



Oregon

John A. Kitzhaber, MD, Governor

Board of Chiropractic Examiners

3218 Pringle Rd SE Ste 150

Salem, OR 97302-6311

Phone: (503) 378-5816

Fax: (503) 362-1260

Email: oregon.obce@state.or.us

Web: www.oregon.gov/OBCE

Oregon Board of Chiropractic Examiners
University of Western States – Hampton Hall
2900 NE 132nd Ave., Portland

PUBLIC SESSION MEETING

July 18, 2013

Members Present

Daniel Côté DC, President

Ann Goldeen DC Vice-President

Doug Dick, Public Member, Secretary

Christine Robinson DC

Glenn Taylor, Public Member

Jason Young DC

Lisa Kouzes DC

Staff Present

Dave McTeague, Executive Director

Kelly Beringer, Admin Assistant

Donna Dougan, Admin Assistant

Tom Rozinski, Investigator

Lori Lindley, AAG

Others: Kevin Shuba AAL, Andrew Riley, AAL, Nathan Junkin, Laura Gabriel, Lori Person NICB, and doctors David Junkin, Brandon Duncan, Kristen Wilber, Sunita Bhasin, Dan Beeson, and Minga Guerrero

CONVENE 8:30 AM

Dr. Côté welcomed the newest board member, Lisa Kouzes DC

ADOPTION OF THE AGENDA Adopted as presented

DISCUSSION ITEMS *(recorded as addressed)*

3. Foreign chiropractic college review: New Zealand College of Chiropractic

The Board has an application for approval from the New Zealand College of Chiropractic, and Dave McTeague's memo. Dave has some concerns about the US CCE process and Australasia CCE process – whether they are comparable. Dave spoke with Oregon doctors familiar with CCE and they say it takes quite a bit of analysis to determine that similarity/difference. Dr. Côté added that the CCE International is membership-based. They are trying to find common ground into equivalency. Dr. Côté thinks they are equivalent, qualified, especially if they take and pass NBCE Part I, II, III and IV. We can still review each case individually. After discussion the Board determined the response to be, "Currently, if someone applies under your current curriculum and accreditation New Zealand graduates qualify for licensure." Doug Dick moved to accept the Board's determination; Lisa Kouzes seconded the motion. All in favor. Ann Goldeen, aye; Glenn Taylor, aye; Christine Anderson, aye; Doug Dick, aye; Daniel Côté, aye; Jason Young, aye; and Lisa Kouzes, aye.

1. Public Hearing – 9:00 a.m.

Pre Paid Treatment Rule Amendments, OAR 811-015-0002

Board and public commented on Draft 6. Lori Person NICB – how will the pre-pay plan rule affect ORS related to insurance (WC and PIP)? A lot of thought has gone into this. Also, much of our conversations have been related to the refund policies. Dave added that Draft 6 came from Dr. Larry Hanberg and the OCA; they also asked how specific does the Table of Calculations need to be.



Specific enough so that patients understand it. Jason Young moved to accept the rule as proposed in Draft 6; Glenn Taylor seconded the motion. All in favor. Robinson, aye; Kouzes, aye; Taylor, aye; Dick, aye; Côté, aye; Goldeen, aye; and Young, aye.

Proposed “Master of the ship” rule (initial hearing)

Andrew Riley, Portland Attorney – “Well-meaning as it may be, it appears to be a purported solution to kill a problem. It’s a missile to kill an ant.” It is supposed to be incentive to clinic owners to make sure that employees do things the right way. That incentive already exists – under civil law... The language is far too broad... There is no exception provided.” Dr. Côté understands that Mr. Riley’s recommendation is to fine tune the language so that the owner is not blamed for every instant regardless of his efforts to “educate or train” his associates. Dr. Bhasin provided written comment to the Board. The board is asking owners to make sure that the associates are abiding by the ORS and OARS. What are we to do if the associates do not comply? Laura Gabriel RN – this rule would be very hard to enforce; if they have a license, they are accountable to the ORS/OAR. Minga Guerrero DC – she sympathizes with the board, as a past board member. She has contracted with various numbers of DCs in her clinic. There is a fine line between training a new doctor who has limited experience case management and directing personal judgment. As an owner you cannot have a “hands-off” approach. She spends 3-4 hours a week reviewing charts that they created for her patients when she’s not there. Owners should provide training manuals and documents they have to sign. She agrees the rule is too broad; it has to be fine-tuned, or tossed; “it gives teeth to any lawsuit.”

Dan Beeson DC agrees with the attorney. Dr. Young suggested that this is an opportunity for the OCA to provide CE related to training clinic owners. David Junkin DC cited a number of professions which do not have this type of rule. He is concerned because he does have a number of associates under him. Dr. Côté countered that the Board is not proposing the rule based on one situation; it’s based on years’ worth of issues. Dr. Côté imagines that if Dr. Junkin did have 50 clinics, that he would also have site managers/supervisors which would manage and monitor the licensees at those location. Dr. Côté asked Dr. Junkin to allow the Board to manage the cases where there is abuse. He (Dr. Junkin) responded that there are already laws that make me do what I must do. Kevin Shuba AAL feels that the way the rule is drafted, the Board is forcing licensed DCs to be looking over their shoulders; it will be very problematic. Even the Vet Board’s rule has exceptions to it; at a minimum the Board should look at those. Dr. Brandon Duncan agreed, the language is too broad. Dr. Côté ended the discussion by stating that a committee with some legal representation will be put together to manage the next draft. OBCE Public member Douglas Dick said his profession has such a rule.

Proposed Paper Review record keeping rule

Dr. Côté asked for any comment in addition to those made by Dr. Michael Burke’s written comment. Dr. Kouzes provided input from the Rules Advisory Committee. Which reports? Some are not “written, not discoverable.” For example, a DC reviews records for arbitration, the file is reviewed and a call is made by phone; and a report is not requested. Dr. Côté – there is a rule that says IME doctors have the same responsibility as regular chiropractors to keep records. We’re finding that there are a couple outfits who require DCs to do file reviews, but then telling the chiropractor that they cannot keep copies of their reports. We’re trying to set up a rule which says the doctor does need to keep a copy for seven years. Dr. Young suggested inserting “discoverable reports.” Dr. Kouzes added that both sides of the IME situations are already playing by certain rules, and it seems

like we are trying to override those. As a physician, you write a report, review a case file, give an opinion, you should keep it for a while.

Dr. Goldeen feels that the scope of this is very narrow. She's had a number of people call or email her about it. For instance, a DC reviewed one day of service and issued a DX and opinion about the whole case based on that one day. Dr. Côté – that is not what we want to address; we want to address that need for the reviewer to keep a copy of the report in case there is a complaint. Dr. Guerrero requested that the Board include file reviews in the rule's language. (*It is.*)

Board recommended minor edits, so the draft now reads,

(3)(a) Chiropractic physicians performing independent medical examinations and/or written file reviews ~~for third parties~~ shall be responsible for keeping a record of all authored reports for 7 years from the date authored.

Dr. Kouzes added that she thinks some of the grumblings in the IME community are based on the fear that the Board will punish the IMEs for their differing opinion (from the treating physician's). The Board denies that allegation; we are trying to protect both the physician and the patient.

2. Rules: Possible adoption or referral for more public comment of proposed rules

Board moved to adopt Draft 6 of the Prepaid (and Contracted) Treatment Plan rule as presented. Further comment will be accepted on the other two proposals presented today for the "Master of the Ship" rule and Paper Review record keeping (November hearing).

4. Budget & Legislative issues update

Senate Bill 106 took the fee structure out of our statute, and allows the Board to adopt/raise fees through the administrative rule making process. SB 5508 and our approved budget increases our legal services funding and authorized the hiring of our half-time Chiropractor/ investigator position. The Department of Justice has offered us a flat-rate for legal services for this biennium, that should be a great saving for us. Dave is going to talk to the Administrative Hearings Office (OAH) to see if they will offer the same type of flat-rate fee. (*OAH's statute doesn't allow this however.*)

5. Proposed rulemaking for legislatively authorized fee increases (SB 106)

While, Senate Bill 106 allows the fee increases, the specific fee increases were approved through the legislative budget process and anticipated in the OBCE's revenue projection for the 2013-15 biennium.. A new aspect we're bringing forward is the creation of a CA late renewal fee (also allowed by SB106). Staff drafted proposed language similar to that language structure for the DCs late renewal. Ann Goldeen DC moved to go into permanent rulemaking for the DC and CA fee increases including establishing a CA late fee. Jason Young DC seconded the motion. Robinson, aye; Côté, aye; Goldeen, aye; Taylor, aye; Young, aye; and Kouzes, aye. Doug Dick was absent for this vote.

6. September planning meeting outline, possible survey questions

Dave provided the board a draft agenda with goals which is open for discussion. Dave suggests the Board identify critical issues to prioritize. In the next two weeks, (Board and Staff) send to Dave and Dr. Côté our top three subjects to discuss/develop/approach in September. (*Note: Dr. Young has an unavoidable conflict the same date as the September meeting.*) Dave also added that we've developed a

survey in the past for the profession. Board members should think about strategic planning issues we can get from the field. Dave will draft the survey around the top three issues. (Include the Public Notice list). Finally Dave asked the Board members to contact key stakeholders, insurance and association folks, legislators, etc. prior to the September meeting. Dave has three questions 1) How do we efficiently process the increased case load; 2) What are the different perceptions of minimum standards? and 3) How do we update the Chiropractic Practices and Utilization Guidelines?

Assignments were made as follows: Dr. Coté – Association’s current President; Dr. Kouzes – UWS’s President, Joe Brimhall DC; Doug Dick Democratic Legislator; Christine Robinson Republican Legislator; Ann Goldeen - Governor’s Health Policy; Glenn Taylor – Past Board Members; Jason Young – known “critics.”

Finally, there is a small survey Dave will provide the Board - Continuum Exercise – it gauges where the individual members stand on broad regulatory philosophical issues.

[Tom introduced Lori Person, an NICB agent. NICB (National Insurance Crime Bureau) is a non-profit insurance agency. NICB coordinates with various insurance company special investigation units and sometimes presents issues of concern to the OBCE.]

7. New Doctors meetings: future of

Due to the unavailability of board and committee members, we had to cancel our June 2013 session. Do these meetings continue to be important to the Board? The Board answered strongly, Yes. Board members proposed an October date, and possibly the next in March or April. Two members need to commit to be on the panel. Continue with the New Doctor Introductions.

8. Review / Approve Proposed Record Keeping courses (if any) No requests

9. Review / Approve Separation of Duties policy and procedures

The members have reviewed the Segregation of Duties for handling agency revenue. Spelling error on page 2, paragraph 4 “billing.” Ann Goldeen moved to adopt the draft with corrections made as noted; Jason Young seconded the motion. All in favor. Côté, aye; Robinson, aye; Goldeen, aye; Dick, aye; Taylor, aye; Young, aye; and Kouzes, aye.

11:45 AM ADJOURN to Executive Session

3:15 PM RECONVENE to Public

IN THE MATTERS OF

Case # 2012-3009 The Board proposed an Agreement of Voluntary Compliance with a \$5,000 civil penalty, one year of mentoring with file pulls. Ann Goldeen moved to accept the determination; Doug Dick seconded the motion. All in favor. Taylor, aye; Dick, aye; Goldeen, aye; Côté, aye; Robinson, aye; Young, aye and Kouzes, aye.

Case # 2013-1003 The Board proposed case closed. Glenn Taylor moved to accept the determination; Doug Dick seconded the motion. All in favor. Robinson, aye; Young, aye; Kouzes, aye; Taylor, aye; Côté, aye; Goldeen, aye; and Dick, aye.

Case # 2013-5010 The Board proposed a contingent case closed with an agreement to an informal file pull within six months. Christine Robinson moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Côté, aye; Taylor, aye; Young, aye; Kouzes, aye; Robinson, aye; Goldeen, aye; and Dick, aye.

Case # 2013-5011 The Board proposed a contingent case closed also with an agreement to a file pull within six months. Christine Robinson moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Dick, aye; Taylor, aye; Robinson, aye; Côté, aye; Young, aye; Kouzes, aye; and Goldeen, aye.

Case # 2012-1009 Jerry Evans DC

The Board proposed to issue a Letter of Reprimand, \$4,000 civil penalty, two years' probation with a mentor, 8 hours billing CE and 8 hours charting/clinical justification CE, successful completion of the OBCE Ethics and Jurisprudence Exam, the NBCE Ethics and Boundaries Exam. All to be completed within 90 days. Licensee must also remove "OBCE certified" from his website. If the doctor agrees to these stipulations, the Board is willing to remove the \$4,000 civil penalty. Daniel Côté moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Dick, aye; Taylor, aye; Robinson, aye; Young, aye; Kouzes, aye; Goldeen, aye; and Young, aye.

Case # 2012-1050 Jennifer Fletcher DC

The Board proposed to issue a notice of discipline for a 90-day suspension; \$5,000 civil penalty, file pulls every three months, reset the probation for three years, and four interviews annually – based on violations of the previous Order. This is a contingent notice, if she is agreeable to reset the probation with file pulls and a certified biller; the Board will accept that in lieu of all other stipulations. Christine Robinson moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Kouzes, aye; Young, aye; Taylor, aye; Robinson, aye; Dick, aye; Goldeen, aye and Côté, aye.

Case #s 2012-3034 and 2013-2003 Christopher Fowler DC

In a settlement agreement the Board proposed to issue a letter of reprimand with a \$1000 civil penalty, five file pulls (two within the next eight months, one within the next six months, and the last three within the year after that); CE (six billing and coding and six on charting/documentation; the hours are in addition to the current year's CE requirement); 18 month probation. Christine Robinson moved to accept the Board's determination; Ann Goldeen seconded the motion. Young, aye; Robinson, aye; Côté, aye; Taylor, aye; Dick, aye; Goldeen, aye. Kouzes recused.

Case #s 2012-3035 and 2013-2004 Felipe Rodriguez DC

Same package as above. In a settlement agreement the Board proposed to issue a letter of reprimand with a \$1000 civil penalty, five file pulls (two within the next eight months, one within the next six months, and the last three within the year after that); CE (six billing and coding and six on charting/documentation; the hours are in addition to the current year's CE requirement); 18 month probation. Christine Robinson moved to accept the Board's determination; Doug Dick seconded the motion. Young, aye; Robinson, aye; Côté, aye; Taylor, aye; Dick, aye; Goldeen, aye. Kouzes recused.

Case # 2011-3003, 3004, 2012-3015, 3016, 3023, 3031, and 1039 Kim Jameson DC

The Board proposed to issue the Final Order with a reprimand and requiring 12 hours continuing education based primarily on the recommendations of the administrative law judge. The judge disagreed with the majority of the Board's initial findings. Ann Goldeen moved to accept the determination;

Christine Robinson seconded the motion. All in favor. Dick, aye; Taylor, aye; Kouzes, aye; Young, aye; Robinson, aye; Goldeen, aye; and Côté, aye.

Case # 2013-1006 Sam Moursalian DC

The Board authorized staff to sign an interim stipulated order to put public protections in place. (The order was effective on July 24, 2013.) Daniel Côté moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Robinson, aye; Dick, aye; Taylor, aye; Kouzes, aye; Côté, aye; Goldeen, aye; and Young, aye.

Case # 2013-5007

The Board authorized contingent authority to request an injunction against the unlawful ownership of a chiropractic clinic by a non-chiropractic entity, if supported by legal advice. Daniel Côté moved to accept the Board's determination; Glenn Taylor seconded the motion. All in favor. Young, aye; Taylor, aye; Kouzes, aye; Robinson, aye; Goldeen, aye; Dick, aye; and Côté, aye.

Case # 2013-1025 The Board proposed a contingent case closed with a Letter of Concern with the doctor's agreement to complete 12 hours CE in x-ray technique and identification. Christine Robinson moved to accept the Board's determination; Jason Young seconded the motion. All in favor. Taylor, aye; Kouzes, aye; Young, aye; Robinson, aye; Goldeen, aye; Dick, aye and Côté, aye.

3:35 PM RETURN TO EXEC SESSION *Drs. Côté and Robinson left for the day.*

5:00 PM RECONVENE to complete the In the Matters of

Case # 2012-1058 Elliott Mantell DC

The Board authorized an Agreement of Voluntary Compliance to resolve this case (which was signed and effective on July 29, 2013). Ann Goldeen moved to accept the Board's determination; Jason Young seconded the motion. All in favor. Dick, aye; Taylor, aye; Kouzes, aye; Young, aye; Goldeen, aye.

Case # 2013-1032 The Board found no statutory violation. Ann Goldeen moved to accept the Board's determination; Jason Young seconded the motion. All in favor. Dick, aye; Taylor, aye; Kouzes, aye; Young, aye; and Goldeen, aye.

Case # 2012-1004 Kevin Plummer DC

The Board authorizes issuing the proposed Stipulated Final Order (which was signed and effective on August 27, 2013). Doug Dick moved to accept the Board's determination; Jason Young seconded the motion. All in favor. Goldeen, aye; Young, aye; Kouzes, aye; Dick, aye; Taylor, aye.

Case # 2011-1026

The Board proposed to accept the settlement offer. Doug Dick moved to accept the determination; Glenn Taylor seconded the motion. All in favor. Goldeen, aye; Dick, aye; Young, aye; Kouzes, aye; and Taylor, aye. *(Not yet concluded as of the publication of these minutes.)*

Case # 2013-1015 The Board proposed a contingent case closed upon acceptance of the first offer. Doug Dick moved to accept the determination; Glenn Taylor seconded the motion. All in favor. Goldeen, aye; Taylor, aye; Dick, aye; Kouzes, aye; and Young, aye.

Case # 2013-1023 The Board proposed a contingent case closed based on the licensee's retirement and return of his Certificate of Registration. Doug Dick moved to accept the Board's determination; Jason Young, seconded the motion. All in favor. Goldeen, aye; Dick, aye; Taylor, aye; Kouzes, aye; and Young, aye. (*The doctor has retired from practice.*)

Case # 2013 -5014 George Ulbrich DC

The Board proposed to issue a Notice of Proposed License Suspension for failure to pay state taxes as required by Oregon Law. Glenn Taylor moved to accept the Board's determination. Doug Dick seconded the motion. All in favor. Young, aye; Kouzes, aye; Goldeen, aye; Dick, aye; and Taylor, aye.

Case # 2013-1033 The Board proposed case closed. Glenn Taylor moved to accept the determination; Doug Dick seconded the motion. All in favor. Young, aye; Taylor, aye; Kouzes, aye; Dick, aye; and Goldeen, aye.

#8 (Exec) Christian Schuster DC

The Board proposed to issue a Notice of Proposed Suspension of the doctor's license for failure to comply with his previous Order, probation and mentoring requirements. The Board was advised that the licensee has the right to a hearing on whether he violated the Order, but he does not have a right to a hearing on whether he is going to be suspended. Doug Dick moved to accept the Board's determination; Glenn Taylor seconded the motion. All in favor. Kouzes, aye; Goldeen, aye; Taylor, aye; Dick, aye and Young, aye.

#9 (Exec) CA applicant (former DC)

The Board proposed to issue the CA license contingent upon payment of a past due \$506 civil penalty for previous disciplinary action, and upon receipt of the supervising DC's letter of support and acknowledgement of her previous discipline. Glenn Taylor moved to accept the determination; Jason Young seconded the motion. All in favor. Goldeen, aye; Young, aye; Taylor, aye; Dick, aye; and Kouzes, aye.

#11 (Exec) (Suspended doctor) In light of the Stipulated Final Order concerning the doctor's return to practice, and provisions tied to the psychological evaluation, the Board proposes an amendment to the doctor's stipulated final order provisions congruent with the recommendations from the evaluator concerning practices in his clinic. Lisa Kouzes moved to accept Board's determination; Jason Young seconded the motion. All in favor. Dick, aye; Taylor, aye; Goldeen, aye; Young, aye; and Kouzes, aye.

#12 DC - inactive to active issue The Board proposed to issue the active license. Lisa Kouzes moved to accept the Board's determination; Glenn Taylor seconded the motion. Goldeen, aye; Taylor, aye; Kouzes, aye; Young, aye; and Dick, nay. Motion passed.

5:23 PM ADJOURN for the Day