

Groupon, Informed Consent, Boundaries, LMT billing, and Graduates of Foreign Colleges Issues before OBCE.

The Board has referred these issues to the Rules Advisory Committee who met on July 8th. Those meeting minutes and related information are on the Board's website. The OBCE will next meet at UWS in Portland on July 21st and could vote to begin a rulemaking process for some of these topics.

Public comment is welcomed on all of these issues. It is best to send comments by email to Oregon.obce@state.or.us, or fax to 503 362-1260, regular mail works too. The Board needs your comments in writing so they have a chance to read and review them ahead of the meeting.

Groupon/internet advertising. Currently the OBCE's legal advice is that Groupon-like advertising programs are in violation of the OBCE's rule

against fee splitting. This is because a prospective patient pays a fee to the advertiser for the purchase of a coupon to visit a specific business. That fee is then split between the business doing the advertising and Groupon.

The Board has received numerous public comments that this doesn't create a true public harm and offers a new and effective way to introduce chiropractic to potential patients. The Board may consider proposing a rule amendment for this purpose.

At the May OBCE meeting Scott Shephard DC testified on "behalf of thousands of Oregonians who have successfully gained access to chiropractic care as the result of social media advertising... Groupon has nothing in common with the sort of fee-splitting referral arrangements that this Board has sought to eliminate in the past, namely because (this) does not covertly influence, deceive or harm the consumer. This is not a case where the consumer receives a recommendation from a

CONTINUED ON PAGE 9

New OBCE Board Members



Drs. Christine Robinson and Todd Bilby joined the Board in May 2011 replacing Dr. Joyce McClure from Portland and Dr. Michael Vissers from Canby.



New OBCE Board members Christine Robinson DC and Todd Bilby DC

Dr. Robinson has practiced in the Medford area since 2001, and before that in California. She graduated from Los Angeles Chiropractic College in 1999. She has previously served on the OBCE's Peer Review, and Rules Advisory Committees. She is active with the Ashland Elks Lodge and has participated in the Medford Food Project.

CONTINUED ON PAGE 3

What's Inside BackTalk

President's Report.....	2
Dry Needling Rule Adopted	4
Boundaries Response	5
Peer Review Openings.....	6
Policy & Practice Questions	7
Oregon Public Health Association	8
Licensing & CE.....	11
Public Protection Report	12
Newly Licensed DCs	16



President's Report

Ann Goldeen DC

We're sending this BackTalk as a hard-copy to our licensees through regular mail this one time, as well as by email. Frankly, we're concerned that as an email attachment or link it is too easily discarded. We especially want the profession's attention to our public statement announcing increased sanctions for violations of professional boundaries and sexual misconduct.

In this issue we highlight key policy and/or rule discussions underway. We are working through key policy areas affecting informed consent, boundaries (waiting periods), internet marketing programs like Groupon etc., graduates of foreign chiropractic colleges and more. Often our discussions go on for an extended time, as did our recent discussions of dry needling. The Board has to take the time to make sure we get it right, hopefully the first time.

To keep abreast of issues under review by the OBCE please check out our web page at www.oregon.gov/obce. The OBCE welcomes your views and comments on these issues.

Federation of Chiropractic Licensing Boards (FCLB)

Recently, Daniel Cote DC, our board Vice-President and I attended the FCLB's annual meeting in Florida. We learned a tremendous amount and we're happy to report the OBCE is still on the cutting edge of many issues affecting chiropractic regulation.

For example, several other state chiropractic boards have had their license funds "swept" by a legislature desperate for money. We were able to stop that from happening to the OBCE in 2010 (two other health boards were not so lucky).

Travel to Treat laws were also discussed. FCLB is looking at issuing photo IDs for doctors who wish to travel and treat. Then they would apply to the target state and get a sticker for the time period involved. Oregon has had this law since 1995 allowing out of state chiropractors to come into Oregon for up to 15 days for a specific sporting, educational or cultural event. We've had no issues or problems with our current law.

CONTINUED ON PAGE 3

The mission of the Oregon Board of Chiropractic Examiners is to serve the public, regulate the practice of chiropractic, promote quality, and ensure competent ethical health care.

BackTalk is the official newsletter of the Board of Chiropractic Examiners. The Board's next meeting is July 21, 2011 in Portland. For more information, go to the OBCE web site at www.oregon.gov/obce or call the Board office at (503) 378-5816.

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President's Report – FCLB

CONTINUED FROM PAGE 2

James Winterstein DC, President of National University of Health Sciences, lectured that chiropractic physicians treat just 7-8% of the population (That number has hardly budged over the last 30 years), lack cultural status and are under-reimbursed. He said chiropractic college program admissions are declining overall. One college just closed. Other professions have succeeded and are progressing with increased scopes and reimbursement. He said scope expansion is essential to survive. We need to get rid of scammers. We need to embrace primary care and to teach patients to live a healthy lifestyle.

NBCE is developing a standardized test for chiropractic assistants with 30 hour online didactic training to be followed in the office with practical training.

Legal Puzzles. Telemedicine is a tricky area-whose jurisdiction is responsible when the patient is out of state or country? (FYI, we had a recent case where we advised a DC that a patient relationship is established if any chiropractic services are provided such as nutritional advice.)

Scope of practice breakout. Many boards are dealing with scope of practice issues. Adopting regulations in areas of collaborative practice (animal adjusting) was discussed. Scopes of practice are changed quickly if good relationships are developed. Preceptor practice is allowed in a number of states. Graduated, but not licensed DC's can practice under another's license (this is not allowed in Oregon). If to be included there needs to be specific regulations about scope of work and what constitutes appropriate supervision. Does the DC need to be on-site? Does the work need to be directly overseen? How about a phone call away? What about therapies? California has rewritten every regulation the last two years to be up to date and relevant.

Physical examinations. DC's have lost the ability to do them around the country because of significant misconceptions by various parties about the levels of education, examination, authority and responsibility in state and provincial scopes of practice. (We know this is an issue in Oregon as many school districts now forbid DCs from performing school physicals.) The state association has an important role to play in informing the public about DC's education, scope of practice and ability to provide many more services than they believe. ■

New Board Members

CONTINUED FROM PAGE 1

In her application she stated, "As a member of the Peer Review Committee, I learned first hand the public protection challenges facing the OBCE and our profession, such as record keeping, clinical justification and in some cases excessive treatment. I know that maintaining professional boundaries is an area we need to keep addressing. Also, my appointment helps meet the Governor's geographic representation goals, as Southern Oregon has not been represented on the Board since 2003."

Dr. Bilby has practiced in Corvallis since 1997. He graduated from Palmer College of

Chiropractic-West in 1996. He has served five years on the OBCE Peer Review Committee and was the committee's chair for the last year. He has also taught anatomy, physiology and pathology at the Heart of the Valley School of Massage, and currently is a Tai Chi instructor at the Corvallis Senior Center. He enjoys cycling, gardening, sailing, local travel and exploration.

In his application, he stated, "During my service on the Peer Review Committee I have become very familiar with the statutes and administrative rules governing the practice of chiropractic. I have always approached these cases with an open mind and pride myself on being able to see both sides of any issue." ■

Dry Needling Rule Adopted

The new rule for dry needling certification was approved by the OBCE at their May 17th meeting. To practice dry needling, a chiropractic physician must register with the Board and provide proof of 24 hours education with an approved course. A written informed consent from every patient regarding the clinical purpose of chiropractic dry needling must also include a clear statement that this is not acupuncture.

This action comes after a year long discussion and review of comments. There was definite opposition from the acupuncture community. However, the Board determined this is not acupuncture and is a distinct modality that has useful application to chiropractic practice. On June 23rd the Oregon Association of Acupuncture and Oriental Medicine filed a petition for Judicial Review with the Oregon Court of Appeals.

The Board's website (www.oregon.gov/obce) has the registration form and a list of approved courses. Future applicants for an active chiropractic licenses may also certify if they have completed the required 24 hours within the core curriculum of a chiropractic college. ■

New Administrative Rule Adopted by the OBCE on May 17, 2011

OAR 811-015-0036 Dry Needling

Dry needling is within the chiropractic physicians' scope of practice for the treatment of myofascial triggerpoint pursuant to ORS 684.010(2).

(1) Dry Needling is a technique used to evaluate and treat myofascial trigger points that uses a dry needle, without medication, that is inserted into a trigger point that has been identified by examination in accordance with OAR 811-015-0010 with the goal of releasing/inactivating the trigger points, relieving pain and/or improving function.

(2) A chiropractic physician licensed in Oregon who wishes to practice dry needling must,

(a) Register with the Board on the form prescribed by the Board and,

(b) Provide proof of the basic Board approved course hour requirements before engaging in the practice of dry needling, and

(c) Perform all aspects of needle insertion and removal.

(3) In order to perform dry needling, chiropractic physicians must complete a minimum of 24 hours of education with practicum specific to dry needling within the curriculum of an accredited chiropractic college, or through post graduate continuing education on dry needling approved by the Oregon Board of Chiropractic Examiners.

(4) Chiropractic physicians must obtain a written Board approved informed consent from every patient treated with dry needling regarding the clinical purpose of dry needling and must state clearly that dry needling is not acupuncture.

Crossing Professional Boundaries and Sexual Misconduct: The case for a strong response

Statement from the Oregon Board of Chiropractic Examiners

Public Notice: The Board intends to increase sanctions and penalties for boundary violations and sexual misconduct. Board proposed consequences are case-specific and often multifactorial. Past orders have included: revocation, suspension, probation, education, fines, treatment, monitoring, and supervised patient encounters. The Board intends to increase sanctions significantly in all cases henceforth, and to increase consequences for noncompliance with Final Orders in all cases.

Currently, the Board has a number of investigations underway and two appeals of existing disciplinary actions. These are a major contributor to the \$200,000 in legal costs to the OBCE for the 2009-11 biennium just concluded.

Crossing boundaries with patients can have serious consequences for patients. In one case, the patient reportedly attempted suicide as a result. Long-term deleterious effects have been documented in many sexual misconduct scenarios.

The consequences are far reaching for the doctor who engages in this conduct. Two recent board actions are a case in point. In one a doctor inappropriately touched a patient during a treatment session. That patient made a complaint to law enforcement and the doctor was convicted in circuit court with a court ordered suspension from practice for three years, followed by an indefinite suspension by the OBCE. A second doctor who

previously employed this doctor failed to report previous complaints from several patients and was fined \$4,800 for not attending to his Duty to Report responsibility.

The primary mission of the Oregon Board of Chiropractic Examiners (OBCE) is to protect the public's safety with respect to the practice of chiropractic. There is nothing as damaging to patients and destructive of the public trust in the chiropractic profession than professional boundary crossings that involve patient-doctor sex or any sexually motivated contact. In addition to the professional literature that fully documents the harm done to patients, interviews with affected patients really brings this home. The harm done to patients and their loved-ones is real, painful, and often long lasting. That's why there has been a long-term consistent effort by the OBCE to address this issue. ■



Dr. Gary Schultz DC, DACBR, addresses the dry needling issue at the Board's January 2011 meeting.

Peer Review Committee Openings

The OBCE is currently accepting applications for the OBCE Peer Review Committee. The OBCE refers complaints to the Peer Review Committee for in-depth file reviews and interviews. Their primary role is investigatory and typically involves complaints regarding alleged violations concerning clinical justification, course of treatment, documentation, and billing. At the conclusion of the review, the committee makes a report back to the OBCE.

The Peer Review Committee meets six to eight times a year, usually on 2nd Thursdays at the OBCE offices in Salem. Peer Review members

must be willing assist with report writing and possible expert testimony in contested case hearings. Eight hours annual CE may also be earned by members.

Any interested chiropractic physician with five years active practice should submit a letter of interest and resume to the OBCE, 3218 Pringle Road SE #150, Salem, Oregon 97302, or fax 503-362-1260. If you have applied before, you are asked to provide a new letter and resume. If you have any questions, please call Dave McTeague, Executive Director, at 503-373-1620. ■

New Doctors Meeting

A large group of newly licensed DCs met with Board and Peer Review members in April. Kimberly DeAlto DC, Peer Review Committee member, led a discussion about chart noting and clinical justification.



Policy & Practice Questions

Question: *Does the OBCE waive licensing fees and/or continuing education for DCs and CAs on active military duty, such as serving in Iraq/Afghanistan etc.?*

Answer: Yes, license renewal fees will be waived for active duty military licensees (ORS 408.450). Also, a licensee can request a CE hardship waiver if that is needed.

Question: *A chiropractic clinic keeps daily charts electronically which indicates the provider of the services. Is it necessary for a chiropractic physician to print out and personally sign each daily chart note?*

Answer: No, it is sufficient to keep that information electronically as long as the provisions of OAR 811-015-0005 (1) (b) are met, "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."

Question: *Can DCs treat or address allergies holistically?*

Answer: Yes, DCs have a broad scope of practice.

Question: *(from an insurance claims rep.) Are chiropractors allowed to bill/perform CPT 99183 in the state of Oregon (physician attendance of hyperbaric oxygen therapy)?*

Answer: What she is really asking is, "Is hyperbaric oxygen therapy within the Oregon chiropractic scope of practice?". The answer is Yes, as long as this utilizes concentrated oxygen, which is what we understand hyperbaric oxygen therapy to be.

The Oregon Board of Pharmacy considers USP (medical) Oxygen (100%) a prescription drug. However oxygen concentrated at a lower percentage (90 to 95%) does not require a prescription. With that understanding, the

OBCE does not prohibit oxygen concentration or the devices which produce this by chiropractic physicians. However, it would be inaccurate for anyone to represent that the Board has "approved" the use of oxygen concentration. Similar precautions as indicated for emergency medical oxygen must be observed. (Policy statement 11/20/2008)

Question: *Regarding Over-the-Counter (OTC) homeopathic products (prepackaged for use by the consumer),*

- May the DC give the patient a dose from that vial?

Answer: Yes.

- Send the patient home with a dose from that vial?

Answer: Yes.

- Place a pellet of the OTC remedy in a vial with water to be administered to an infant?

Answer: Yes.

- Or must I sell them the entire vial of the remedy?

Answer: No.

Question: *A chiropractic physician asks about "homeopathic HCG," believes there's some benefit for this as a weight loss. The doctor wants to know the Board's position.*

Answer: The Board does not opine on every single substance or supplement out there for any number of potential uses.

Doctors need to make sure that the science behind use of a product is strong (not "junk science"), and operate appropriately. If something is experimental in terms of purported benefits or effects, then they must clearly inform their patients, and probably put those disclosures in writing to the patients before they charge them and provide the aforementioned ETSDP (examination, test, substance, device or procedure).

The Board believes that "research methodology" or "statistics" is part of the chiropractic education, at least since the early '80s. Therefore, we could reasonably expect that DCs do know how

CONTINUED ON PAGE 8

Policy...*CONTINUED FROM PAGE 7*

to evaluate research for validity and to use due diligence in understanding the applicability for their chosen therapeutic pathways, prescribing accordingly.

If a DC cannot be or is not competent in assessing the validity of relevant research, then they have no business dabbling in newfangled technologies or outlying applications of substances or supplements, because their license is

representing that they DO have the knowledge to perform due diligence and make informed recommendations and treatment plans.

That said, if a DC requests a formal determination whether an ETSDP is “standard, investigational or may not be used,” we have a formal process and a committee that assists the Board in this. The application form has a list of questions to be addressed. The onus is on the applicant to provide the relevant information and research to be reviewed. http://www.oregon.gov/OBCE/pdfs/pp_Append_A.pdf ■

Oregon Public Health Association (OPHA)

The OPHA has a chiropractic section. This article was submitted by Sean Herrin DC, CCSP.

Let’s start by stating the obvious. By providing conservative care, preventing disease, and promoting health and wellness, chiropractic physicians are well suited to have a voice in public health policy discussions. The strength of that voice is dependent on the involvement of chiropractic physicians in the state association that is responsible for influencing and formulating public health policy. The Oregon Public Health Association (OPHA) is that organization.

The OPHA policy priority areas are those in which all Oregon chiropractic physicians are vested. Some priority policy areas of the OPHA are: obesity, smoking, health care access, alcohol and substance abuse. Every time you have prescribed aerobic exercise, promoted healthy nutrition, encouraged smoking cessation, helped prevent workplace injuries, and promoted drug-free alternatives to managing a variety of conditions, you were promoting priorities and values that the OPHA stands for.

The objectives of the chiropractic section of the OPHA are: (1) To encourage interdisciplinary communication and cooperation between

chiropractic and other health care professions regarding public health; (2) To promote and disseminate chiropractic research pertinent to public health; (3) To promote conservative care in community health; (4) To encourage participation by chiropractic physicians and chiropractic institutions in public health; (5) To encourage chiropractic physicians, educators, and students to join and participate in the OPHA and the section and; (6) To collaborate with the OPHA community in advancing public health policy.

At the state level, the OPHA is geared toward influencing public health policy in ways different from organizations like the OBCE or OCA. Generally speaking, it’s not about insurance issues, scope of practice etc.; rather, it’s about doing things at the state level to help our patients as well as everyone else to stay healthy.

At the national level, the OPHA is affiliated with the American Public Health Association (APHA; www.apha.org), that emphasizes similar public health policy items. A unique public health directive that APHA supports is called Healthy People 2020 (www.healthypeople.gov/2020) and is something that all chiropractic physicians should be familiar with. This is the latest rendition of a national plan of action to improve

CONTINUED ON PAGE 9

OPHA...

CONTINUED FROM PAGE 8

public health in many arenas that chiropractic physicians are involved with, such as chronic back conditions, heart conditions, diabetes, and sleep health. By joining the OPHA, you will be supporting Healthy People 2020 as well!

With all of this said, it is surprising to learn that the Chiropractic Section of the OPHA is currently very small. This is incredible considering how well aligned (pun intended) chiropractic is with public health, and how inexpensive (\$50 a year), and easy it is to join; just go on-line at: www.oregonpublichealth.org. For more information contact: Shireesh Bhalerao DC at sbhalerao@uws.edu. ■

Groupon...

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health care provider or other professional whose judgment has been secretly corrupted by the promise of a referral fee. Rather, Groupon customers initiate the purchase and relationship on their own volition in response to a notice that is definitively advertising. The customers can then inspect the facility and know the specifics of what they are purchasing, and they can know fully the nature of the service and of the introductory offer. The customers are in complete control of the purchasing process, and in addition, Groupon maintains a customer-friendly refund program..." Dr. Shephard continued, "This Board has also recognized that advertising practices that might technically be considered fee-splitting should not be outlawed if they clearly are not harmful. Case in point: in 2008, the Board was asked by a practicing doctor if a non-profit could advertise to their members, wherein the doctor could return 10 percent of the monies he or she received in fees back to the school. The Board approved this request."

Gift Cards: The Board was also advised that Groupon-type coupons would be considered Gift Cards as per Oregon law, effective January 1, 2008. The value on a gift card cannot be reduced because you have not used the card or a certain period of time; you may not be charged a fee to use the card, such as an inactivity fee, a maintenance fee or a service fee; and gift cards may only have an expiration date if the card is marked with the expiration date (in at least 10-point type), the card does not expire for at least 30 days after it was purchased, and the card was sold for less than the face value of the card. Gift cards do not include prepaid calling cards, prepaid commercial mobile radio services or cards that are usable with more than one seller of goods or services (for example, a gift card that can be used at any store in a mall).

Informed consent. Should written informed consents be required? At their March meeting a Model Uniform Written Informed Consent was discussed. The Board was told there was discussion on the DCs list serve in this regard. The current administrative rule requires patient informed consent but does not require it be in writing, although that is highly recommended.

Boundaries: Should there be specific waiting periods before a personal relationship with a former patient? The current rule doesn't specify a time period that must exist between termination of a patient-doctor relationship and the beginning of a personal relationship. The current rule provides criteria that must be applied to make that determination. OAR 811-035-0015-(d) currently reads, "In determining whether a patient is a current patient, the Board may consider the length of time of the doctor-patient contact, evidence of termination of the doctor-patient relationship, the nature of the doctor-patient relationship, and any other relevant information."

A complicating factor is determining the patient-doctor relationship termination date. There have been assertions that the last date of treatment constituted the end of the patient-doctor relationship even though it may not be evident in a patient's records. Also, once a complaint or proposed disciplinary action is underway, written memos or statements by the doctor or patient purporting to document the termination have had a way of mysteriously appearing months or even years after the fact - even though the OBCE had requested, and was supposed to have, the complete patient file in its possession.

The waiting period issue was discussed at length by the former Nominal Panel, Rules Advisory Committee and OBCE over a decade ago. After

CONTINUED ON PAGE 10

Boundaries...

CONTINUED FROM PAGE 9

those discussions and through the rule making process, the OBCE decided against specific time periods at that time.

Different professions have adopted different waiting or cooling off periods. Some believe once a patient, always a patient; others have specific time periods like one or two years.

The OBCE wants to discuss this further because some believe that doctors need clearer guidance as to how long to wait before determining if a personal relationship with a former patient might be appropriate.

LMT/Any Trained Person issues; re: billing, CMS Form 1500, supervision, independent contractors vs. employees.

At their July 2010 meeting the OBCE answered a practice question asking whether a chiropractic clinic can bill for LMT massage services provided outside the clinic by an independent contractor. The Board thought that sounded like billing for services not actually rendered by the licensee. The Board's response was that an LMT needs to be "in the office" in order for the chiropractor to bill for their (massage) services.

This raised a host of other questions and has led to some soul searching on a variety of issues. The Policy/Rule questions posed to the Rules Advisory Committee (and the profession) are summarized as:

- Do the OBCE policies or rules regarding requiring direct supervision of clinic staff need clarification?
- OR do we need a policy or rule addressing levels of staff supervision? For example, immediate personal supervision (CMS Form 1500), "direct supervision" – see existing rule definition, or global or indirect supervision.
- Regarding chiropractic billing for LMT services, do we need a policy statement to clarify what practices are acceptable and which are not?
- Regarding chiropractic clinics' use of independent contractors (vs. employees) for billable services, what policy statements should the OBCE make?

- Do the OBCE's policies for "Other Trained Persons" need clarification? What portions, if any, of the OBCE's Any Trained Person policy should be incorporated into administrative rule?

The resulting discussion may indicate a need to clarify the role of independent contractor relationships with chiropractic clinics and a need for a more clear understanding of the CMS Form 1500 attestation that every clinic signs when submitting billings to insurance payers. For an expanded discussion, go to our web page at www.oregon.gov/obce and look for the Rules Advisory Committee meeting information under "What's Happening".

Graduates of foreign chiropractic colleges.

Currently, the OBCE is unable to license foreign chiropractic college graduates due to difficulties in determining whether those colleges meet the requirements of the U.S. Council on Chiropractic Education accreditation standards. Recently, the four main CCEs around the world have cooperated to become part of the Council on Chiropractic Education International and have established a set of standards that all these CCEs meet. The OBCE will consider a rule proposal that allows those chiropractic colleges to be considered for approval.

The four CCEs are: Council on Chiropractic Education Australasia (CCEA), Canadian Federation of Chiropractic Regulatory and Educational Accrediting Boards (CFCREAB), European Council on Chiropractic Education (ECCE) and the Council on Chiropractic Education United States of America (CCE).



Board President Ann Goldeen (2nd from left) presented the OBCE Plaque of Appreciation to Public member Cookie Parker-Kent, Dr. Joyce McClure and Dr. Michael Vissers for their service on the OBCE.

DC and CA Licensing, and Continuing Education

By Kelly Beringer



*Hello Doctors
and Chiropractic
Assistants,*

Well it has been a crazy year at the Board office. Lots of changes occurred, including the CA Initial Training requirements. The rule change - an increase from six to twelve initial training hours - went into effect on January 1, 2011. The training must include 8 hours didactic instruction, and four hours practical instruction. In addition to the increase in hours, the Board determined a certain set of topics be taught in the didactic training.

Since the rule changed many licensees have had plenty of questions, including these most frequently asked:

Question: Has the requirement for continuing education hours changed to 12 also?

Answer: No, the CE requirement remains at six hours annually.

Question: If I took six hours training in September 2010, and I'm only ready now (post January) to submit my application, can I use the six hours training instead of acquiring 12 hours?

Answer: No. Applicants must submit the full 12 hours training, plus, the new rule requires the application, exam and proof of training to be submitted within 60 days of the full 12 hours training. Today, any training prior to January 1, 2011 is invalid (or has to be amended to meet the new guidelines).

Question: Can I take the 8 hours didactic instruction from one of the Board's approved trainers, and complete the 4 hours practical training from my supervising (employing) DC?

Answer: Yes, an applicant may complete their education in this manner. In addition, the supervising DC may also perform the didactic

portion, but must be sure to "present" the training as outlined.

After changing the rule, Board staff also verified with all its current approved trainers whether they would be willing and able to provide the training under the new guidelines. We have updated our list of trainers, and all listed have agreed to train as indicated on the list (for example, some are providing only the didactic instruction).

To note: As the training logs have been coming in from DCs training their own CA applicants, I've noticed that some doctors are recording the applicant's time to take the open-book examination as part of the 8 hours didactic instruction; this does not qualify as part of the initial training (as outlined by the Board). Be sure to follow the guidelines.

Lastly, I want to let you know that as of today we have 1246 licensed chiropractic assistants, and that's AFTER we dropped 282 during last year's license renewal! Crazy!

On other matters (i.e. **continuing education**) it seems that I have been getting more inquiries from licensees (both CAs and DCs) who are taking advantage of the broad Oregon continuing education rule. The doctors and CAs are broadening their search for education – both in topic and venue – as the rule was intended. Review the guidelines of the rule on the OBCE's website at http://www.oregon.gov/OBCE/ContEduc.shtml#Administrative_Rules_for_CE (*underscores in the spaces*).

While you're visiting the website, also check into the Board's "Denied CE Activities or Courses" list. The Board updates the list regularly.

The last note on Continuing Education – the OBCE will be performing a random audit some time this Fall. Be sure to notice that licensees have 30 days to respond. If you receive mail from the OBCE, please open it as soon as possible.

Have a great summer, and we hope all your businesses are thriving. ■

OBCE Public Protection Update

(January 1, 2011 to June 30, 2011)

Recent Final Actions

Gustav Schefstrom DC. Stipulated Final Order. Licensee has agreed to take 40 hours remedial education in x-ray technique and report writing and may not take or interpret x-rays until this is completed. X-ray reports in this case did not include the required conclusions or interpretations, the quality of the cervical x-rays exposed was not within the standard of care, there was insufficient collimation in all views and there was no shielding in the views exposed by Licensee. The charts do not show that informed consent from the patient. Review of this patient's history indicates informed consent was particularly important due to his somewhat complicated prior history. The finding of "Chronic cervical instability below C1" is not supported by the findings, and chart notes on the actual treatment performed are insufficient and should have indicated that he performed an adjustment to C1, as well as the other areas the patient alleges he treated. In addition, although he had the patient fill out the Disability Index for neck and mid-back, he scored neither. Violations of ORS 684.100(1)(f)(A), OAR 811-030-0030(2)(b) and (m), OAR 811-030-0020, OAR 811-035-0005(1) and (2) and OAR 811-015-0005(1). (6/20/2011)

Brent Warner DC, Stipulated Final Order. This order stays the requirement for the ProBE ethics program and instead orders Licensee to submit to a psychological evaluation with a requirement to follow the evaluator's treatment recommendations. Licensee took and failed the ProBE ethics program. The order incorporates the other sanctions of the Final Order issued 3/24/2010. New violations of ORS 684.100 (1)(p); and OAR 811-035-0015(23). The previous Final Order was for a 120 day suspension (served), three year probation, \$5,000 civil penalty, and \$9532.35 cost recovery; for sexual relations with a patient, failure to keep chart notes and failure to cooperate with a board investigation. Violations of ORS 684.100 (1)(f)(A), OAR 811-035-0015(1)(b)-(e), OAR 811-015-0005(1), 811-035-0015(19) and (20). (6/1/2011)

Jonathan Preiss DC, Stipulated Final Order. Letter of Reprimand, \$504 refund to patient, one year mentoring plan, two years file reviews, must take

and pass the OBCE online Ethics & Jurisprudence examination. The Peer Review Committee found chart notes did not substantiate the need for duration of treatment and treatment provided. Computer generated chart notes did not provide sufficient information. There was no information about the type of neuromuscular re-education, traction or core exercises the patient was doing. The daily SOAP notes were almost identical for extended time periods. Based on these records, another chiropractic physician could not take over care of this patient. In addition, billing procedures were not explained to the patient. Licensee has had similar discipline in 1998 and 2004 for billing issues. The chart notes do not reflect distinct records that accurately reflect the patient encounter to a minimum standard of care. Violations of ORS 684.100(1)(f)(A) and OAR 811-015-0010(4) and OAR 811-015-0005(1) and (1)(a) and OAR 811-015-0000(2) and OAR 811-035-0015(7). (5/31/2011)

Daniel Cook DC. Stipulated Final Order. 60 day suspension (beginning July 1, 2011), three years probation, must be accompanied by a board approved chaperone any time he is in a room with a female patient for the duration of the probation, must attend and complete the Professional/Problem Based Ethics (PROBE) weekend course, and a Letter of Reprimand. Violations (boundary issues) of ORS 684.100(1)(f)(A); OAR 811-035-0015(1)(a)-(e) and OAR 811-010-0005(4). (5/23/2011)

Dorian Quinn DC. Stipulated Final Order. Letter of reprimand, and 4.5 hours CE on chart noting which can be counted towards the relicensure requirement, two years random file reviews and \$2,000 Civil Penalty. Review of chart notes showed that Licensee provided supplements but there was no documentation as to what type of supplements were prescribed. Licensee agrees that the records did not reflect the names of the treating physicians. The Board finds that there is poor differentiation of who did the treatment in the chart notes. The chart notes do not indicate if Licensee is treating Patient 1 as a chiropractor or an acupuncturist, as Licensee has dual licensure. Violations of ORS 684.100(1)(f)(A), OAR 811-015-0005(1)(b) and OAR 811-015-0005(2).

CONTINUED ON PAGE 13

OBCE Update *CONTINUED FROM PAGE 12*

Review of the website on December 9, 2010 found that Licensee does not clearly identify himself and the information on the first several pages would lend someone to believe they may be contacting a medical doctor as the word Doctor is used in the information. This is in violation of ORS 676.110(2), 684.100(1)(i), OAR 811-015-0045(3). These continued advertisements also violate the Agreement of Voluntary Compliance which is a violation of ORS 684.100(1)(f)(A) and OAR 811-035-0015(23). (5/12/2011)

Karen Cendejas CA. Final Order of Default. – Revocation of Chiropractic Assistant license. Alleged violations of OAR 811-010-0110 (15) (i) for soliciting a prescription pain killer from a patient and altering a receipt in the office thereby having monies unaccounted for. (5/2/2011)

D. Scott McEldowney. Final Order by Default. \$750 civil penalty. \$250 is for advertising acupuncture and placing pictures of acupuncture procedures being performed in his advertisements. \$500 is for advertising specific success rates with various ailments a patient may have. Violations of ORS 684.100(1)(i) and OAR 811-015-0045(1) and (1)(b). (4/28/2011)

Timothy Swindler DC. Final Order by Default. \$250 civil penalty for failure to keep a current address on file with the Board and failure to respond to a CE audit request. Alleged violations of ORS 684.100(1)(g) and (p) and OAR 811-035-0015(19). (4/18/2011)

Shane Espinoza DC. Stipulated Final Order. \$5,800 civil penalty, five-year probation, office monitoring and compliance program for two years, file reviews for three years and a letter of reprimand. The OBCE reviewed 60 patients' records and found the records to be incomplete. Patient records were missing a significant number of chart note entries; and several were missing any treatment notes, chart notes did not indicate the author of the chart note and the provider of the service for each entry, many charts were not completed until days, weeks or months after actual treatment, chart notes were below the standard of care. Licensee hired a CA and for eight months allowed her to apply hot/cold packs to patients without a CA license. Violations of ORS 684.100(1)(f)(A) and (m); OAR 811-015-0005(1), and (1)(a) and OAR 811-010-0110(5). (4/1/2011)

Bryan Scott DC. Second Amended Final Order. This order continues his probation for two more years and continues the requirement for treatment with his psychologist, and one polygraph a year. Licensee has a permanent license restriction against treatment of minors. (3/23/2011)

Kristin Lohman CA. Consent Agreement. Condition on license to inform any chiropractic employers of her convictions and random UAs for two years. Applicant has a history of substance abuse related convictions and served one year in the Washington State Women's Correctional Facility. Applicant has since been attending AA meetings regularly and has been clean and sober for three years. She appeared in person before the OBCE along with her chiropractic employer and office manager. Applicant has since taken responsibility for her earlier misdeeds and she received her certification for medical assisting. (3/21/2011)

Sarah Reynolds CA. Consent Agreement. Condition on license to inform any chiropractic employers of her convictions. In 2005, applicant was convicted of misdemeanor theft, was given a suspended sentence and paid restitution. (3/21/2011)

Scott Gates DC. Final Order by Default. \$250 civil penalty for failure to respond to CE audit request and provide a current address to the Board. Violations of ORS 684.100(1)(g) and (p) and OAR 811-035-0015 (19). (2/17/2011)

Jennifer Fletcher DC. Stipulated Final Order. Three year probation, file reviews, reprimand, 20 hour CE on record keeping, billing & coding, and board interviews. Licensee's records for the listed patients do not meet the required minimal standards of care and another chiropractic physician could not resume treatment of these patients without an adequate description of the care provided by licensee. There is also over treatment, under treatment and billing irregularities. Violations of: ORS 684.100(1)(f)(A) and (B),(m),(q),(s); OAR 811-015-0000(4); OAR 811-015-0005(1), (1)(a)(b), (2); OAR 811-015-0010(1), (2), (3), (4); OAR 811-035-0015(2), (3), (5), (7), (10) and (12). Licensee's failure to cooperate during the investigation and contacting of witnesses is a violation of ORS 684.100(1)(f) and OAR 811-035-0015 (19), (20). (2/3/2011)

CONTINUED ON PAGE 14

OBCE Update *CONTINUED FROM PAGE 13*

Mark Burdell DC. Stipulated Final Order. Suspension (90 days, 60 days stayed), \$5,000 civil penalty, NBCE Ethics and Boundary Examination for untruthful answers to renewal form questions about disciplinary actions against Licensee in Arizona. Violations of ORS 684.100(1)(a),(s) and OAR 811-035-0015(16). (2/1/2011)

Michael B. Currie DC. Surrender of License. Respondent agrees not to reapply for a chiropractic license for at least two years. Prior to an application being considered, respondent must demonstrate completion of treatment for alcohol and substance abuse including 24 random UAs in year one, obtain a psychosexual evaluation and follow the evaluator's recommendations, and take and complete the PROBE course. The Stipulated Final Order details respondent's history of arrests and convictions, and includes findings of unprofessional conduct towards and inappropriate sexual contact with patients, or acting in a way that could reasonably be interpreted as sexual towards a patient, and habitual use of controlled substances which incapacitates Licensee from performance of professional duties. Since October 2009 he has been arrested over six separate occasions. Licensee continued to practice chiropractic while he was on emergency suspension. In addition, he caused injury to a patient during treatment due to acting outside the standard of care. Violations of ORS 684.020, 684.100(1)(f)(A) and OAR 811-035-0015(1)(a)-(c), (9), (13), (14), (20) and (23). An emergency license suspension was issued on 12/11/2009. (1/27/2011)

Patricia Carlin, CA applicant. Consent Agreement for conditions to inform any chiropractic employer of her 2003 conviction for unauthorized use of a vehicle and identity theft. Applicant is now an LMT and has "turned her life around." (1/27/2011)

Del Schaeffer DC. Final Order. License suspension for failure to pay State of Oregon taxes. The OBCE is required by law to impose a license suspension following contested case hearing when requested by the Oregon Department of Revenue. Violation of 305.385(4)(c). (1/26/2011)

Current Proposed Actions

Case # 2011-1002. Proposed \$2,500 civil penalty, NBCE Ethics and Boundaries examination and 12 additional hours of continuing education in clinical

record keeping. Licensee provided chiropractic care previous to becoming licensed. The patient chart notes reviewed did not meet minimum standards and the clinical justification for treatments is at issue. Alleged violations of ORS 684.100 (1)(f), ORS 684.020 (1), OAR 811-010-0005(3) and (4), OAR 811-035-0015(14), OAR 811-015-0005(1)(a) and (b);OAR 811-015-0010 and OAR 811-035-0005(2) (5/27/2011)

Case # 2011-5008. Proposed \$7,500 civil penalty, NBCE Ethics and Boundaries examination and 12 additional hours of continuing education in clinical record keeping. Licensee allowed her son, a recent chiropractic college graduate, to practice chiropractic in her clinic previous to becoming licensed. The patient records that were kept by Licensee during the treatment of a patient do not meet minimal standards. There are no consent forms in the file for the original treatment provided. On the initial visit, only the history is reported. There are no notes of examinations performed, no objective findings, no assessment of the patient, no diagnosis, and no treatment plan. After the initial visit, the treatment dates are not properly identified with the name or signature of the treating provider and also do not have a SOAP note in the charts. It is also apparent that this patient was not re-examined at appropriate intervals. The chart notes have more than one persons handwriting on them and where treatment is noted, are not initialed as to who the treatment was provided by and the chart notes do not clearly identify the patient on the notes themselves. Alleged violations of ORS 684.100 (1)(f), ORS 684.020 (1), OAR 811-010-0005(3) and (4), OAR 811-035-0015(14), OAR 811-015-0005(1)(a) and (b);OAR 811-015-0010 and OAR 811-035-0005(2) (5/27/2011)

Case # 2011-5006. Proposed \$750 civil penalty for failure to identify his profession in a newspaper advertisement. Alleged violation of ORS 676.110(2), and OAR 811-015-0045(2) (5/19/2011)

Case # 2010-2003, 2004. Proposed Letter of Reprimand, 12 additional CE hours in clinical record keeping, and a mentoring plan for one year that includes file reviews. The Peer Review Committee found the chart notes were often inaccurate with repeated instances in the chart notes where information from a single encounter is repeated in several subsequent encounters; a lack of clinical justification, and past history and examinations not meeting

CONTINUED ON PAGE 15

OBCE Update *CONTINUED FROM PAGE 14*

minimal competency. Alleged violations of ORS 684.100(1)(f)(A), OAR 811-015-0005(1), and OAR 811-015-0010(1), (2) and (3) and (4/1/2011)

Todd Hansen DC, Case # 2010-1019. Proposed license revocation. Alleged violations of ORS 684.100(1)(f) and (p); OAR 811-035-0015(3), (10) and (23) and 811-010-0110(5) and (6) for failure to follow terms of a previous board order and allowing unsupervised therapies by chiropractic assistants. Alleged violations of ORS 684.100(1)(f)(A) and (C), (q), OAR 811-035-0015(6) for treatments variously described by up to fifteen patients as being “rough,” “aggressive,” and “hurtful.” Alleged violations of ORS 684.100(1)(f)(A) and OAR 811-035-0015(1)(a) through (e) for having a sexual relationship with a patient; and other boundary violations with other patients. Alleged violations of ORS 684.100(1)(f)(A), and OAR 811-035-0015(9) and (13) for use of illicitly prescribed substances. Alleged violations of ORS 684.100(1)(f)(A) and OAR 811-015-0005(1) and (3) for failure to keep chart notes on staff who were provided chiropractic care. *A hearing has been requested.* (4/22/2011)

Case # 2010-2000. Proposed Letter of Reprimand, two year probation with file reviews, board appearances, 18 hours CE in record keeping and clinical justification within the next six months, and a \$5,000 civil penalty regarding excessive treatment and chart notes that do not meet minimal standards. Review of the 7 patients’ chart notes show that they are contradictory and do not provide a reliable record of patient encounters and contain minimal information. There are exams that do not contain enough information to be credibly billed as “detailed.” Alleged violations of ORS 684.100(1)(f)(A) and OAR 811-015-0005(1)(a) and (b). The objective and treatment plan portions of the chart notes change very little if at all. The subjective changes do not typically correspond to the objective findings or treatment plan. Alleged violations of ORS 684.100(1)(f)(A) and OAR 811-015-0010(1)–(5). *A hearing has been requested.* (2/16/2011)

The examination findings are not credible. All patients consistently have positive orthopedic findings bilaterally for all reported tests. This includes consistent reports of positive findings for tests that produced negative results such as Bakody’s and

Braggard’s sign. All of the initial examination findings have patients reporting 10/10 pain levels on a VAS for most presenting symptoms. When questioned by the committee regarding these Licensee stated they were correct. There is no discussion or other information in the patient record to reconcile the improved subjective reports with the unchanged objective findings. Alleged violations of ORS 684.100(1)(f)(A) and OAR 811-015-0010(1)–(5). *A hearing has been requested.* (2/16/2011)

Case # 2010-2002. Proposed letter of reprimand, \$5,000 civil penalty, three year probation with random file reviews. Alleged violations of ORS 684.100(1)(f)(A) and OAR 811-015-0005(1)(a) and (b) (chart notes), ORS 684.100(1)(f)(A) and OAR 811-015-0010(1) and (2) (excessive use of modalities without clinical justification). *A hearing has been requested.* (1/31/2011)

Case # 2010-1008, 1009, 1013, 1025. Proposed Letter of Reprimand. Alleged violations of ORS 684.100(1)(f)(A), OAR 811-015-0005(1)(a)(b); OAR 811-015-0010(3); and OAR 811-035-0005(2) and OAR 811-015-0010(1)–(5). The Notice states, “The conclusions and diagnoses of Patients 1-4 by Licensee (IME reports) are unsubstantiated by the exam findings, history, subjective or objective findings. These diagnoses are not complete based on the mechanism of the injury and presenting complaints. Licensee ignores and minimizes his actual examination findings in order to promote conclusions which minimize the current condition of the Patients 1-4, and in most cases, recommends curtailment of active treatment based on these conclusions.” *A hearing has been requested.* (12/2/2010)

Case # 2009-3010. Proposed Letter of Reprimand and six CE hours relating to x-ray equipment, use and procedures, and patient file reviews for one year. Alleged violations for insufficient or lack of collimation for X-ray views (ORS 684.100(1)(g)(A), OAR 811-030-0020 and OAR 811-030-0030, lack of breast shielding on 12 year old female patient (violates ORS 684.100(1)(g)(A) and (B) and OAR 811-030-0030), and lack of understanding of the clinical justification for radiographic examinations (684.100(1)(g)(A) and (B), OAR 811-035-0005(1), OAR 811-035-0015), and allowing chiropractic assistants or other office staff to take initial patient histories (ORS 684.100(1)(g)(B) and OAR 811-010-0110(7)). (12/7/2009) *A hearing has been held.* (12/7/2009) ■

NEW LICENSED DCs

June 9, 2010 to June 15, 2011

Teah L. Adams
Jelani H. Allen
Dennis O. Beasley II
Stephen R. Besser
Erin D. Bloom
Paul Botner
James S. Bowman
Adam C. Bramble
Joshua A. Bray
Jared G. Brinkerhoff
Duy N. Bui
Megan A. Choy
Michael T. Daglen
Justin M. Davis
Aaron S. Davison
Geno L. DePaoli
Philip A. DeVasto
Bradley D. Donahoe
Michael A. Duncan
Karen C. Elliott
Jamie M. Ellis
Kenneth G. Ericksen
Darren J. Faherty
Casey L. Ferguson
Joshua D. Fine

Sean P. Gregg
Chantel L. Henry
Mistina E. Hufford
Alisha L. Jacobs
Christina M. Jaderholm
Emilee N. Jansen
William P. Kabele
Dawn S. Kahrs
Craig K. Kawaoka
Ali Khoshbin
Kendra G. Killian-Davis
Brock J. Kunz
Catherine Y. Kuwata
Deborah L. Leach-Green
Kristina C. Lehman
Samuel C. Lim
Dianna L. Loudenbeck
Shawn C. Lutz
Anthony J. Marasco
Chelsea A. Markus
Benjamin J. Matheson
Lori A. Maupin
Nicholas R. McBride
Phillip J. McCary
Charles P. McGrath

Jennifer L. McHattie
Breanne A. McSorley
Elisha P. Monger
Amanda D. Morgan
Grant P. Morlock
Eric A. Neumann
Julianne K. Newman
Michael H. Nguyen
Julio R. Olivares
Joshua D. Ort
David S. Perham
Joseph F. Perin
Joseph E. Pfeifer
Wendy Pollock
Elizabeth X. Quint
David M. Ray
Brett A. Renquist
Tony A. Rhodes
Jonathan C. Rhue
Shannon R. Robertson
Alexander Roddvik
JD Tucker Rohm
Kevin M. Ross
Kalina R. Scherer
Andrew J. Scherer

Elena S. Schmidt
Jeffrey R. Seale
Kyli S. Seier
Shelley A. Sheridan
Jian Shi
Cressie L. Simoneau
Rabie Sleiman
Chad E. Smith
Jaron R. Soren
Trevor M. Stauber
Karlie G. Steiner-Bailey
JoAnne Stid
Daniel E. Suppnick
Pardis Tajjipour
Tai Hong Trieu
Trace B. Villines
Thomas J. Walton
Kara E. Werner
John-Paul D. Whitmire
Kristen A. Wilbur
Jeffrey M. Williams
John M. Winckler
Kristi L. Zimmerman

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