



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners

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PUBLIC SESSION MEETING MINUTES

Western States Chiropractic College

Hampton Hall

2900 NE 132nd Ave, Portland, Oregon

January 21, 2010

Members Present

Michael Vissers, DC President/Vice-President

Joyce McClure, DC Vice-President/President

Steve Koc, DC

Ann Goldeen, DC

Douglas Dick, Public Member

Excused: Cookie Parker-Kent

Staff Present

Dave McTeague, Executive Director

Kelly Beringer, Admin Assistant

Donna Dougan, Admin Assistant

Tom Rozinski, Investigator

Lori Lindley, Assistant AG

Others Present: Drs. Chris Pierce, Sharron Fuchs, Judith Boothby, & Dean Clark; Johna Hicks

1:15 PM CONVENE

ADOPTION OF THE AGENDA

Dr. Vissers presented a plaque of appreciation to Dr. Steve Koc for his years of service on the Board. Today is Dr. Koc's last board meeting; he has submitted his resignation.

Board Officer Elections. Dr. Joyce McClure was nominated for the position of Board President; Dr. Michael Vissers was nominated for the position of Vice-President; and public member Cookie Parker-Kent was nominated for the position of Secretary. In addition, Ann Goldeen will serve as the Board's liaison on the ETSDP committee; and Michael Vissers will serve as liaison for the Rules Advisory committee. Dr. McClure moved to accept the nominations as posed; Doug Dick seconded the motion. All in favor. No member was yet appointed to address the CE issues (tabled).

For FCLB and NBCE delegates: Dr. Vissers nominated Dr. McClure as the primary delegate for the FCLB/NBCE; Dr. Goldeen seconded the motion. Dr. McClure nominated Ann Goldeen as the alternate delegate; Dr. Vissers seconded the motion. All in favor.

DISCUSSION ITEMS

1. ETSDP Committee report: Breast Thermography

Dr. Clark briefly outlined the issues and discussion around breast thermography and he offered a little history. There was a clinic in Medford Oregon doing breast thermography; it was a nurse/certified breast thermographer. Her board found no violation against her, but this is what brought the issue before our board. Dr. Clark is one of two DCs actively providing breast thermography in Oregon. He's probably had about 500 women through the process, and he's completed over eight years training. There have

been no complaints. Dr. Clark is here to defend the use of the device as investigational, and feels it fits within our scope of practice. Almost every other state besides Washington allows this (they have a law which disallows any evaluation of the breast tissue by chiropractic physicians).

As far as any level of risk to the patient receiving the procedure, Dr. Clark says it's low; we're measuring heat. As far as a risk that we're going to miss a potential disease – that exists for every one of us every day; there is no greater risk. Dr. Koc has heard a fear that patients will treat this as the only test they need. Dr. Clark says he makes it clear in his informed consent that this is not a stand alone procedure. He feels that breast thermography should be deemed an investigational, adjunct procedure.

Dr. McClure referred to the bottom of Dr. Clark's informed consent form, "the patient agrees that they will have a follow up evaluation if Dr. Clark recommends." She asked if he would recommend that the patient *always* have follow up. He believes that most people will get a follow up; however, he cannot force them to do it; about 90% of those who walk in, get the follow up.

Dr. Clark figures about 50 – 75% (of 100) of patients show an abnormality; however, it varies. These are women who have not had success with mammogram, for example, and they are looking for another way to get all the information they need to detect cancers. Dr. McClure is concerned that patients who have the thermogram ignore the need for a mammogram. Dr. Clark "won't let them off that easy."

Dr. Goldeen also added her concern that the offering of this procedure might create a "breast mill" (full page ads with exaggerated benefits, reduced risk). If we could prevent that type of advertising, and limit the potential risk of people thinking this is the "end all", we might be able to safely incorporate this. Dr. Koc would be happy if a committee were created similar to Dr. Jeff Tunick's organization of the spinal decompression society; they set up standards and guidelines for the benefit of the public. Dr. Clark thinks this is a great suggestion.

Dr. Boothby (provided Dr. Vissers a letter she wrote) had comments. She would like to change her recommendation from high to moderate risk. Because the issue of scope of practice came up, she read the definition of chiropractic diagnosis as cited in ORS 684.010(2)(b) "...The chiropractic diagnosis, treatment and prevention of body dysfunction; correction, maintenance of the structural and functional integrity of the neuro-musculoskeletal system and the effects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic diagnostic procedures and the employment of all rational therapeutic measures as taught in approved chiropractic colleges." In addition, investigational techniques are recognized and accepted in this state (because of the ETSDP process) so this is how she believes this fits into our scope. In the first paragraph of the ETSDP rule, at the end (subsection 3), it reads, "It must show potential merit for effectiveness and be of acceptable risk." There is an "out" in the rule, "Nothing in this section is intended to interfere with the right of any patient to refuse standard or investigational ETSDP's."

Ms. Johna Hicks (Dr. Clark's assistant) commented. She "takes the pictures." Her training involved working with Dr. Clark "for several months on positioning, where the camera goes, etc." She tells the patient to "turn this way slightly, that way slightly." A bad image is very blurry. The machine is very high resolution and you can tell where all the vascular changes are - basal cells, abnormalities - it all shows up on the view. It may take 20 minutes time for a series.

Dr. Sharron Fuchs comments. "The issue with the attorney general shutting down the clinic in Medford was very serious. The owners of the clinic were impersonating other professionals – chiropractors, MDs.

Part of the settlement agreement was to contact all of the people that had come through that clinic and tell them that they could not rest with that thermography reading; that they needed to get further studies.” Dr. Fuchs still questions whether this is part of our scope of practice. She would like to see a mammography first. She sees some room for minor adjustment to Dr. Clark’s informed consent.

Dr. McClure summarized – Drs. Clark, Boothby, and Fuchs still feel that this is an investigational procedure. It is Dr. McClure’s opinion that the procedure itself is within our scope. There is discussion on the table about low to moderate risk; she hasn’t heard specifics about reasons for one or the other.

Dr. Vissers asked if Dr. Clark requires his patients to have a mammogram before they come in. He stated that he cannot require that but he has them sign his consent form which states thermography does not replace a mammogram. Probably greater than 80% of his patients come in post-mammogram. Dr. Vissers asked Dr. Clark what his definition is of “adjunctive.” As an adjunctive, breast thermography is not a stand-alone; it is adjunctive to mammography, ultrasound, and breast MRI. Dr. Vissers then asked if Dr. Clark encourages all patients to get a follow up, or only those with positive results. Dr. Clark responded, “Most of them have already had a mammography before they come in; but its true, in the situation where a patient is negative on the thermogram, this procedure may end up being a “stand-alone” test. THAT concerns Dr. Vissers. Even if a patient has three negative thermograms, there should be something else done. If we allow this as investigational, what are the guidelines?

Dr. McClure offered, we identify BT as an investigational procedure, that is available for qualified doctors to use, under the guidelines of training, and we ascertain what level of risk for this procedure. There should be a clear understanding that it does not replace other tests that are out there with other kinds of information. Alternatively, we create a work group, or subcommittee, as suggested, similar to the decompression society. They will have a more vested interest in making sure there are not failures in the system.

Doug Dick sees two questions on the table – one, is it within the scope (members agree that it is). The second question is how do we best define the use of it?

Breast Thermography Motion 1 - Dr. Goldeen moved to accept breast thermography as investigational with the development of standards for advertising use, and referral; and we need to add something about risk.

Discussion: Dr. Boothby is a high risk cancer patient, and research has recently shown that some mammography is dangerous for high-risk cancer patients. She suggested that follow up be required; but that patients have a choice. The question is not whether or not a woman goes for a mammogram; it is whether thermography “covers” her. Dr. Vissers seconded the motion and he thinks moderate risk is acceptable. He would like to see some sort of informed consent which addresses the negative thermography and the need for follow up.

Dr. McClure asked Drs. Clark, Boothby and Fuchs if they would be willing to work together to develop standards. They agreed. Dr. McClure acknowledged the motion on the floor to establish a committee or workgroup. She would like the doctors to come back with something in writing that they all support. Motion 1 died for lack of clarity.

Breast Thermography Motion 2 - Dr. Goldeen moved that the Board adopt Breast Thermography as an investigational, adjunctive procedure with moderate risk; with board-approved guidelines (to be developed). Dr. Vissers seconded the motion. All in favor. McClure, aye; Vissers, aye; Koc, aye; Goldeen, aye; and Doug Dick, aye. Motion passed. Dr. Clark added that Dr. Kris Peterson in Hermiston is also interested in BT, and may assist in the development of the guidelines. Dr. Clark offered to create some documents to distribute among the group as a start. Dr. Goldeen will be the liaison between the group and the board. Dave offered to set up a conference call whenever needed. The board expects to review this issue and the workgroup recommendations at the next Board meeting.

2. Policy Issue: “dry needling” issue review

Dave provided a number of responses from the chiropractic colleges. Most of the colleges do not currently teach dry needling; at least one has it in their acupuncture program, and it seems half consider it a physical therapy modality. Many had no position. Dr. Koc wants to keep our scope broad, but this sure looks like acupuncture. Dr. Goldeen would like to keep investigating it.

Dr. McClure sees it broken down into two components – dry needling - the insertion of a needle into the trigger point for a therapeutic benefit; and, in terms of determining if that is an appropriate procedure to be performed, she thinks that Oregon chiropractors have the expertise, the training and the risk management to safely make that determination. Whether DCs have the further training for managing the safety, contraindications and risks of penetrating the skin is another question.

Dr. Vissers asked for clarification whether this is a minor surgery procedure, or a physiotherapy; it is for a therapeutic purpose? Dr. Vissers asked who teaches the PT modality of sticking needles into trigger points for relief. Sharron Fuchs again claims that it is taught at the post-graduate level at NYCC.

Lori Lindley added that the acupuncturists think its acupuncture, so it is going to be a problem. McClure added that we feel the PTs have not received enough training to perform a manipulation. Acupuncturists have thousands of hours training. Lori Lindley agreed it would be better if the colleges taught it as physiotherapy.

Dave added that the association has not weighed in on this issue at all; maybe the board wants to get more input from the association.

Dr. McClure offered: This is considered within the realm of physiotherapy because of the therapeutic effects. When it becomes taught at the chiropractic college level or other significant post-graduate training, it may well be incorporated into mainstream chiropractic practice. At this time there are no programs available.

Dry Needling Motion 1: Dr. Koc moved that the Board table this subject and get input from the state association. As a sideline, he supports bringing someone here to teach the subject. Any decisions are pre-mature. Dr. Vissers seconds tabling the discussion, and suggests we enlist WSCC to get involved.

Discussion: If only one college teaches it and eleven others do not, the board has discretion to deal with that. However, Dave added that previously, this board stated that this is acupuncture and it is not within the scope. A few years later the Board reiterated that view; it would be wise to take this slow.

Dr. McClure summarized that if Western States, or any chiropractic college, started to teach it as a core curriculum class (not a limited hour CE class) the door opens for dry needling to become a part of the Oregon chiropractic scope. Conclusion: Tabled, get association buy in, see dry needling taught at Chiropractic College. Dr. Fuchs will approach Drs. Irving and Bill Hartje about getting an instructor to Oregon.

If a course is offered as CE, a licensee may attend for credit, but may not practice dry needling..

Goldeen, aye; Koc, aye; Vissers, aye; Doug Dick, aye; and McClure, aye. All in favor. Motion passed.

3. Policy Issue: Legislative Concepts for 2011

Dave McTeague reported to the Board. April of each year is our deadline for submitting legislative concepts. One proposal would be to eliminate the statutory cap on the license fees. This would allow the OBCE to increase fees through the rulemaking process similar to most other health professional licensing boards (any increase is still subject to ratification by the next legislative session). Secondly, Dave pointed out that CA licensing fees have not been increased since the program's inception in the late 1980's. He said that the staff time to process CA applications and renewals and complaints has been steadily increasing.

Discussion: Members want to see more justification for increasing CA fees. They request staff provide more information about how much staff time it takes to manage the CA program.

Also, the Board may want to consider increasing the unlicensed practice criminal penalty.

In closing, Dave would like to discuss our current practice of reviewing CE courses in Executive Session – he will be researching past AG opinions, and he may propose moving those discussions to public.

4. 2009 Complaint Statistics & Key Performance Measures results

Dave presented the statistics for the board's knowledge. Complaints received in 2009 increased to 78 from the 72 received in 2008. There was a significant increase in 2009 for disciplinary orders and other public protection actions affecting 20 DCs and 6 CAs.

5. Committee Appointments: Peer Review alternate members, others

Dr. Stephen Ray was interviewed for an appointment to the Peer Review Committee. Ann Goldeen moved to appoint Dr. Ray to the PRC as an alternate member; Dr. Vissers seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Joyce McClure, aye; Ann Goldeen, aye; and Michael Vissers, aye.

Other appointments made by the Board include nominations for Dr. Mike Underhill to the ETSDP committee – Dr. Vissers moved and Dr. Goldeen seconded the motion; and Dr. Lisa Kouzes to the Rules Committee. Dr. Goldeen moved and Dr. Vissers seconded the motion. All in favor for both motions. Steve Koc, aye; Ann Goldeen, aye; Michael Vissers, aye; Doug Dick, aye; and Joyce McClure, aye.

6. Policy Issue: Deceased Chiropractor Clinic Name Change Rule

This issue came into the office when a licensee recently died and his estate was trying to sell the practice. They questioned whether the needed to enforce this part of the administrative rule. After

discussion Dr. Vissers moved to send the proposed change to the RAC for their review, and eventually to permanent rulemaking. Ann Goldeen seconded the motion. All in favor. Joyce McClure, aye; Doug Dick, aye; Ann Goldeen, aye; Michael Vissers, aye; and Steve Koc, aye. The proposed change is the deletion of OAR 811-0120(7)(d)(B)(ii) which reads, "The name of the business entity has been changed and a restated organizational document adopted in accordance with laws pertaining to that type of business entity."

7. Staff Report

Dr. Vissers will chair the Rules Advisory Committee meeting on February 16, 2010 (regarding prepay plans and chiropractic assistant training). We also have a New Doctors meeting scheduled for April 1, and we need a board member or two. Drs. Vissers and Douglas Dick will present for the Board and Dr. Corll for Peer Review.

IN THE MATTER OF

Case # 2009-1029 Michael Currie, DC (currently suspended)

The Board proposed to revoke Michael Currie's chiropractic license. Michael Vissers moved to accept the determination; Joyce McClure seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Joyce McClure, aye; Ann Goldeen, aye; and Michael Vissers, aye.

Cases # 2009-1031 & 2009-1032 Kimberly Guthrie, DC

The Board proposed to issue a Letter of Reprimand, a \$5,000 civil penalty, and three years random file reviews. Ann Goldeen moved to accept the Board's determination; Joyce McClure seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Ann Goldeen, aye; Joyce McClure, aye; and Michael Vissers, aye.

Case # 2009-3002

The Board proposed case closed. Michael Vissers moved to accept the board's determination; Doug Dick seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Joyce McClure, aye; Ann Goldeen, aye; and Michael Vissers, aye.

Case # 2009-3022

The Board proposed no statutory violation. Steve Koc moved to accept the board's determination; Doug Dick seconded the motion. All in favor. Ann Goldeen, aye; Joyce McClure, aye; Steve Koc, aye; Doug Dick, aye; and Michael Vissers, aye.

Case # 2009-3024 Todd Hansen, DC

The Board proposed a \$5000 civil penalty, a Letter of Reprimand and a permanent condition that all his CAs be initially trained only by an outside trainer. Ann Goldeen moved to accept the Board's determination; Joyce McClure seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Joyce McClure, aye; Ann Goldeen, aye; and Michael Vissers, aye.

Case # 2009-5012 Thomas F. Miller, DC

The Board proposed to issue a Letter of Reprimand, and a \$3,000 civil penalty. Doug Dick moved to accept the Board's determination; Ann Goldeen seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Joyce McClure, aye; Ann Goldeen, aye; and Michael Vissers, aye.

Case # 2009-2003 Mark Burdell, DC

The Board proposed to revoke Dr. Burdell's chiropractic license. Ann Goldeen moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Joyce McClure, aye; Ann Goldeen, aye; and Michael Vissers, aye.

Case # 2009-3020

The Board proposed no statutory violation with a letter of concern to the licensee. Joyce McClure moved to accept the Board's determination; Ann Goldeen seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Joyce McClure, aye; Ann Goldeen, aye; and Michael Vissers, aye.

4:05 PM ADJOURN for the day