



Oregon

Kate Brown, Governor

Oregon Board of Chiropractic Examiners

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Public Meeting Minutes
University of Western States
Hampton Hall Conference Room
2900 NE 132nd Ave
Portland, Oregon

May 22, 2014

Members Present

Daniel Côté DC, President

Ann Goldeen DC Vice-President

Glenn Taylor, Secretary

Christine Robinson DC

Jason Young DC

Lisa Kouzes DC

Doug Dick, Public Member

Others Present:

Drs. Tom Freedland, Sharron Fuchs, and David Corll. Stephanie King, and Steve Detert (Allstate Ins.)

Staff Present

Dave McTeague, Executive Director

Kelly Beringer, Admin Assistant

Tom Rozinski, Investigator

Lori Lindley, AAG

Shari Barrett, Office Specialist

Frank Prideaux DC, Healthcare Investigator

CONVENE 1:30 PM

ADOPTION OF THE AGENDA Dr. Goldeen moved to adopt the agenda with AAG Lindley's recommended rule proposal about not signing confidential agreements; Dr. Young seconded the motion. All in favor. Motion passed unanimously.

IN THE MATTERS OF

Case #2013-2003

Proposal: to amend the order to account for licensee's return to Oregon

Motion: Dr. Goldeen moved to accept the board's determination; Dr. Robinson seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye

Motion passed unanimously.

Chiropractic Assistant Applicant

Proposal: issue the chiropractic assistant license with stipulations

Motion: Dr. Goldeen moved to accept the determination; Dr. Kouzes seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye

Motion passed unanimously.

Case #2014-1003

Proposal: Case closed; no statutory violation

Motion: Mr. Taylor moved to accept the determination; Dr. Kouzes seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye

Motion passed unanimously.

Case #2014-3001

Proposal: Case closed; insufficient evidence with a letter of concern

Motion: Mr. Taylor moved to accept the Board's determination; Dr. Kouzes seconded
Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

Case #2014-3002

Proposal: Case closed, no statutory violation

Motion: Dr. Côté moved to accept the determination; Mr. Taylor seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

Case #s 2013-1038 and 2014-1001

Proposal #1: issue a notice of discipline with three years' probation and a mentor provision; licensee is to submit to regular file pulls for a minimum of six months; complete an additional 12 hours record keeping CE, and 12 hours CE for clinical justification both to be completed within 90 days of the finalized order. The Board proposed a \$5,000 civil penalty for altering records; a \$10,000 civil penalty for allowing unlicensed practice in his clinic by nutritional consultants who have their own patients, performed laser treatments, etc. without proper chiropractic assistant certification.

Motion: Dr. Kouzes moved to accept the determination; Dr. Young

Vote: Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye

Motion passed unanimously.

Proposal #2 in relation to the same case # above, issue an order for competency, specifically the NBCE's August 2014 SPEC exam. In addition, the Board will convene a review panel made up of two to three DCs who have specific AK and NRT and nutrition training to determine whether licensee needs to take additional education to become clinically competent in the area in which he presently practices. Licensee will pay costs.

Motion #2: Dr. Kouzes moved to accept the Board's determination; Dr. Young seconded.

Vote #2: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

Case #2013-1006 et al

Proposal: issue a one year suspension; Licensee is to take and pass the PROBE Ethics course and NBCE Ethics and Boundaries exam; pay a civil penalty of \$5,000 per patient (\$15,000); five years' probation with a Board-approved chaperone requirement, and counseling for at least two years with a Board-approved counselor. The interim stipulated order stipulations continue.

Motion: Dr. Côté moved to accept the determination; Dr. Kouzes seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

Case #s 2011-2003 et al

Proposal #1: to amend the notice to add additional findings on failure to cooperate.

Motion: Dr. Côté moved to accept the determination; Dr. Young seconded.

Vote: Goldeen, aye; Robinson, aye; Young, aye; Taylor, aye; Dick, aye and Côté. Aye. Kouzes, recused.
Motion passed.

Proposal #2 issue a notice to revoke the license for a variety of violations as found by the peer review committee and board.

Motion: Dr. Côté moved to accept the determination; Dr. Young seconded.

Vote: Taylor, aye; Robinson, aye; Goldeen, aye; Dick, aye; Young, aye; and Côté, aye. Kouzes recused. Motion passed.

Case #s 2013-2014 and 2013-2027

Proposal #1: amend the proposed notice to add additional findings on failure to cooperate.

Motion: Mr. Dick moved to accept the determination; Dr. Goldeen seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; and Robinson, aye. Kouzes, recused. Motion passed.

Proposal # 2 to revoke the license for findings on the peer review report and the Board's determination on multiple violations.

Motion: Dr. Goldeen moved to accept the determination; Dr. Young seconded.

Vote: Côté, aye; Robinson, aye; Goldeen, aye; Dick, aye; Taylor, aye and Young, aye. Kouzes recused. Motion passed.

Case #s 2012-1026 et al

Proposal: to issue the Final Order and adopt the recommendations of the Administrative Law Judge.

Motion: Mr. Dick moved to accept the determination; Mr. Taylor seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye. Motion passed unanimously.

Case #s 2013-5020 and 2013-3026

Proposal: Case closed; issue a letter of concern.

Motion: Dr. Young moved to accept the determination; Mr. Dick seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye. Motion passed unanimously.

Case #'s 2013-5021 and 2013-3025

Proposal: Issue an Agreement of Voluntary Compliance

Motion: Dr. Young moved to accept the determination; Mr. Dick seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye. Motion passed unanimously.

2. FCLB annual meeting report

Dr. Goldeen reported. States were encouraged to eliminate any reference to educational requirements and merely state that the candidate be a graduate of a CCE (or equivalent) college and have passed all of the board exams and be of good moral character. The new CCE guidelines have gone into effect and one major change is the increase of the GPA from 2.5 to 3.0. Colleges need to prove that they are making good doctors. There was talk about improving application questions about arrests, convictions, expungements, etc. NBCE's Part I will now be a computer-based test for the first time this summer.

Many states are outlawing prepay plans. Several states are providing audio downloads of board meetings. Washington has new language on documentation of care. Texas is implementing

expungements for discipline (only non-criminal matters). Nationally, documentation is a big issue; as is informed consent. It was a big thing to have DCs in a lot of the veteran hospitals.

PUBLIC COMMENTS

Executive Director McTeague presented Dr. Dana Sibilla's written comments regarding a non-profit professional league that he is trying to create –to help the profession to “professionalize chiropractic and to improve the experience in both the public and the profession.” Notify Dr. Sibilla that the Board does not provide endorsements.

Dr. Sharron Fuchs commented about the FCLB report and any update the laws and rules.

Dr. David Corll asked if the Board would consider having “vendors” who make presentations to the board for policy changes to sign statements of conflict of interest especially when there is potential personal gain. He gave the example where an LMT came before the board a year ago and asked that CAs be prohibited from performing myofascial release technique. As an LMT he would have gained from that proposal. On a second matter, he also commented that Chiropractic Assistants should not be performing any soft tissue work whether it is MFR or massage. Lastly, he did not agree that the CMS 1500 forms or any financial records should be considered part of the chart records (in relation to the record keeping compliance check list). Dr. Côté replied that the Board uses the information to compare what was charted to what was billed.

DISCUSSION ITEMS

1. Public Hearing on Proposed Rules 2:00 p.m.

Dr. Côté opened the hearing for comments.

- [Record keeping rule amendments, OAR 811-015-0005](#)

Tom Freedland DC distributed a handout of his comments, and read them.

Dr. Fuchs added that much of the Rules Advisory Committee's discussion was about IMEs needing to keep billing information in their records. Dr. Cote asked if she thinks the draft rule in question would cover that concern. Dr. Freedland's draft seems to cover that issue; Dr. Fuchs agrees.

Steve Detert of Allstate thinks the proposed record keeping rule (and check list) look good to him. He still recommends reconsidering the age issue (18 years plus seven). A federal requirement states that the records must be kept seven years after the minor becomes 18 (an “adult”).

- [Chiropractic Assistants rule amendments, OAR 811-010-0110](#)

The proposed language adds “taking vitals” to the rule language. Other suggestions were made for minor edits to the rule.

Dr. Young also cautioned against language leaving “taking x-rays” in the “does not include” list because the CA could have a license to take x-rays. Solution: add to existing language “unless properly licensed.” The Board will hold off voting on this proposal today.

Proposal: Close hearing

Motion: Dr. Robinson moved to close the hearing; Mr. Dick seconded the motion.

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

- [Repeal Dry Needling rule, OAR 811-015-0036](#)

Motion: Dr. Goldeen moved to repeal the dry needling rule; Mr. Dick seconded the motion.

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

Both rules above - Record keeping and Chiropractic Assistant – will be held over for another hearing.

Regarding the Checklist, Dr. Côté likes Dr. Freedland’s suggestion for the financial information. In Dr. Freedland’s draft of the Compliance Check List it should read, “maintained for at least *seven* years from last transaction.” The OAR citation at the bottom of the “list” will be removed and is not part of the policy the board is proposing to adopt. Dr. Côté asked for a motion to adopt this (Dr. Freedland’s) checklist (policy).

Proposal: Adopt changes to the Compliance Check List.

Motion: Dr. Goldeen moved to accept the draft as board policy; Dr. Young seconded.

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

Regarding the length of time a licensee must keep their records the Board proposed to amend section (3) of the rule to:

(3) A patient's original records shall be kept by the Chiropractic physician a minimum of seven years from the date of last treatment. ~~There is no requirement to keep any patient records older than seven years; except if the patient is a minor, the records shall be kept seven years or until the patient is 18 years of age, whichever is longer.~~ Records of treatments performed on a patient while they are a minor must be maintained for 7 years beyond their reaching the age of majority.”

Executive Director McTeague disagreed with Dr. Freedland’s contention that this proposal is not substantially different from existing rule. For example, “Areas of the patient’s body where the licensee provided care,” and “Therapeutic procedures must be clearly described including information such as providers involved, timing, setting and tools used as appropriate.” That is not in the existing rule. It is not in either of the checklists – ours or Dr. Freedland’s. Plus, the Board needs to decide what they want to do with the rule and then make sure the checklist reflects those decisions.

3. OBCE Agency Request Budget proposals

Executive Director McTeague is working on the Agency Request Budget for the 2015-17 budget. Our top priority is to re-up our healthcare investigator. We need more money for administrative hearings and law judges; more money to cover the merchant fees accruing for online renewals. We need to resolve the collection fees issue - DOR collects that fee, and it is considered an expenditure. At our current rate of spending our ending cash balance will be short. To compensate the Board may want to increase license fees before the end of this biennium; if not now, then definitely in the 2015-17 biennium.

Proposal: to authorize Dave to move forward with the Agency Request Budget with the outline of draft policy packages

Motion: Dr. Kouzes moved and Dr. Goldeen seconded.

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed.

4. Policy issue: May DCs diagnose and treat PTSD? Guerrero DC

Chiropractors should have the ability to recognize the signs of PTSD as a mental health issue, and we are not mental health practitioners. Chiropractors should have the ability to recognize the signs and symptoms of PTSD and other mental health conditions, and know that they should refer the patient out for proper diagnostic treatment; co-treatment and supportive care is acceptable.

Proposal: to create a policy that Oregon DCs may diagnose and co-treat PTSD

Motion: Dr. Young moved to adopt this policy; Mr. Dick seconded the motion.

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Kouzes, aye and Robinson, aye. Goldeen opposed
Motion passed.

5. CA Ad-Hoc Committee update

Dr. Côté - level II should maintain our current full CA scope, except the massage therapy. Add massage therapy to level III. Dr. Young – the physiotherapy endorsement should be all physiotherapy (no manual therapies); the soft tissue endorsement should include massage and stretching, etc.

Dr. Cote would like the committee to address how Medical Assistants would fit in to this proposal. Other endorsements were discussed, and the number of possible hours of training to require. Dr. Young proposed that any transition to this endorsement system be spread out over at least one year.

6. Certificates and Diplomates recognized by Chiropractic Community

To prevent people from claiming superiority for certificates and diplomates they hold, Dr. Cote would like to create a registry. Alternatively, the Board directed staff to add a link to the website listing viable credentials.

7. Committee appointments

Proposal: Appoint new peer review committee member

Motion: Mr. Taylor moved to appoint Kevin Cheng DC as a new Peer Review Committee alternate; Dr. Young seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

Proposal: Appoint new subcommittee member

Motion: Dr. Goldeen moved to appoint Michael Lell, a DC student at UWS, to serve on the ETSDP Committee. Dr. Kouzes seconded the motion.

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

Discussion: Executive Director McTeague provided a list of committee members who have not been attending; the Board directed staff to request the committee member to step down if they do not intend to serve any longer.

8. Staff Report

Based on the budget analyst's comment about reducing staff to compensate for our budget shortage, Executive Director McTeague created a list of projects at hand which negate her suggestions.

- Update the CA exam with ethics question
- Update the web page with malpractice information
- ORS review
- Need to update Ethics, Minor Surgery/Proctology, and Obstetrics/Gynecology test questions
- Board member training
- More information on continuing education

CORRESPONDENCE

1. **Arn Strasser DC re: Senior Active designation**

Dr. Strasser requested that the "senior" designation be removed from the web data. The Board directed staff to change the programming to reflect "Active" instead of "Senior Active."

2. **Proposal:** enter rulemaking on the unprofessional conduct rule for the purpose of adding a new section to prohibit any agreements that would limit a person's ability to file a complaint with the board or truthfully answer any question posed by the Board or participate as a witness in a board proceeding.

Motion Dr. Goldeen moved to enter permanent rulemaking; Mr. Taylor seconded.

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

Proposal: End the meeting

Motion: Dr. Kouzes moved to end the meeting; Dr. Goldeen seconded

Vote: Dick, aye; Taylor, aye; Young, aye; Cote, aye; Goldeen, aye; Kouzes, aye and Robinson, aye
Motion passed unanimously.

4:25PM ADJOURN

Prepared by Kelly Beringer, OBCE, Administrative Assistant
Transcribed 6/22/16

Tape destruction 6/22/17

4) Board and Commission Meeting Minutes Series documents the official proceedings of the board or commission meetings. Records may include agendas; minutes; meeting notices; items for board action; contested case hearings schedules; committee reports; exhibits; and related correspondence and documentation. Records may also include audio recordings of meetings used to prepare summaries. (Retention: (a) Minutes: Permanent, transfer to State Archives after 10 years; (b) Audio recordings: 1 year after transcribed, destroy; (c) Other records: 5 years, destroy).