



Oregon

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Board of Chiropractic Examiners

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OBCE PUBLIC SESSION MINUTES

Morrow Crane Building

2nd Floor Large Conference Room

3218 Pringle Road SE #150, Salem, Oregon

March 17, 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

Staff Present

Dave McTeague, Executive Director

Kelly Beringer, Admin Assistant

Donna Dougan, Admin Assistant

Tom Rozinski, Investigator

Lori Lindley, AAG

Others: Drs. Terry McDermott, Joyce McClure, and Eric Hubbs, Judith Boothby, Russell Margach, John Lawton; and Mr. Steve Detert of Allstate, and Lori Persons, NICB; and Tracy Holland, Chiropractic Assistant

CONVENE 8:30 AM

ADOPTION OF THE AGENDA Dr. Ann Goldeen moved to accept the agenda as presented. Dr. Côté seconded the motion. Dick, aye; Taylor, aye; Robinson, aye; Goldeen, aye; and Côté, aye. (Dr. Kouzes and Dr. Young were not yet present.) Motion passed.

DISCUSSION ITEMS

1. Rules Advisory Committee Report

Glenn Taylor reported to the Board on the committee's review of the three rules - Record Keeping, Chiropractic Professional Corporation and Business Entity Majority Ownership and Chiropractic Assistants. An email report had been distributed to the board members. People agreed that a multi-level program for the CAs would be good; it matches what is happening on the national scene.

There was no suggestion for the record keeping proposal. On the majority ownership piece, most understood that licensees sign contracts they shouldn't sign, but they didn't feel that is something that we should be regulating. Dr. Côté thanked Glenn for the report.

4. Policy Issue: Informed Consent, Electrical Stimulation in Minors

Dr. Frank Prideaux and Dave McTeague presented draft policies to the Board which address their concerns that arose recently concerning the use of electrical stimulation on children. The concern is potential damage to the end plate of a young person's bone that has yet to fully develop. There is a theoretical possibility of inducing premature bone growth with electrical stimulation. These draft policies are an initial attempt to make practitioners aware of the need for caution and informed consent.

Dr. Côté asked for any discussion. He liked University of Western States take on it – how dangerous is it. Also, though, “minor” should be defined – look at growth plates, etc. Dr. Goldeen thinks any policy



should be broad. Dr. Prideaux added that this is more than just informed consent; there are more situations “coming down the pike” too Dr. Côté feels this is clinical justification. When you go to school and learn about electrical stimulation that you know about using it over the ephysis. Dr. Robinson feels this would be over-regulation. Dr. Kouzes suggested we remind licensees in the next BackTalk. The Board did not move forward on the proposal.

(Dr. Kouzes and Dr. Young arrived.)

6. Staff Report - None

3. ETSDP Committee report and review of Functional Neurology petition

Dr. Kouzes reported to the Board as the liaison to the ETSDP committee. The Oregon Chiropractic Association members had submitted this request for review. It was unanimous that this is within the scope of chiropractic and should be determined standard as defined in the administrative rule. There is some concern that if used in the wrong hands, it could be dangerous; shouldn't be used just by any chiropractor. Dr. Kouzes asked Dr. Margach to comment. The example that was given in the meeting was that people were taking advantage of the concept of functional neurology care and doing lots of promotion, and it was suspected to take advantage of people that are easily preyed upon. But these doctors may not have the requisite training to be doing the best job for those patients. Dr. Kouzes referred to the draft policy language. We re-stated what the different diplomate programs are out there and we recited the advertising rule that you need to support any claims made. If there are doctors out there treating with functional neurology without the training that the Board will look at those on a case by case basis. Dr. Goldeen asked “How does the proposal protect the public against this circumstance?”

There is no registry with the Board for reporting diplomates; board and staff had discussed it in the past. Staff verified that it would be possible to add to the online renewal process.

Dr. McClure suggested the OBCE obtain the lists of diplomates from the specific boards. In addition the diplomate boards each have their own CE requirement. Dr. Young agrees. Dr. Côté suggested that the question be added to the license renewal whether the diplomates have met their CE requirements. The separate diplomate boards are already tracking that and it would be redundant for OBCE staff to do the same. It would be beneficial to add the question “Do you currently have a diplomate?”

Amend the proposed Functional Neurology policy statement. The Board proposes to use the first paragraph and portion of the last paragraph only. The policy would read,

“The Board recognizes functional chiropractic neurology procedures and protocols as “standard” as per the Board’s ETSDP rule. All chiropractic physicians who advertise that they hold special certification or training must be able to support those advertising claims with credible evidence.”

Jason Young moved to adopt the policy as revised above. Lisa Kouzes seconded the motion. Motion passed unanimously.

2. Public Hearing on Proposed Rules

9:40 AM Dr. Côté opened the hearing

- **Record keeping rule – Draft 3, OAR 811-015-0005**

Dr. Côté asked for any comments. Dr. Kouzes suggested that “expert reports” in section 7 be removed because HIPAA says you should be only releasing records which the DCs created themselves not those records generated by others. Other members disagreed; sharing of other professionals’ records is standard. Lori Lindley added that the patient always has to sign a release before anything is released. No further discussion. Dr. Young pointed out that this conversation is about maintaining records, not release of records; it’s unrelated. Dave McTeague referred to the Guide to Policies and Practice, there is mention under “Patient Records” that independent medical examiners are not required to keep medical records of other providers. Dr. McClure added that there is discrepancy between what the insurance companies are requiring (10 years) and the law (7 years). Lori Lindley said theirs is a policy, ours is law. Regarding the Compliance Checklist, the RAC felt that when vitals are taken that the results should be recorded (as stated in the draft).

Dr. Young proposed an edit to proposed subsection (1)(c)(7); change to “Other ‘clinically relevant’ correspondence including but not limited to..” Board agreed. After discussion, he also suggested removing “billing and payment” from (1)(c)(7) because it is redundant with subsection (1)(c)(6); plus in (6) remove “Financial information, including but not limited”. (6) would read, “Billing agreements, billing records, ledgers, and billing forms (i.e. CMS 1500s)” Dr. Kouzes recommended deleting (1)(c)(4) entirely as it is redundant to subsection (1)(c)(3)(I) “Examinations and the results of those examinations.” Glenn Taylor added that the Compliance Checklist is only a training tool, and not intended to be added as part of the rule; the word “must” is recommended to be removed as well. Finally, the entries in “blue” need to be revised similar to the rule.

Dr. Young moved to adopt the draft of the record keeping rule for further rulemaking hearing. Dr. Goldeen seconded the motion. Motion passed unanimously. *(The rule number outline was redone to the appropriate format.)*

Discussion continued about the length of time required for records – current OBCE rule cites seven years or until of 18 years of age. A public attendee commented that HIPAA required that records should be kept seven years once the minor becomes 18. The Board will check into that language. *(Board staff checked the HIPAA regulations and there is no mandate for length of time to keep records.)*

- **Professional Corporation and Business Entity Majority Ownership, OAR 811-010-0120**

Draft 2. Dr. Joyce McClure: can make no sense of the proposed new language in subsection (2)(a) (D) and (E). Dr. Côté explained what the Board is trying to achieve by the language – basically restricting entities from establishing deceptive contracts with licensees, specifically contracts which transfer clinic ownership to a non-chiropractic entity. Glenn Taylor reminded the Board that there was no support from the Rules Advisory Committee on this proposal. A larger issue is what happens to the patient files in certain circumstances – death of the licensee, or sudden abandonment. Dr. McClure feels that there are rules already in place to require chiropractors to conform to a certain level of professional behaviors ... their choice to contract with these non-chiropractors is their problem; the board should not be regulating. Steve Detert from Allstate commented that Washington doesn’t allow non-health professionals to own any portion of the clinics; he recommends Oregon follow suit. Dr. Côté wondered if we should require 100% ownership, but make allowances for those sudden death circumstances.

(Pause rule hearing to interview Dr. Matt Freedman, peer review committee member)

5. Committee appointments

10:50 AM Matt Freedman DC

The Board called Dr. Freedman to discuss his letter of interest and in serving on the Board's Peer Review Committee (PRC). When he first moved to the state, he spoke to Dr. Sunny Kierstyn and she had commented about being on the PRC and how it helped her in her practice. He thinks it will be good to be an objective voice for the licensees. Dr. Goldeen asked if he has ever done an evaluation of another doctor's care. Yes, he can do that if he needs to. He holds the advanced certification from Arthur Croft. Have the time to commit? "Do I have the time, no. Should I take the time, yes."

With no further comment, Dr. Goldeen moved to appoint Dr. Matt Freedman as an alternate member. Dr. Young seconded the motion. Discussion: Glenn Taylor is concerned about Dr. Freedman's sense of the committee's time commitment, but is fine with Dr. Freedman's appointment as an alternate at this time. Motion passed unanimously.

(Continue rule hearing)

Dr. McClure referred to OAR 811-010-0120 (5)(a) citing language on the death of the licensee. The Board asked whether other health-related boards have similar issues. Should we consider going to the legislature re: Chapter 58 – change the majority ownership section for health-related boards? Should we amend the language regarding death of the owners? Glenn Taylor again commented that neither he nor the RAC supports the proposed language; looking at clarifying the language for deceased licensees may be useful. Dr. McClure suggested the Board educate the new licensees at the New Doctor sessions with the Board; forewarn them. Two means to address this involve getting the association involved and provide assistance, or going to the legislature to change the section for health professionals in Chapter 58. The Board asked Dave to query other boards have similar problems. Pursue fine-tuning the section about death of clinic owners. No rulemaking action at this time.

• **Chiropractic Assistants, OAR 811-010-0110**

Glenn Taylor – the motion that the committee adopted was that the concept should be developed further. People feel that the existing format is okay, but possibly add one or two more tiers with more skills and scope. It was suggested that Dr. Hubbs work with UWS, and look at the national activity regarding the CAs. There was some discussion about including the person with a medical assistant degree. Lori added that there is a national certification for the MA's but there is no state regulation.

Dr. Hubbs commented. He did some research, and claims that nearly every chiropractic college has some training for CAs, a variety of degrees; there is also a master's program for "chiropractic technicians." He proposes the Board adopt a tier similar to the "Chiropractic Technician." Add to the rule something similar to "as long as they meet the minimum standards set in the CCE accredited colleges...." There are also other colleges like Heald, Ashmead, and Evergreen who are doing a medical assistant/chiropractic assistant programs; he hasn't evaluated the programs, but most are 12 months in length. Dr. Hubbs claims the technicians can do most of what DCs can do except adjusting and diagnose – take notes, histories, take x-rays and perform ortho/neuro exams. Dr. Côté asked if this technician program offers massage training; some CAs have no massage training, and they are performing one hour massage and billing for it like they are massage therapists. Dr. Hubbs believes that the "if they are taking the chiropractic technician programs, massage is covered" Dr. Côté asked "So they do cover massage therapy in those programs?" "physical therapy and physiotherapeutics are covered; putting

people on and off therapy is covered” electrotherapy, hydrotherapy, ultrasound, traction...and yes, soft tissue techniques” A member of the public referred to Dr. Janice Justice’s CA program and said she teaches massage, too; but she is not training it as part of the CA program, nor is it required.

Dr. Young added, we have a high turnover rate for the CA; we can make this a profession. He likes the idea of the CT, but we need to find a middle ground so we don’t shut people down. Glenn added that the RAC recommends not changing the current CA position. Dr. Côté feels it can improve slightly. The NBCE has a 24 hour program which we should begin to consider using. Dr. Young reviewed the tier levels he envisions: 1) Keep our current level, 12 hours training, add training for taking vitals, or allow taking them; 2) a lesser tier for all office personnel – no patient contact, 6 hours training, simple test, 4 hours CE (HIPAA, laws, rules, duty to report, philosophy). Dr. McClure is not in favor of the lower tier; our current tier – she recognizes those dually licensed LMT/CAs; upping the initial training is a good idea, and keeping the CE down is good. She sees the advantage of the “super CA” in some situations. Dr. Young feels that it is important that we not make them look like LMTs – limiting the number of units they can perform. Dr. Côté would rather ensure that they are qualified. Dr. McClure asked if there is anything the Board would like her to carry back to the OCA. We’re looking for suggestions; want to insure that the CAs are qualified; don’t want to create a financial hardship, and to continue to protect the public.

(5 minutes break 11:50 am)

Continue CA rule discussion

Dr. Côté asked Dr. Young if we should take the issue back to the RAC? Dr. Ann Goldeen - we’re trying to determine whether CAs have adequate training to provide massage; she is not in favor of the “super CA” concept. Dr. Kouzes – to summarize, to be a massage therapist you need 500 odd hours, if you’re a CA you need 12. If you’re working under a DC, it won’t need to be 500 for CA; and we want to keep this cost effective. Which authorities do we contact to determine the appropriate number of hours? We need to balance the cost with competency and patient safety. Dr. Young suggested an additional 12 to 16 hours specific to massage training. We definitely need to make the training attainable.

What we can do today is to handle the piece about vitals; Dr. Young recommends we add it to our initial training requirements. Glenn proposed that we NOT jump into the change now regarding the vitals. Doug warns the Board against a disagreement with another profession.

Dr. Goldeen moved that we go into rulemaking to allow CAs to take vitals. (Motion died for lack of a second.)

Dr Young asked to first be allowed to move to require two hours CE (of the six required) in explaining and taking vitals to be reported July 2015. Glenn Taylor seconded the motion. Christine Robinson abstained. Young, aye; Côté, aye; Dick, aye; Robinson, aye; Taylor, aye;

Does the new CA initial training need to cover two hours of training in the taking of vitals – lecture and practical?

Dr. Young moved to go into rulemaking for Chiropractic Assistants OAR 811-010-0110 (for “housekeeping”) to add to the CA scope the ability to take vitals; Dr. Goldeen seconded the motion.

Proposed change to 811-010-0110(8) would read as follows,

“The scope of practice does not include performing physical examinations (**except taking of height, weight, blood pressure, temperature, pulse, respiration and/or body fat percentages**), taking initial histories, taking x-rays, interpretation of postural screening, doing manual muscle testing or performing osseous adjustments or manipulations.”

Since we are amending the rule, Dr. Young proposed to solidify language to be only certified, certify, and certification, instead of license, licensure, etc. Dr. Côté asked him to draft up additional changes for the May meeting.

Dr. Goldeen asked, “What can we do to get a handle on untrained CAs performing massage? ...this is a public safety issue.” It’s uncertain whether the DC is providing adequate training, and we know the CA is not being trained up front.

Dr. Young asked the Board if it’s appropriate to create an ad hoc committee to work on this. The following volunteered: Drs. Jason Young, Eric Hubbs, and chiropractic assistant Tracy Holland. Dr. Hubbs may know an LMT who may be interested and available to help. Dr. Gary Schultz from UWS showed interest also in assisting in development. Kelly Beringer will staff the ad hoc committee. Dr. Young has requested input from the Board of Massage, but they did not respond to his request. Dr. Côté asked for a commitment for one meeting before the May 22 board meeting.

In closing this discussion, Glenn Taylor thanked Dr. Eric Hubbs for his contributions at Rules Committee and here.

CORRESPONDENCE

1. Kevin Burgess, AAL and Cash Discounts

The attorney inquired about cash discounts in relation to Medicare, and third-party payors. Board members suggested Mr. Burgess contact Steve Conway in Wisconsin; he is an expert in defense of Medicare.

12:00 PM Working LUNCH and ADJOURN to Executive Session

5:00 PM RECONVENE to Public Session

IN THE MATTERS OF

Dry Needling Rule

The Board proposed to remove the dry needling rule from Chapter 811 and inform the Secretary of State’s office. Staff will send letters to those doctors who were previously certified to perform dry needling. Doug Dick moved to accept the determination; Jason Young seconded the motion. Motion passed unanimously.

Leif Choi DC, mentor report, request

The Board proposed to amend Leif Choi DC’s stipulated final order to conclude his probationary period. Daniel Côté moved to accept the determination; Christine Robinson seconded the motion. Motion passed unanimously.

Heather Gilker, Chiropractic Assistant applicant

The Board proposed to issue the Chiropractic Assistant license with disclosure stipulations. Ann Goldeen moved to accept the determination ; Christine Robinson seconded the motion. Motion passed unanimously.

Mary Christ, Chiropractic Assistant applicant

The Board proposed to issue the CA license with disclosure stipulations. Ann Goldeen moved to accept the determination; Lisa Kouzes seconded the motion. Motion passed unanimously..

Chiropractic Assistant applicant

The Board proposed to issue a Notice to Deny Chiropractic Assistant application. Ann Goldeen moved to accept the determination; Jason Young seconded the motion. Motion passed unanimously.

Doctor of Chiropractic Reciprocity Applicant

The Board determined to deny the request for waiver of the Oregon Specifics exam. Candidate must take and pass all three written portions of the exam. Glenn Taylor moved to accept the determination; Lisa Kouzes seconded the motion. Motion passed unanimously.

Case #2014-1002 The Board proposed no statutory violation. Christine Robinson moved to accept the determination; Lisa Kouzes seconded the motion. Motion passed unanimously.

Case #2013-5022 The Board proposed no statutory violation. Ann Goldeen moved to accept the determination; Doug Dick seconded the motion. Motion passed unanimously.

Case #2013-2024 The Board proposed a contingent case closed with six additional hours CE in billing and coding. Lisa Kouzes moved to accept the determination; Jason Young seconded the motion. Motion passed unanimously.

Case #2013-2022 The Board proposed a contingent case closed with six additional hours CE in billing and coding. Jason Young moved to accept the determination; Lisa Kouzes seconded the motion. Motion passed unanimously.

Case #2013-2029 The Board proposed a contingent case closed if licensee agrees to two years' file pulls (2x /year) with Pediatrics CE (# hours); If not agreeable within 10 days the Board will issue a notice of proposed disciplinary action with the same provisions. Lisa Kouzes moved to accept the determination; Glenn Taylor seconded the motion. Motion passed unanimously.

Case #2014-5002 Jeffrey Dougal DC

The Board proposed to issue a notice of disciplinary action for two years' file pulls (2x year) with a letter of reprimand; an additional six hours CE clinical justification. Jason Young moved to accept the determination; Doug Dick seconded the motion. Motion passed unanimously.

Case #2014-2000 The Board proposed a contingent case closed with a letter of concern, as long as the doctor willingly provides three patient files – one where staff is treated, and two regular patients. The Board also intends to subpoena some insurance files. Lisa Kouzes moved to accept the determination; Jason Young seconded the motion. Motion passed unanimously.

Case #s 2011-2005 and 2013-1007 Brandon Hatch DC

The Board proposed to amend the original Proposed Notice of Discipline. Christine Robinson moved to accept the determination; Lisa Kouzes seconded the motion. Motion passed unanimously.

Case #2012-5005 Lance Hatch DC

The Board proposed to amend the original Proposed Notice of Discipline. Christine Robinson moved to accept the determination; Doug Dick seconded the motion. Motion passed unanimously..

Case #s 2013-1038 and 2014-1001

The Board proposed an emergency suspension. Lisa Kouzes moved to accept the determination; Jason Young seconded the motion. Motion passed unanimously.

(New Case #2014-5006)

The Board will open a new complaint. Lisa Kouzes moved to accept the determination; Doug Dick seconded the motion. Motion passed unanimously.

Case #s 2011-1026; 2012-1042, 1043, 1054, 1055, 1056, 3036, 3045; and 2013-1001 and 1015 regarding Donald Reneau DC

The Board proposed to issue an amended proposed order to include cost recovery for portion of costs related to the Office of Administrative Hearings, a sum totaling approximately \$9,400. Doug Dick moved to accept the Board's determination; Jason Young seconded the motion. Motion passed unanimously.

Case #2014-1000 The Board proposed no statutory violation. Glenn moved to accept the determination; Lisa Kouzes seconded the motion.. Motion passed unanimously.

Case #2013-1045 The Board proposed no statutory violation. Jason Young moved to accept the determination; Doug Dick seconded the motion. Motion passed unanimously.

(New Case #s 2014-5007 and 5008)

Regarding another case addressed today, the Board proposed to open two new complaints against two other DCs. Daniel Côté moved to accept the determination; Jason Young seconded the motion. Dr. Lisa Kouzes is recused. Goldeen, aye; Young, aye; Robinson, aye; Taylor, aye; Dick, aye; and Côté, aye.

Regarding administrative rules, Dr. Côté asked that the Board to begin considering what we might do in rulemaking when a licensee dies and his patient files are left unattended. Glenn Taylor asked Lori Lindley to research other agency's approach to similar issues.

Dr. Goldeen moved to close today's meeting; Dr. Kouzes seconded the motion. Motion passed unanimously.

5:15 PM ADJOURN for the Day