motion. All in favor. Robinson, aye; Côté, aye; Young, aye; Dick, aye; Kouzes, aye; and Goldeen, aye.

ADJOURN for the day 2:55 PM