



Oregon

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Oregon Board of Chiropractic Examiners

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PUBLIC SESSION MEETING MINUTES

Red Lion Hotel, 6th Fl, Fremont Rm.

Portland, Oregon

July 19, 2012

Members Present

Ann Goldeen DC, President
Daniel Cote DC Vice-President
Doug Dick Secretary Public Member
Todd Bilby DC
Huma Pierce DC
Christine Robinson DC

Staff Present

Dave McTeague, Executive Director
Kelly Beringer, Admin Asst
Shari Barrett, Office Specialist
Tom Rozinski, Investigator
Lori Lindley, Assistant AG

Excused: Cookie Parker-Kent, Public Member

Other: Anthony Marrone DC; Jason Young DC

CONVENE: 1:30 pm

ADOPTION OF THE AGENDA

PUBLIC COMMENTS

Dr. Anthony Marrone and Jason Young appeared to speak to discussions on the agenda

DISCUSSION ITEMS (recorded in order addressed)

6. Policy Issue: Request to review policy prohibiting Online CA Initial Training

A current provider for CA CE is requesting the Board allow the CA *initial training* to be offered online (versus live as currently mandated). She has drafted a full 12 hour program including practical exercises. Is the Board interested in changing its current policy?

Dr. Goldeen would be concerned that we would be endangering patients – that the applicant would not give their full attention to the training while at home, or work. Dr. Coté is willing to allow the 8 hours didactic if the program is offered through a regulated website that verifies attendance (log in and log out); the hands' on should remain live. Dr. Jason Young added that the cost saving to CAs would be great – no travel expense, etc. He also agrees that the practical portion should not be included in the “online” option. If the didactic portion were allowed “online” he could drop his training cost. Dr. Young clarified: he only supports a webinar “online” option because the opportunity for Q & A for the attendees is important. Dave asked how a trainer would engage the attendees in a webinar. Dr. Young replied that the software he uses offers little surveys and the attendee cannot go forward until the surveys are answered.

Dr. Coté added that the webinar technology must insure active participation every so many minutes. The presentation should be live, interactive, and not pre-recorded. Dr. Young also suggested adding short surveys after each training outline section (HIPAA; Patient safety; medical terminology, etc.). And, require the participants to ask questions. There were suggestions to add 4 - 5 questions after each module webinars. To be continued in September 2012. Staff will draft language, have committee

review it, share with current CE vendors for input, re-present to Board in September. Answer to Dr. Canham, partially yes; modify your approach.

Correspondence #2 Topical Compounded OTCs - Anthony Marrone DC (Mark: 25:11 on tape)

Dr. Marrone asks the Board whether or not the use of compounded over-the-counter topicals is allowed for use by chiropractic physicians in Oregon. Dave added that the Board's existing policy (a copy of the Pharmacy Board's) claims that,

“ORS 689.005(22) Nonprescription drugs means drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with requirements of the statutes and regulations of this state and the Federal Government.”

Dr. Bilby wonders how one would manage the dosage. Dr. Marrone provided a list of topical compounds – not all are used by DCs. The patient would still have to be educated about the product, etc. This would be something the patient would apply at home.

If something is “pre-packaged” then it has an “instruction manual.” Dr. Coté is concerned about the training that might be required when compounds are mixed. Dr. Coté agrees with the concept, but has concerns. Dr. Marrone is only suggesting that a pharmacist is the “mixer.” Also, Dr. Coté added that the term “recommend” might be better than “prescribe.” Dr. Marrone recommends speaking to Dr. Natalie Gustafson, a pharmacist with whom he has communicated regarding this request. Dave McTeague briefly drafted.

“It is allowable for a chiropractic physician to request an Oregon licensed pharmacist to compound OTCs and/or herbal nutritional supplements for topical patient care, provided patient instructions are included.”

Dr. Coté propose we start off with Dave's draft language, have Lori compare it to existing laws and rules to see if we can go forward with it. Also, staff will check for other policies that we may need to revisit prior to adoption of this policy.

Related to another existing P & P Guide policy – Colloidal Silver – Dave recommends that the board vote to repeal the Board's Colloidal Silver policy in consideration of the FDA's alert – that ingestion may cause permanent discoloration of skin and mucous membranes. Dr. Coté suggests we send a listserve notice/warning against the use of Colloidal Silver. The board may decide to re-write the policy for clarification. Board members will review the information more closely for September's meeting.

1. Proposed Rules discussion: Any Trained Person issues; billing identifiers, supervision, Power Poll results (Continued from previous meetings.)

Not discussed today

2. Budget issues update: Agency Request Budget, Budget Policy Packages; Current Biennium Expenditures

Dave asked the board to approve the proposed Agency Request Budget. Dr. Coté moved to authorize Dave to submit the proposed budget – which includes a proposed fee increase and five budget policy packages – add half-time DC staff investigator, increase mentor resources; increase allocation for merchant fees when online license renewal takes effect; budget to pay for Department of Revenue

collection fees on major recoveries. Dr. Goldeen seconded the motion. All in favor. Doug Dick, aye; Ann Goldeen, aye; Christine Robinson, aye; Daniel Coté, aye; Todd Bilby, aye; and Huma Pierce, aye.

3. Legislative Concepts update

As a companion to the proposed fee increases, the OBCE is proposing legislation to remove fee maximums from statutory law. This allows the OBCE to address fees by administrative rule with a post review by the Legislature. Only the OBCE and the Pharmacy Board have fee maximums in statute.

4. Policy Issue: Pre Paid Treatment Plans rule and Medical Retainer Practices (SB 86)

Dr. Coté feels the prepayment plan must include a clear refund schedule listing specific amounts to be refunded either by time period or by service utilized. Dr. Coté does not want to specify any certain amount. Dr. Coté feels strongly the plan be set up by visit or time. Dave brought to the board's attention the Massachusetts language (page 10 of electronic file, Public Agenda) "In event of early termination of a prepayment discount plan by the patient, the maximum fee charged cannot exceed the chiropractor's usual and customary fee for the services rendered." And, "In event of early termination of a prepayment discount plan by the licensee, the discount should be prorated when determining the amount of repayment." Dr. Goldeen likes the language; the usual and customary fees (Dr. Coté added "for each item") need to be on any prepayment contract – and explained to the patient.

Staff will draft language to 811-015-0002 – add the Massachusetts language [paragraphs D and E], and Dr. Coté's suggestion. Dr. Coté made a motion to enter into rule making to amend OAR 811-015-0002; Doug Dick seconded the motion. All in favor. Pierce, aye; Robinson, aye, Bilby, aye; Dick, aye; Goldeen, aye; and Coté, aye.

ADJOURN to Executive Session RE-CONVENE to Public Session

IN THE MATTERS OF

Bonita Moore, CA Applicant for licensure

The Board authorized the Executive Director to issue a Consent Agreement and license the applicant with the stipulation that she disclose her criminal history to all future employers. Daniel Coté moved to accept the determination; Doug Dick seconded the motion. All in favor. Pierce, aye; Bilby, aye; Robinson, aye; Coté, aye; Goldeen, aye, and Dick, aye.

Case #2011-1047 The Board proposed no statutory violation. Daniel Coté moved to accept the determination; Christine Robinson seconded the motion. Huma Pierce recused. Dick, aye; Bilby, aye; Robinson, aye; Goldeen, aye; and Coté, aye.

Case #2012-1021 The Board proposed no statutory violation. Daniel Coté moved to accept the determination; Doug Dick seconded the motion. All in favor. Bilby, aye; Pierce, aye; Robinson, aye; Goldeen, aye; Dick, aye; and Coté, aye.

Case #2011-5026 **Chris Clemens DC**

The Board proposed to adopt the Order of the Administrative Law Judge having considered the exceptions filed by the licensee, and denying oral argument, and voting to impose the recommended suspension of license for failure to pay state taxes. Daniel Coté moved to accept the Administrative Law Judge's proposed order and issue a Final Order suspending Dr. Clemens' license; Christine Robinson seconded the motion. All in favor. Pierce, aye; Bilby, aye; Dick, aye; Goldeen, aye; Robinson, aye; and

Coté, aye. Dr. Clemens' license will be reinstated upon a finding by the Department of Revenue that he has come into compliance with their laws.

Case #2012-1024 The Board proposed no statutory violation with a letter of concern. Christine Robinson moved to accept the determination; Huma Pierce seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Dick, aye; Pierce, aye; and Coté, aye.

Case #2012-3011 The Board proposed no statutory violation. Ann Goldeen moved to accept the determination; Doug Dick seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Pierce, aye; Dick, aye; and Coté, aye.

Case #2012-1023 The Board proposed no statutory violation. Huma Pierce moved to accept the determination; Christine Robinson seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Pierce, aye; Dick, aye; and Coté, aye.

Case #2011-1012 Mike LeBoss

The Board proposed to issue a Cease and Desist letter, a \$10,000 civil penalty for unlicensed practice with a public press release. Todd Bilby moved to accept the Board's determination; Christine Robinson seconded the motion. All in favor. Coté, aye; Dick, aye; Goldeen, aye; Bilby, aye; Robinson, aye and Pierce, aye.

Case #2012-3013 The board proposed insufficient evidence to find a violation. Christine Robinson moved to accept the Board's determination; Huma Pierce seconded the motion. All in favor. Coté, aye; Dick, aye; Goldeen, aye; Bilby, aye; Robinson, aye and Pierce, aye.

Case #2012-2001 The board proposed to issue a contingent Case Closed with a Letter of Concern – upon confirmation that the doctor did release the requested patient records to the insurance company. Christine Robinson moved to accept the Board's proposal; Doug Dick seconded the motion. All in favor. Coté, aye; Dick, aye; Goldeen, aye; Bilby, aye; Robinson, aye and Pierce, aye.

Case #2012-3010 The Board proposed no statutory violation. Daniel Coté moved to accept the determination; Huma Pierce seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Pierce, aye; Dick, aye; and Coté, aye.

Case #2012-1030 The Board found insufficient evidence to find a violation. Christine Robinson moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Pierce, aye; Dick, aye; and Coté, aye.

Case #2011- 1018 Shizeng Yang LMT

The Board proposed to issue a Public Cease and Desist and a \$500 civil penalty for unlicensed practice of chiropractic; the case will be referred to the Board of Massage. Daniel Coté moved to accept the determination; Huma Pierce seconded the motion. All in favor. Bilby, aye; Robinson, aye; Goldeen, aye; Pierce, aye; Dick, aye; and Coté, aye.

Continue Public Agenda Discussion Items

5. Policy Issue: May original patient records be destroyed after transfer to electronic?

Board members agreed to allow the destruction of the paper patient records, after it has been scanned into an electronic format, as long as a proper data backup of the computer system is in place.

7. Policy Issue: Is “gua sha” or “cupping” (moxibustion) within CA scope of practice?

A CA/LMT who has been trained in gua sha and cupping, asks whether these procedures are allowed under the CA scope of practice. After reading the materials provided the Board it determined unanimously, “No, this is a practice of acupuncture.”

8. Policy Issue: Does a single practitioner doctor have to initial every entry?

No, as long as it is obvious who the author of the record is, every entry does not have to be signed or initialed.

Current rule cites, “(1) (b) Every page of chart notes will identify the patient by name, and the clinic of origin by name and address. Each entry will be identified by day, month, year, provider of service and author of the record.”

Dave added that the Board is trying to further interpret an existing rule, and a policy clarification needs to be written similar to “The Board’s interpretation of this rule is that in a sole practitioner office, the entries are sufficiently identified by the name on the cover sheet or at the top of every page, as long as there are not other people seeing and treating the patient.”

Daniel Cote moved to adopt a policy, in concept, to clarify administrative rule 811-015-0005 (Records) in concept, similar to that cited above by Dave McTeague. Doug Dick seconded the motion. All in favor. Pierce, aye; Bilby, aye; Robinson, aye; Coté, aye; Dick, aye; and Goldeen, aye.

9. Committee appointments and Peer Review Interview/s (1:00 p.m.)

No interviews were held. .

CORRESPONDENCE, continued

1. Advertising & practice questions from Scott McEldowney re: Meridian Therapy and Auriculotherapy and an Acugraph device.

Dave added that Dr. McEldowney contacted him and he is no longer using the “Acugraph” so the Board need not address that part of his request.

Regarding meridian therapy and auriculotherapy, the Board confirmed that both may be performed as part of the Oregon Chiropractic scope of practice.

Regarding use of these terms, "Meridian Therapy," "Auriculotherapy," and "Meridian Point" all three may be used.

Added Discussion: Peer Review Committee member license status

Peer Review Committee member Stephen Ray is not actively practicing; he is however, performing IMEs and file reviews. Does this qualify as *active* practice as is required to serve on the Committee? Dr. Ray wants to continue serving on the PRC. The Board agreed that “maintaining” an active license is enough to serve on the Peer Review Committee (with some board discretion).

Added Discussion: A licensee submitted a letter of interest to serve on the PRC. Dave will answer the letter.

3:30 PM ADJOURN