



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners

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PUBLIC MEETING MINUTES

Oregon Garden
879 W Main St
Silverton, OR 97381

November 18, 2010

Members Present

Joyce McClure DC, President
Michael Vissers DC Vice-President
Cookie Parker-Kent, Secretary, Public Member
Daniel Cote DC
Ann Goldeen DC, Secretary
Huma Pierce DC
Douglas Dick, Public Member

Staff Present

Dave McTeague, Executive Director
Kelly Beringer, Admin Asst
Donna Dougan, Admin Asst
Tom Rozinski, Investigator
Lori Lindley, Assistant AG

Others Present: Usha Honeyman DC/ND; Lester Lamm DC for UWS; Sharron Fuchs DC; David Wheeler DC; Nicole Krishnaswami, OMB Operations and Policy Analyst; Collin Stoll L.Ac, OAAOM Vice-President; Dixie Young L.Ac., OAAOM board member; Christo Gorawski L.Ac; Stephen Kafoury, lobbyist for OAAOM

CONVENE: 12:55 p.m.

ADOPTION OF THE AGENDA

DISCUSSION ITEMS (in order actually addressed)

1. ETSDP committee report: Lyme disease applications

Dr. Ann Goldeen synopsisized. She and Dave McTeague met with the ETSDP by phone conference in early November. A statement was developed by the committee:

In the treatment of patients with Lyme disease, it is standard of care for chiropractic physicians to participate adjunctively in the co-management with other appropriate health care providers having prescription writing privileges

Usha Honeyman, an ND and DC would like to see the Board adopt the policy language. She treats many patients with Lyme disease. She thinks treating Lyme disease with antibiotics is mandatory, and “yes, treating chronic cases is valid (*chiropractic?*)”

Dr. McClure asked for a motion. Michael Vissers DC moved to accept the language as posed by the ETSDP; the motion was seconded by Daniel Cote DC. Discussion: Dr. Vissers asked why other board members are suggesting the use of “actively” versus “adjunctively.” Drs. Joyce McClure and Ann Goldeen explained that use of “adjunctively” might infer the DC is secondary in roll to another

healthcare professional. All in favor. Huma Pierce, aye; Joyce McClure, aye; Michael Vissers, aye; Doug Dick, aye; Ann Goldeen, aye; Cookie Parker-Kent, aye; Daniel Cote, aye.

(The Board has continued to discuss this issue and may revisit this in the future.)

2. Policy Issue: Discipline Consistency/Matrix

Dave McTeague provided the Board a draft model/matrix based on the tool utilized by the Nursing Board. The board made a couple changes to the matrix for its purposes. The matrix graphs aggravating factors against mitigating factors for cases where the Board is considering proposing discipline. There are four sections of the matrix – (I) Least serious, (II) Fairly serious, (III) Serious, and (IV) Most serious. Dr. Vissers thinks if something falls into category II, a Letter of Concern would be too light; if there are a lot of mitigating factors, and if they are in the 8-10 aggravating factor we should be fining or issuing a disciplinary action. Dr. McClure agrees. Members agreed to delete from Cat II “If closed, may need a letter of concern,” and remove “Close.” They discussed adding voluntary compliance to Cat I.

The outcome of the changes:

1. Cat I Least Serious – Close or letter of concern; Voluntary compliance
2. Cat II Fairly Serious - Reprimand to probation
3. Cat III Serious - Reprimand, Probation with terms, or Suspension
4. Cat IV Most Serious - Suspension; Voluntary surrender; Restriction; Revocation

Dave also provided the Board with a synopsis history of past OBCE actions in the areas of advertising, chiropractic assistants, sexual misconduct/boundaries, treatment/billing, unlicensed practice and unprofessional conduct. This is to assist the Board in meeting their goal of consistency in discipline. He provided an OBCE staff summary of Oregon Medical Board boundary and sexual misconduct cases (for comparison/utilization). The Board will consider this information further at their January meeting.

3. FCLB report: Ann Goldeen DC

Dr. Goldeen went to Sedona, AZ for the FCLB Annual Conference and provided a written report for the board. There was a lot of discussion about what to do with people on probation. Several of the states have probation criteria, a whole protocol, some of which they meet with the board, or a monitor. The licensee doesn't get off probation until he/she meets with the board and everyone agrees that it's appropriate. She would like to see the OBCE adopt similar criteria. Discussion about “specialists”: Multiple states (OK, NM, and AK) have a registry where a licensee pays an annual fee in order to be able to use a diplomate designation in their practice. The “specialty” is posted on the web and it creates accountability. CE discussion: different ways of reducing complaints by using CE at board functions/meetings. Alaska and one other state invite doctors to board meetings for CE credit. In addition every person meets face to face with the (AK) board; they believe this has caused a reduction in complaints. Dr. Goldeen made brief mention of the documentation that she received at the conference – including much about “board immunity.” There were two reps from the ICA and they had their best practices document (she had a copy of it in her packet of info). Other states' documentation she had included the new ethics and boundaries (NBCE's?), a CCE report, FCLB's model practice act, and an NBCE report.

4. Policy issue: Dry needling 1:30 p.m.

Multiple members of the public were present to speak to the board on this topic. Nicole Krishnaswami, a policy analyst for the Oregon Medical Board (OMB) spoke, “It is the OMB’s position that dry needling is acupuncture.” The OMB does not believe this is part of the chiropractic scope of practice and has submitted a letter to that effect.

Lester Lamm DC representing the University of Western States that dry needling IS within the chiropractic scope of practice. “It is not a “practice” but a “procedure.” In addition, UWS’s statement reports that dry needling is a part of the core curriculum and is covered in the Soft Tissue Therapies course.

Collin Stoll L.Ac., Vice-President of the Oregon Association of Acupuncture and Oriental Medicine spoke, “The OAAOM is in agreement with the OMB and our national organizations ... that dry needling is acupuncture and it’s been well-defined ... as well as in popular medical literature....” They argue that dry needling is outside the chiropractic scope of practice.

Dixie Young L.Ac., a board member of the OAAOM added, “... It is also acupuncture, and that is our argument. ... A comparison of acupuncture points and trigger points shows that there is a 93% correlation. ...” She made comparison that using dry needling requires going deeper into the muscle than even the OBCE’s minor surgery certification allows. She cited multiple concerns – puncturing a lung or other organ, contraindications, the need for caution. “We want to protect the integrity of our medicine and the standard of having highly trained professionals in acupuncture.” They argue that dry needling is outside the chiropractic scope of practice.

Christo Gorawski L.Ac. – Mr. Gorawski began by stating that the major organizations for acupuncture are in the process of creating a minimal standard for dry needling. He read his (personal) statement to the board. In his reading he quotes ... “Dr. Peter Lichtenstein DC, L.Ac. currently teaches the 105 hour course in dry needling at Northwestern Chiropractic College and New York Chiropractic College, and feels that upward of 600 hours or more should be the minimum for learning and understanding the full implications of the practice of what is now called dry needling; which he has also stated should more correctly be called acupuncture ...”

Stephen Kafoury, a lobbyist for OAAOM read his statement next. The OMB has formally declared that, “acupuncture is defined by a technique – inserting needles, and its treatment – disease and pain.” He opposes dry needling as part of the chiropractic scope of practice.

Sharron Fuchs DC appeared a fourth time to address dry needling. She cited about a dozen chiropractic boards who allow dry needling within the DC scope. After some testimony, Dr. Fuchs stated that she believes only 12-15 hours training is required to learn dry needling.

Dr. Lamm addressed Dr. Cote’s question about training. He knows of no 12-15 hour courses on acupuncture; he is aware of one program in Illinois which allows practice of dry needling with 100 hours of training. All other programs, 200-300 hours, are specific to teaching acupuncture. Dr. Lamm again states, and gives examples, that dry needling is a “procedure” not a “practice.”

Stephen Kafoury responded that the acupuncture ORS clearly states that acupuncture is the use of needles for therapeutic purposes. Dr. Cote corrected Mr. Kafoury in that the OBCE is not here to decide on the definition or regulation of acupuncture. We’re discussing the inclusion of a procedure into chiropractic. Kafoury argues that if you are putting needles into a person for a therapeutic purpose, then that is defined in statute and is defined as acupuncture.

Mr. Kafoury thinks the OBCE should look at the definition of chiropractic in the statute. Much discussion ensued about scope.

MDs historically have a universal practice. That does not necessarily mean that MDs are always trained in the areas they practice. If we had our druthers, as acupuncturists, we would say that doctors ought to have additional certification.... There are some doctors who are licensed as both acupuncturists and MDS. There are some MDs who take additional training in acupuncture and there are some MDs who do it without any at all. Dr. Vissers is trying to make the point that there is a lot of overlap (between professions) (e.g. MDs performing adjustments [practicing osteopathy]); he would consider adjusting a procedure even though it's been aligned with chiropractic for hundreds of years. On that note, he continues "the needle is off limits because it's not a procedure, because its "acupuncture." Dr. Vissers is trying to understand how one is held as a procedure and the other as a practice.

Mr. Kafoury suggested that your (the OBCE) board, and Oregon Medical Examiners' Acupuncture Advisory Committee sit down together and talk about how we can define our practice and how you can define your practice so we eliminate the overlap, or where there is a place where there might be overlap how much training is realistic. I think right now I heard each rep that most acupuncturists really don't know the kind of training that chiropractors have, and I'm assuming that, vice versa, that chiropractors don't know what kind of training acupuncturists have and for a decision to be made about how much training would be required for chiropractors to do acupuncture /dry needling whatever you want to call it. I think that's an issue that needs further discussion and we can do that.

Dr. McClure summarized the key points – that contraindications are properly understood, accepted protocol for insertion and disposal of needles, patient safety, etc. Are these key points within the training available to currently licensed Oregon DCs? If there are any areas of deficiencies, is it something we want to address or not?

Dr. McClure asked for a motion. Dr. Cote is conflicted with a rational analysis about scope versus procedures. He feels that if it had a different name, there would be no issue. We are allowed to do venipuncture and minor surgery. He believes dry needling is part of chiropractic, as long as it is done for trigger point therapy. Bottom line: dry needling is an instrument.

Doug Dick said he expected a lot more from this discussion and he wants to see some definitive information. How many hours of training ARE required? Where is the Oregon Chiropractic Association? Are they in? He doesn't see the curriculum. If we're going to move forward, we have to "massage" this more.

Lori Lindley presented the option to have the Attorney General give a formal opinion. Both the OMB representative and Dave McTeague stated this would be an expensive option.

Dr. Vissers feels we should hold off any decision until the next meeting January 2011; hopefully someone will bring some detail information about course curriculums. Dr. Lamm promises to bring the Board whatever information they need or want – what's in the curriculum currently for students, what would be required for post-grad education program to bring current licensees up to a minimum level of education to perform the procedure.

Dr. Cote moved to revisit this discussion in January 2011, and request information from the college regarding hours needed for current licensees to become trained. Dr. Cote would entertain the idea of getting a formal Attorney General Opinion. His motion applies to NEW detailed information only – about the curriculum. Ms. Krishnaswami added that the OMB’s budget doesn’t have any money to pursue the AG opinion option. Ann Goldeen seconded Dr. Cote’s motion. All in favor. Ann Goldeen, aye; Cookie Parker-Kent, aye; Daniel Cote, aye; Huma Pierce, aye; Joyce McClure, aye; Michael Vissers, aye; and Doug Dick, aye.

3:00 pm ADJOURN to Executive Session

3:25 pm RE-CONVENE Public Session

5. Adding technique & diplomate information to Licensee Lookup

Dr. McClure supports adding the diplomate information to the licensee lookup; she feels we should temporarily hold off on uploading the technique information. She would like staff to footnote “board-certification” and the quantity of post grad education hours required, testing, etc.

Dr. Cote moved to post board-certified diplomates onto the website. Dr. Goldeen seconded the motion. All in favor. Pierce, aye; McClure, aye; Vissers, aye; Dick, aye; Goldeen, aye; Parker-Kent, aye; and Cote, aye.

6. Board Best Practices review

Dave asked board members to complete their Best Practices worksheet and turn it in to staff. Members turned in their completed worksheets to Dave.

7. Staff Report

The ETSDP committee will next meet on the issue of treating thyroid. Dave is presently chairing the Health Professional Board’s Peer Review Committee; they are currently reviewing the Oregon Optometry Board. The OBCE’s online state Ethics Exam ran smoothly with Donna Dougan’s help. The next board meeting will be scheduled for January 20, 2011 in Salem. Staff will look into scheduling a joint meeting with PRC for March 2011. Lastly, Dave requested BackTalk article ideas from the board – charting, specifically what are the pitfalls of electronic records; an article from an active Mentor (e.g. Dan Winslow); an article of an interesting doctor, for example the doctor here today who works at the University of Oregon and does rehab, helping seniors, etc.; plus an article on Lyme Disease .

3:55 pm ADJOURN to Executive Session

4:15 pm RE-CONVENE Public Session

8. Committee appointments

The board proposed to remove Dr. Tom Freedland from the Peer Review Committee. Dr. Vissers moved to accept the board’s determination; Doug Dick seconded the motion. All in favor. Goldeen, aye; Parker-Kent, aye; Cote, aye; Pierce, aye; McClure, aye; Vissers, aye; and Doug Dick, aye.

After interviews today, the Board appointed Drs. Maurice Smith and Jennifer Hess as full Peer Review Committee members; and appointed Dr. Kimberly DeAlto as an alternate member. Ann Goldeen moved to accept the Board’s decision; Daniel Cote seconded the motion. All in favor. Parker-Kent, aye; Cote, aye; Pierce, aye; McClure, aye; Vissers, aye; Dick, aye; and Goldeen, aye. *(Subsequently Dr. Smith has declined due to the press of personal business. Dr. DeAlto then moved up to full member on the Peer Review Committee.)*

Lastly, the Board appointed Drs. Brenton Cheng and Andrea Herrst to its ETSDP Committee. Seth Goldstein was appointed to the Board's Rules Advisory Committee. Ann Goldeen moved to accept the Board's determinations; Huma Pierce seconded the motion. All in favor. Parker-Kent, aye; Cote, aye; Pierce, aye; McClure, aye; Vissers, aye; Dick, aye; and Goldeen, aye.

IN THE MATTERS OF

CE AUDIT Non-Compliance #1 Timothy Swindler DC

The Board proposed to issue a suspension for failure to notify the board of a change of practice, and for failure to respond to the board's CE audit request. Michael Vissers moved to accept the motion; Doug Dick seconded the motion. All in favor. Dick, aye; Goldeen, aye; Parker-Kent aye; Cote, aye; Pierce, aye; McClure, aye; and Vissers aye. *(Subsequently, Dr. Swindler provided evidence of completion with an explanation of why he didn't respond to the Board's audit. This will be reviewed at the Board's January meeting before any more action is taken.)*

CE AUDIT Non-Compliance #2 Scott Gates DC

The Board proposed to issue a suspension for failure to respond to the Board's CE audit request. Doug Dick moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Goldeen, aye; Parker-Kent aye; Cote, aye; Pierce, aye; McClure, aye; Vissers aye; and Dick, aye. *(Subsequently, Dr. Gates provided evidence of completion with an explanation of why he didn't respond to the Board's audit. This will be reviewed at the Board's January meeting before any more action is taken.)*

Case #10-1017

The Board proposed a contingent case closed with a Letter of Concern for the licensee's lack of clinical justification when treating thyroid. Also, the licensee must agree to identify himself, and not make unsubstantiated claims in his advertising. Daniel Cote moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Pierce, aye; McClure, aye; Vissers aye; Dick, aye; Goldeen, aye; Parker-Kent aye; and Cote, aye. *(The ETSDP committee plans to review chiropractic diagnosis and treatment of thyroid issues.)*

Case #10-1019

The Board proposed to issue a Notice of Proposed Revocation for multiple violations, including boundary issues, harmful treatments, violating a previous board order and substance abuse issues. Michael Vissers moved to accept the motion; Doug Dick seconded the motion. All in favor. Dick, aye; Goldeen, aye; Parker-Kent aye; Cote, aye; Pierce, aye; McClure, aye; and Vissers aye. *(1/5/11 Note: The Board is going to review this action at their January 20,2011 meeting.)*

Case #10-1022 Kevin McCausland DC *(Notice of Discipline previously issued)*

The Board agreed to an Agreement of Voluntary Compliance provided the doctor complete 12 hours continuing education in billing, coding, clinical recordkeeping and be subject to random file pulls for two years. If the doctor accepts this would not be recorded as a disciplinary action. Ann Goldeen moved to accept the Board's determination; Huma Pierce seconded the motion. All in favor. Parker-Kent aye; Cote, aye; Pierce, aye; McClure, aye; Vissers aye; Dick, aye; and Goldeen, aye.

Case #10-1026

The Board determined the case closed. Cookie Parker-Kent moved to accept the determination; Huma Pierce seconded the motion. All in favor. Cote, aye; Pierce, aye; McClure, aye; Vissers aye; Dick, aye; Goldeen, aye; and Parker-Kent aye.

Case #10-1030

The Board determined no statutory violation. Daniel Cote moved to accept the determination; Cookie Parker-Kent seconded the motion. Joyce McClure is recused. Vote: Cote, aye; Pierce, aye; Vissers aye; Dick, aye; Goldeen, aye; and Parker-Kent aye.

Case #10-3006 James Christy DC

The Board agreed to an Agreement of Voluntary Compliance as a non-disciplinary order, whereby Dr. Christy must appropriately report his 2003 DUI and diversion (as being charged with a misdemeanor) in the future. Huma Pierce moved to accept the Board's determination; Joyce McClure seconded the motion. All in favor. McClure, aye; Vissers aye; Dick, aye; Goldeen, aye; Parker-Kent aye; Cote, aye; and Pierce, aye. (*The doctor accepted this agreement.*)

Case #10-3009

The Board determined no statutory violation. Michael Vissers moved to accept the board's determination; Ann Goldeen seconded the motion. Joyce McClure is recused. Vissers aye; Dick, aye; Goldeen, aye; Parker-Kent aye; and Cote, aye; Pierce opposed.

Case #10-3010 Shane Espinoza DC

The Board proposed a civil penalty of \$200 per file currently in the Board's possession (approximately 60 files) for inadequate charts for a \$12,000 civil penalty; and five year probation with an intensive monitoring program using an outside monitor. Ann Goldeen moved to accept the determination; Cookie Parker-Kent seconded the motion. Parker-Kent aye; Cote, aye; Pierce, aye; McClure, aye; Vissers aye; Dick, aye; and Goldeen, aye.

4:30 pm ADJOURN for the day