**Thomas D. Freedland, D.C.**

9735 S.W. Shady Lane
Suite 303
Tigard, Oregon 97223
(503) 684-1273

**Testimony of Thomas Freedland, D.C. before the House Healthcare Committee on February 22, 2012**

Chairman Greenlick, Chairman Thompson, members of the committee, thank you for inviting me to appear today. My name is Thomas Freedland. I am a chiropractor practicing in Tigard, Oregon. In addition to treating patients, I perform Independent Medical Evaluations and Records Reviews.

Nearly a year and a half ago the Oregon Board of Chiropractic Examiners voted to issue me a Letter of Reprimand claiming the conclusions in my reports were not supported by my examination findings.

The Board had received a series of complaints from patients I had examined during IMEs. A husband and wife were upset that I had been asked to review the treating doctor's records. A woman was upset that it took too long to perform a standard exam and she claimed she was hurt by routine procedures. Another patient complained that I yawned when I greeted her and did not look at her when I took her history. A fifth patient simply said I was biased against her.

As one who performs IMEs, such complaints are not uncommon; they are usually dismissed since there is no violation. For some reason these cases were handled differently. There is evidence the complaints were instigated by a disgruntled doctor.

While the Board can choose how to investigate a complaint, these were handled in quite an unusual manner. Rather than review the cases themselves or send them to the Peer Review Committee, they sent the files to an outside chiropractor for review, saying they did so because I was on the Peer Review Committee. The reason why the Board could not hear the case was never explained. Complaints against Board members have gone to the Peer Review Committee and to the Board itself for review; the involved doctor is simply recused.

The Board received this outside report and voted to issue a Letter of Reprimand for allegations quite different than anything described in the original complaints. The Board has a policy to allow doctors to speak to the charges before discipline is considered. I was never given this opportunity.

In another recent case involving a doctor who had completed a records review, the Board voted to discipline him without an interview. Later they rescinded the vote, saying they violated their own policy. This suggests the Board acted deliberately in denying me an opportunity to discuss my case.

Three weeks after voting to discipline me, the Board posted a statement on their website and on the website of the Federation of Chiropractic Licensing Boards that the most pressing problem in Oregon was the current system of IME reviews was biased against patients. It went on to say that the Board had a current case against a chiropractor who they believed had not supported his

conclusions based on his examination. Mine was the only case pending. In reviewing the minutes of prior Board meetings there is no mention of such a concern. Just last week, in reference to today's hearing, the Board president sent an e-mail to the chiropractors in Oregon saying that complaints about IMEs amounted to 3% of all their cases reviewed. That appears to be a contradiction of their earlier statement; however, the statement on the FCLB website is still present today, while other information on the page from the Oregon Board has been updated regularly.

My Letter of Reprimand was received ten weeks after the vote, weeks after the minutes from that meeting were publicly posted to the Board's website. The letter alleged my exams were inadequate because I did not mention muscle tone, and said this was a required component of the Clinical Justification Rule. The rule does not make such a requirement. My reports were quite explicit and demonstrated a full evaluation of the patients' injuries. To say they did not exceed, let alone meet the criteria of the administrative rule would be a break from reality.

The letter said that I had not commented on imaging studies for one patient, yet my report had a section devoted to the topic. They said I should have followed up on the treating chiropractor's diagnosis of a space occupying lesion and a compression fracture. That is absurd. There was no evidence of either on my evaluation. The treating chiropractor's records did not support these conditions.

The diagnosis of a space occupying lesion (a tumor) was made by the same chiropractor on three different patients who had filed complaints. These diagnoses were why I questioned the credibility of the chiropractor's records, yet I was supposed to further investigate these conditions. Simply put, the treating chiropractor's records were not to be believed.

The Board must have reviewed these records, yet they relied on them to find fault with my reports and took no action against the treating doctor. Later, they would say they would question the other chiropractor's records only if they received a complaint.

My exam on another patient who complained to the Board showed neck motion was limited. The Board said I needed to explain why she was limited. In my report I described how immediately after I measured her neck movement, the patient displayed full range of motion. The implication being that the measurement was not valid. This along with several other tests led me to conclude the patient had magnified her symptoms. Her history suggested an injury some weeks after the accident in question. The Board did not even consider this possibility.

Still another patient said she remembered her motion was limited during my exam. It was not. The Board contended I should have included her perception of limited motion in my report, a claim made weeks after the examination, and then only to the Board in her complaint. That is ludicrous.

The Board said I violated the informed consent rule, yet every report submitted referenced a signed informed consent I had obtained from the patient. I was also faulted for not releasing records, but there had never been a request for any of the records. There was no substance to the allegations in the letter. The only thing I could agree with was that I had seen the patients.

The OBCE suggested mediation, and then changed their mind and invited me to appear at their March 2011 meeting, 6 months after their original vote. Despite my repeated requests for them to explain their allegations, they insisted on asking other questions such as: *What journals did I read?* Or, *Is there a conflict of interest in treating patients and performing IMEs?* The Board was stymied by the term "objective findings." My use of the term was consistent with the definition used in Workers' Compensation cases per ORS 656.005(19).

With no resolution, the matter was to be advanced for a hearing before an Administrative Law Judge, which could not be scheduled until late August 2011. On the eve of discovery, the Board proposed an Agreement of Voluntary Compliance (AVC) for no apparent reason. It can be speculated that they realized they did not have a case. I reluctantly agreed since it was a non-disciplinary – but public - resolution, and it would stop the emotional and financial drain. However, the AVC is interpreted by some of my former and potential clients as discipline since it is labeled as a "Board Action."

This entire event could have been avoided if the Board had acted appropriately. From the start they treated me differently. They violated their own rules by voting for a disciplinary action without providing an opportunity for explanation. They publicly posted a proposed Letter of Reprimand that they knew, or should have known was untrue. And they pursued this case despite a lack of evidence. This suggests they allowed their emotions (or bias) to cloud their objectivity. The members of the Board have misused their positions of responsibility. It is my hope that your review of this matter will help correct deficiencies in the disciplinary process to prevent this type of abuse from occurring in the future.

Dr. Burke has suggested one solution to the concern of bias would be the inclusion on the Board and its Peer Review Committee chiropractors who perform forensic services. I would agree. To that end and in light of the evidence presented, it would not be unreasonable for the Board to expunge my record and reappointment to the Peer Review Committee.

I appreciate the time you have devoted to this topic, and I thank you for inviting my comments.

Thomas D. Freedland, D.C.

# Thomas D. Freedland, D.C.

**9735 SW Shady Lane, Suite 303**
**Tigard, Oregon 97223**
**(503) 684-1273**


## Chiropractic Physician

Private practice located in Tigard, Oregon (Purchased in 1993), emphasis on family care and sports injuries. Established a broad base practice, including personal injury, private insurance, Medicare, cash, and Workers' Compensation cases with participation in Caremark Comp through Managed Healthcare Northwest and Providence MCO through Complementary Health Plans. Preferred Provider for Kaiser, Blue Cross, Providence, and others. Continued medical/health care support for various athletic projects, including the Hood to Coast Relay, Multi-sports Series, and other projects through AA Sports.

Instructor and consulting doctor, University of Western States - Chiropractic College, teaching in areas of clinical documentation and assisting with Community Based Internship program that allows student interns to work and observe in a field office. Previously taught narrative report writing.

Certified Independent Chiropractic Examiner - American board of Independent Medical Examiners (ABIME) October 2001 to present

Certified Chiropractic Sports Physician, a post-graduate program concentrating on the injuries that occur with physical activity and the approach to treatment and rehabilitation.

Experience with claim reviews and Independent Medical Examinations (IME) since 1996, working with several Portland areas companies performing reviews and exams in Oregon, California, and Washington.

Former Assistant Professor/Director of Laboratories at Cleveland Chiropractic College, Los Angeles, with teaching emphasis in the areas of diagnosis, laboratory studies, report writing, sports injuries, and emergency care. Coordinated campus safety, emergency response, and in-service training.

Served on several committees for Oregon Board of Chiropractic Examiners.

## Licensing

California State Board of Chiropractic Examiners - 19785
Oregon Board of Chiropractic Examiners - 2762
State of Washington license (Chiropractic) - CH00033624
Alaska Board of Chiropractic Examiners - 456
Chiropractic Physicians' Board of Nevada - B01285
Hawaii Department of Commerce - DC 1065

**Professional Affiliations and Licenses**

Washington Association of Independent Medical Examiners (WAIME)
American Board of Independent Medical Examiners (ABIME)
Tigard Area Chamber of Commerce - Member (former Board member)

**Academic Training**

A.A. - General Studies, Long Beach City College - June 1975
B.S. - Zoology, California State University, Long Beach - January 1978
Teaching Credential - California Community Colleges, Limited Service: Health Technologies and Police Sciences - December 1980
D.C. - Doctor of Chiropractic, Cleveland Chiropractic College, Los Angeles - December 1988 Summa Cum Laude
C.C.S.P. - Certified Chiropractic Sports Physician, ACA Council /Sports Injuries - 1991
IDE/QME - Cleveland Chiropractic College - July 1992
CICE - Certified Independent Medical Examiner (ABIME) - October 2001

**Allied Health Care Positions**

Cardiology Technician - Fountain Valley Regional Hospital and Medical Center (June 1988 to December 1989)

Paramedical Insurance Examiner - Medical Examination Data Services, LA, Ca. (August 1986 to June 1989)

Emergency Medical Technician - Bowers Ambulance Service and Dilday's Ambulance Service - LongBeach, Ca. (September 1974 to November 1977)

**Law Enforcement Positions**

(Retired from law enforcement after 34 years of service as both regular and reserve officer - May 18, 2011)

Reserve Police Lieutenant - Tigard Police Department. Reserve Commander overseeing Reserve Officer patrol functions and supervision, assist with in-service training and consultant on emergency medical procedures. (January 1994 to May 2011)

Deputy Sheriff (Reserve Forces/Training Officer) - Los Angeles County Sheriff's Department, Aero Bureau / NORSAT / Avalon Station. (May 1986 to November 1993)

Deputy Sheriff/Supervising Line Deputy - Los Angeles County Sheriff's Department. Experience testifying as a narcotics expert and an expert on gang activity. (April 1984 to May 1986)

Police Officer/Training Officer - Downey Police Department. Experience with testifying as expert on gang activity, narcotics, and accident reconstruction. (August 1979 to April 1984)

Deputy Sheriff - Riverside County Sheriff's Department. (November 1977 to August 1979)

**Thomas D. Freedland, D.C.**

9735 S.W. Shady Lane
Suite 303
Tigard, Oregon 97223
(503) 684-1273

Supplemental Training and Certification Related to Independent Medical Evaluations

Certified Independent Medical Examiner – American Board of Independent Medical Examiners (ABIME) - The organization was established to enhance the quality of independent medical examinations by creating a voluntary process of standard setting, definition of competencies, and performance evaluation. ABIME certification was created to establish and maintain standards of conduct and performance among independent medical examiners. ABIME is recognized by the American College of Occupational and Environmental Medicine, which sponsors state-of-the-art training courses in impairment and disability evaluation.

I am one of only two chiropractors in the State of Oregon who hold ABIME certification. I was first certified in 2001, and my current certification is valid through 2016.

Certified Chiropractic Sports Physician (CCSP) – The CCSP is a post-graduate course of study focusing on soft injuries from sporting activities. Credentialing was under the ACA Sports Council and focuses on diagnosis, treatment, and rehabilitation. Injuries from work and auto incidents are similar in nature; assessment and treatment parameters overlap significantly.

I have over 33 years of law enforcement experience, both full-time and reserve. In that capacity I was certified as an accident investigator and was actively involved in such cases until retiring from law enforcement in May 2011.

I have additional training in accident reconstruction, occupant kinematics, low speed collision injury assessment, injury causation, evidenced based guidelines for use in independent medical examinations, as well as the use and application of the AMA Guides to the Evaluation of Permanent Impairment 4th, 5th, and 6th editions.

I have over 200 hours of training that is directly related to the performance of Independent Medical Examinations. I have testified as an expert witness on over 40 occasions in Oregon, Washington, California, and Nevada.

I regularly provide continuing education on Independent Medical Examinations, claims management, and countering medical fraud to claims representatives, attorneys, medical personnel, and law enforcement officers and other investigative personnel (including the FBI) across the country, and internationally on several occasions.

I served three years on the Oregon Board of Chiropractor Examiners' Peer Review Committee, and approximately five years (duration of program) on the OBCE's Nominal Panel, which developed the Manual for Evidence Based Chiropractic.

I am part of the faculty of University of Western States College of Chiropractic. I oversee interns working at area sporting events and on rotations through my office. I also guest lecture on campus quarterly on report writing and clinical documentation.

Oregon
Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners
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E-mail: oregon.obce@state.or.us
www.obce.state.or.us

3 May 2010

Thomas Freedland DC
Tigard Medical Mall
9735 SW Shady Lane #303
Tigard, OR 97223

RE: OBCE Case No: 2010-1008: Request for Response
Re: Patient:

Dear Dr. Freedland;

The Oregon Board of Chiropractic Examiners has received a complaint regarding your chiropractic care of patient, . You are requested to provide a written response to this complaint and a complete copy of the patient's file. The complaint is summarized below:

*"I was an MVA on June 22, 2009. I was initially treated by my regular DC, Dr. Beebe. I was referred for an IME exam by Dr. Freedland on 26 August 2009. Dr. Freedland's diagnosis was "Possible stress to the neck and upper back as a result of the described impact, which may have been sufficient to result in a mild sprain/strain which would be relatively self-limiting." I resent the implication that there possibly was no injury at all as a result of the accident. Dr. Freedland's exam was brief, superficial, and limited in scope. There were few questions from him regarding my condition after the accident, or about the treatment I received. I believe the treatments I received were very beneficial. Dr. Freedland stated that the treatments were unnecessary. We received a 2nd IME from Dr. Vera Sahoe on 12/22/09, which contradicted Dr. Freedland's findings, and recommended a treatment period of 6-12 weeks."*

You are requested to respond to this complaint within fourteen days of receipt of this notice so the complaint can be reviewed at the next full Board meeting. After careful consideration of the allegations put forward by the complainant the OBCE has determined that the minimum information necessary to thoroughly investigate this matter is a complete copy of the patient's file.

In order to facilitate this review process, you are required to send a complete copy of the patient's file to the OBCE administrative office within fourteen days of receipt of this letter (OAR 811-015-0006(3) (b)), including your chart notes, x-rays, billing records, as well as copies of any and all correspondence contained in the file to be organized as follows:

- the patient file presented in **chronological order**, **sectioned** and **labeled** in

- examinations,
- daily treatment notes,
- x-ray reports,
- insurance billing and/or invoices, and
- correspondence (i.e. from another profession or an insurance company).

Also be sure to include any written explanation you wish to make or believe will assist the Board in their deliberations. You are required to return a signed copy of the **Certification of Patient Records** form attesting to the completeness of the patient file.

It is in your best interest to respond succinctly so the Board has all the pertinent facts with which to make a decision. As soon as the file is complete the complaint will be put on the Executive Agenda for review.

Thank you for your cooperation in this matter. If you have any questions or need further assistance in this or any other matter, please do not hesitate to contact me at the following phone number 503-373-1615.

Sincerely,

Thomas W. Rozinski
Investigator, OBCE

**Thomas D. Freedland, D.C.**

9735 S.W. Shady Lane
Suite 303
Tigard, Oregon 97223
(503) 684-1273

May 5, 2010

Thomas W. Rozinski
Investigator
Oregon Board of Chiropractic Examiners
3218 Pringle Road S.E.
Suite 150
Salem, Oregon 97032-6311

RE: OBCE Case #2010-1008 – Patient:
OBCE Case #2010-1009 – Patient: S

Dear Mr. Rozinski:

I am in receipt of your May 3, 2010 correspondence regarding complaints filed with the Oregon Board of Chiropractic Examiners regarding the Independent Medical Evaluations that I performed on S on August 26, 2009. The examinations were coordinated through STAR Medical, but performed in my office on August 26, 2009.

Both complaints appear to focused on a disagreement with my clinical opinion. It is my belief that the two evaluations and the associated medical records support the conclusions contained in my reports.

I have enclosed copies of both reports along with the medical records that were made available to me at the time of my evaluations. S were both present during the examination to facilitate the history since they were involved in the same incident. My rough (shorthand) history and examination notes are also included for review. In Mr. F Case, Lisa Kouzes, D.C. was present to assist with the recording of the examination findings. She was not available during Ms. F exam

In Ms. s complaint, she takes exception to my comments regarding forms she completed at Dr. Beebe's office that were provided for review. Ms. F 's responses on these forms are questionable (*specious*) because they describe limitations on activities that could not have occurred between the time of the accident and Dr. Beebe's initial evaluation.

Should you have any other questions or concerns, or if there is additional information that is necessary, please feel free to contact my office.

Sincerely,

Thomas D. Freedland, D.C.

# Independent Medical Evaluation Report

| | |
|---|---|
| **Examinee:** | Case # 2010 - 1008 |
| **Date of Injury:** | June 22, 2009 |
| **Claim Number:** | 176237304020 |
| Date of Examination: | August 26, 2009 |
| Examining Physician(s): | Thomas D. Freedland, D.C. |
| Examining Location: | Tigard Medical Mall, 9735 SW Shady Lane, #303, Tigard, OR 97223 |
| Referral Source: | John Van Natta, Claims Adjuster |
| Client Organization: | Safeco Insurance Company |

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## Introduction

Mr. (Case # 2010 – 1008) was referred for an Independent Medical Evaluation (IME) by the above client. The independent medical examination process was explained to the examinee, and he understands that no patient/treating physician relationship was established. Mr. (Case # 2010 – 1008) was advised that the information provided will not be confidential in that a report will be sent to the requesting client.

Available for review are photocopies of photographs of a Jeep Cherokee; one image shows the rear bumper pushed in below the taillight assembly by several inches. The bumper may be slightly rotated down and away from the tailgate. There is a repair estimate on the vehicle, a 1993 Jeep Cherokee 4x4 Sport, reflecting damage of $308.60 for repair and overhaul of the rear bumper. There is a copy of the Application for Benefits, treatment records from Beebe Chiropractic Clinic, Daniel Beebe, D.C., for services starting on June 22, 2009, the day of the accident, continuing through to July 31, 2009, and billing information.

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## History

### Chief Complaint

His complaints consist of a dull ache in the right side of the neck; the pain can be a 2/10. It becomes worse when he is tired or has been driving for greater than an hour. Stress will also increase his pain. He finds it decreases if he soaks in the hot tub.

### History of Present Injury

On June 22, 2009, (Case # 2010 – 1008) was driving a 1993 Jeep Cherokee. He was on the side road from Carlton, Oregon stopped at the intersection of Highway 99W near Newberg, Oregon. He was waiting to turn to travel north on Highway 99W. He was stopped, had his foot on the brake, and he believes his head

was turned to the left; his vehicle is an automatic. He advanced forward, but saw a car approaching and realized it was continuing on 99W. He stopped and in turn his vehicle was struck from behind by an older model van. He had no warning the accident was going to take place. The impact moved his vehicle forward perhaps a foot. There were no other vehicles involved and no secondary impact. He did not notice any immediate pain.

He was able to exit the vehicle and exchange information with the other party. Police did not come to the scene. He reports there was damage to the rear bumper with the bumper being pushed in adjacent to the body. He is not sure if there was an actual dent to the rear tailgate. He reported there had been prior damage and he does not know if the dent was the result of the impact or was preexisting.

He started to notice discomfort within a day or two of the accident, primarily in his neck and upper back, although he sought treatment from Dr. Beebe shortly after the accident on June 22, 2009. He had previously treated with Dr. Beebe with the last visit perhaps six weeks earlier. An evaluation was performed. No x-rays were taken. Treatment started three times a week consisting of chiropractic manipulation/adjustment, electrical stimulation, and massage. He last treated about two weeks ago. He is at the point where he receives massage about once every ten days. He is moving toward resolution. He does a home stretching routine. He and his wife will walk three to four times a week.

**Chart Review**

The Application for Benefits identified the accident as occurring on Highway 99W at the Carlton Exit.

The claimant presented to Dr. Beebe on the day of the accident (June 22, 2009) and listed head and neck complaints. The initial report is typewritten and computer generated which stated, "The patient entered the office with complaints related to a new condition in the head and neck region which is acute based on onset of less than six weeks ago and was ". Below that is a heading that says, "History of Present Injury," and provides "location of head and neck symptoms: neck region;" Quality reads, "The quality of the symptoms is described as tightnesstiffness." Then it has a section labeled, "Spine, Ribs, Pelvic Complaints," and reads, "The patient entered the office reporting complaints related to a new spine, ribs and pelvic region condition which is acute based on onset of less than six weeks ago and was caused by an auto accident. The patient reported the following symptoms as a result of the accident: stiffness." It then described both vehicles were mid-sized cars. The patient was aware of the impending collision. He was wearing a lap and shoulder harness. The vehicle was not moving. The other vehicle was moving between 10 and 15 miles per hour. The report appears to be either pre-formatted or computer generated given the stilted nature of the information. It stated the bumper moved about six inches resulting in mild to moderate damage. The symptoms were listed as a 2/10, but with activity they were a 4/10. It listed a variety of activities that were limited for this accident that occurred the same day. This described bending, carrying groceries, changing position, climbing stairs, driving, extended use of the computer, feeding, household chores, lifting, pet care, self-care, reading, sleep, static sitting, static standing, walking, and golf. It goes on to describe mild to moderate to severe tenderness, tightness, and hypomobility in multiple areas. The

nature of the reporting is verbose to the point of obfuscating information. There were recommendations to order thoracolumbar radiographs, thoracic radiographs, a thoracic MRI, and cervical radiographs with several of these items repeated with no clarification.

The claimant was diagnosed with cervical, thoracic, lumbar, and sacroiliac segmental dysfunction, a pectoralis spasm, a thoracic strain, a lumbar strain, a space-occupying lesion, and cervical strain, as well as late effect of sprain/strain of various musculature with secondary problems of pain. Dr. Beebe then went through and outlined how each of the diagnoses would be treated including the conditions that could not possibly exist, such as late effect of a sprain/strain with an accident that occurred the same day. He also deferred treatment regarding the space-occupying lesion which was not further clarified. There was no discussion of past medical history and even the current medical history is marginal.

The subsequent notes are largely a reprint of the initial evaluation bringing into question the nature of the documentation. It listed the claimant was treated with chiropractic manipulation to three to four areas, massage, electrical stimulation, and ultrasound.

By the last visit the claimant was still reporting pain with bending, carrying groceries, extended computer use, feeding was painful, and golf was limited. The diagnoses remained the same including a space-occupying lesion. Treatment remained unchanged.

The billing information lists an initial examination on June 22, 2009 using CPT code 99212 which would suggest a low-level established patient encounter; yet, there is no discussion of past history or baseline complaints.

Despite the pain complaints according to the claimant being limited to the neck and upper back, ongoing treatment consists of chiropractic manipulation to three to four areas, ultrasound, and electrical stimulation. Later, there is merely ultrasound and manipulation. There is nothing within the bills that reflect the massage that is listed as being performed.

No other clinical information is provided.

**Medical History**

| | |
|---|---|
| Current Medications: | Medications include neotrexate, UroXatral, and another medication for his prostate. |
| Allergies: | He has no allergies to medication. |
| Illnesses: | He was diagnosed with rheumatoid arthritis approximately three years ago. At that time pain was presenting in the right knee, right ankle, and possibly the right wrist. The diagnosis was based on laboratory findings. |

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Prior Injuries: Last year he broke his right elbow. It resolved with immobilization. He dislocated his ankle some 15 years ago and fractured a finger also some 15 years ago. He reports no other injuries.

Operations: He underwent surgical repair of his ankle when it was dislocated. He also had a hernia repair a number of years ago.

**Socioeconomic and Family History**

Employment History: At the time of the accident the claimant was retired from having been a CPA. He is involved in other endeavors, but did not have to change or modify any of his activities as a result of the accident.

Education: Education includes a bachelor's degree.

Military History: He served six years in the National Guard.

Marital Status: He is married and they have two adult children living outside of the home.

Habits: He does not smoke or use tobacco products. Alcohol consumption is limited to wine with dinner.

Physical activities include a home gym routine that he accomplishes in about 30 minutes. He cut back on the activities for a short period of time after the accident, but has since resumed them as well as routine morning stretches and walking with his wife.

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## Physical Examination

On examination, Mr. (Case # 2010 – 1008) states his height as 6 feet and weight of 202 pounds. He is 68 years of age and right handed.

The claimant sits comfortably during the course of the history. He walks with a normal gait. He stands with a right shoulder three-quarters of an inch lower than the left and reports his right leg is shorter than the left and he has a heel lift incorporated into his shoe. There is a slight increase in lumbar lordosis.

Axial compression and traction are unremarkable.

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**Cervical Ranges of Motion:** (measured with dual inclinometers)

| | |
|---|---|
| Flexion | 58 degrees |
| Extension | 44 degrees |
| Right lateral bending | 16 degrees |
| Left lateral bending | 32 degrees |
| Right rotation | 62 degrees (slight right paracervical discomfort) |
| Left rotation | 78 degrees |

(Note: Rotation measured with a goniometer.)

Upper extremity deep tendon reflexes are 2+ at the biceps, triceps, and brachioradialis. Muscle strength is 5/5 in the upper extremities. No sensory deficit is seen.

There is slight tenderness noted bilaterally in the trapezius muscles with an ache or soreness more pronounced on the right than the left. There is slight tenderness along the right upper parathoracic margin extending down to about T3.

There are no complaints in the mid thoracic or lower lumbar region; as such, no further evaluation of these areas was performed.

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## Diagnostic Studies

No studies are provided for review. From the records and history, no studies have been taken in conjunction with this incident. The claimant reports the last x-rays he had taken were some 25 years ago.

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## Conclusions

**Diagnosis**

1. Possible stress to the neck and upper back as a result of the described impact which may have been sufficient to result in a mild sprain/strain which would be relatively self-limiting.

**Discussion**

In response to specific questions posed in the cover letter, I offer the following comments.

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1. History, physical, and medical evaluation of the claimant.

   ***This has been addressed above.***

2. A diagnosis of all conditions found and their relationship to the injury/accident.

   ***The diagnosis is listed above.***

3. A diagnosis of all preexisting conditions and a determination of whether the injury/accident aggravated these conditions. Please delineate the percentage of the claimant's current condition as it relates to the injury/accident to the preexisting conditions.

   ***Prior medical conditions have been outlined above. From the available history, there was no specific aggravation of baseline complaints. While the claimant does have a prior history of rheumatoid arthritis, it does not appear as if there has been any substantial change in this condition from the accident.***

4. Are you aware of any injuries and/or congenital factors which may be contributing in any way to the claimant's current medical condition? If so, please elaborate on how this prior condition will affect the claimant's recovery?

   ***There are no baseline complaints or other identified injuries. The claimant does have a congenital short right leg, but this does not appear to be an appreciable factor in terms of this accident.***

5. Do your objective findings support the claimant's subjective complaints?

   ***From the standpoint the claimant has minimal subjective complaints and no overt objective findings, these two elements are consistent.***

6. Based on the documentation provided and your examination, has the treatment provided to date been reasonable, necessary, and directly related to the accident? If not, please outline why.

   ***On a precautionary basis an initial evaluation by Dr. Beebe may have been appropriate; however, the need for any type of long term or prolonged course of care does not appear to be reasonable or supported. The available clinical documentation does not appear credible, especially in light of the various diagnoses including late effect of sprain/strain injury on a mild trauma that occurred the same day the claimant was evaluated and inclusive of a diagnosis of a space-occupying lesion.***

7. Would further treatment be considered reasonable, necessary, and directly related to this accident? If so, please outline a specific treatment plan for this claimant to include frequency and duration of treatment and prognosis for recovery.

***No additional treatment would appear to be reasonable, appropriate, or related to the accident in question. The claimant is stationary relative to the accident under review.***

Thank you for allowing me the opportunity to participate in the evaluation of this individual. Should you have further questions or need clarification, please do not hesitate to contact STAR Medical.

Sincerely,

Thomas D. Freedland, D.C.
Chiropractor

TDF:gab

Oregon
Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners
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3 May 2010

Thomas Freedland DC
Tigard Medical Mall
9735 SW Shady Lane #303
Tigard, OR 97223

RE: OBCE Case No: 2010-1009; Request for Response
Re: Patient: [redacted]

Dear Dr. Freedland:

The Oregon Board of Chiropractic Examiners has received a complaint regarding your chiropractic care of patient, [redacted]. You are requested to provide a written response to this complaint and a complete copy of the patient's file. The complaint is summarized below:

*"I was an MVA on June 22, 2009. I was initially treated by my regular DC, Dr. Beebe. I was referred for an IME exam by Dr. Freedland on 26 August 2009. Dr. Freedland's exam was brief, and leaned heavily on answers to a questionnaire that I filled out for Dr. Beebe. Dr. Freedland gave special weight to answers about my ability to feed myself, clothe myself, and to whether or not sexual activity was difficult (which he alluded to more than once). There was something disturbing and personal about this choice of words, and his use of the word "specious" in his analysis questioned my integrity, and also Dr. Beebe's. I do not want another woman to have to read a response of this sort in the future, and it is this, along with other concerns, that I take this step of filing a complaint. We received a 2nd IME from Dr. Vern Saboe on 12/22/09, which contradicted Dr. Freedland's findings, and was very detailed.*

You are requested to respond to this complaint within fourteen days of receipt of this notice so the complaint can be reviewed at the next full Board meeting. After careful consideration of the allegations put forward by the complainant the OBCE has determined that the minimum information necessary to thoroughly investigate this matter is a complete copy of the patient's file.

In order to facilitate this review process, you are required to send a complete copy of the patient's file to the OBCE administrative office within fourteen days of receipt of this letter (OAR 811-015-0006(3) (b)), including your chart notes, x-rays, billing records, as well as copies of any and all correspondence contained in the file to be organized as follows:

- the patient file presented in **chronological order**, **sectioned** and **labeled** in

- examinations,
- daily treatment notes,
- x-ray reports,
- insurance billing and/or invoices, and
- correspondence (i.e. from another profession or an insurance company).

Also be sure to include any written explanation you wish to make or believe will assist the Board in their deliberations. You are required to return a signed copy of the **Certification of Patient Records** form attesting to the completeness of the patient file.

It is in your best interest to respond succinctly so the Board has all the pertinent facts with which to make a decision. As soon as the file is complete the complaint will be put on the Executive Agenda for review.

Thank you for your cooperation in this matter. If you have any questions or need further assistance in this or any other matter, please do not hesitate to contact me at the following phone number 503-373-1615.

Sincerely,

Thomas W. Rozinski
Investigator, OBCE

**Thomas D. Freedland, D.C.**

9735 S.W. Shady Lane
Suite 303
Tigard, Oregon 97223
(503) 684-1273

May 5, 2010

Thomas W. Rozinski
Investigator
Oregon Board of Chiropractic Examiners
3218 Pringle Road S.E.
Suite 150
Salem, Oregon 97032-6311

RE: OBCE Case #2010-1008 – Patient: [redacted]
OBCE Case #2010-1009 – Patient: [redacted]

Dear Mr. Rozinski:

I am in receipt of your May 3, 2010 correspondence regarding complaints filed with the Oregon Board of Chiropractic Examiners regarding the Independent Medical Evaluations that I performed on [redacted] on August 26, 2009. The examinations were coordinated through STAR Medical, but performed in my office on August 26, 2009.

Both complaints appear to focused on a disagreement with my clinical opinion. It is my belief that the two evaluations and the associated medical records support the conclusions contained in my reports.

I have enclosed copies of both reports along with the medical records that were made available to me at the time of my evaluations. [redacted] were both present during the examination to facilitate the history since they were involved in the same incident. My rough (shorthand) history and examination notes are also included for review. In Mr. [redacted]'s case, Lisa Kouzes, D.C. was present to assist with the recording of the examination findings. She was not available during Ms. [redacted]'s exam.

In Ms. [redacted] complaint, she takes exception to my comments regarding forms she completed at Dr. Beebe's office that were provided for review. [redacted] responses on these forms are questionable (*specious*) because they describe limitations on activities that could not have occurred between the time of the accident and Dr. Beebe's initial evaluation.

Should you have any other questions or concerns, or if there is additional information that is necessary, please feel free to contact my office.

Sincerely,

Thomas D. Freedland, D.C.

# Independent Medical Evaluation Report

| | |
|---|---|
| **Examinee:** | Case # 2010 - 1009 |
| **Date of Injury:** | June 22, 2009 |
| **Claim Number:** | 176237304020 |
| Date of Examination: | August 26, 2009 |
| Examining Physician(s): | Thomas D. Freedland, D.C. |
| Examining Location: | Tigard Medical Mall, 9735 SW Shady Lane, #303, Tigard, OR 97223 |
| Referral Source: | John Van Natta, Claims Adjuster |
| Client Organization: | Safeco Insurance Company |

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## Introduction

Ms. (Case # 2010 – 1009) was referred for an Independent Medical Evaluation (IME) by the above client. The independent medical examination process was explained to the examinee, and she understands that no patient/treating physician relationship was established. Ms. (Case # 2010 – 1009) was advised that the information provided will not be confidential in that a report will be sent to the requesting client.

Available for review is an Application for Benefits, records for manual therapy by Lisa Ovey, L.M.T., and treatment records between June 22, 2009 and July 31, 2009 by Daniel Beebe, D.C., as well as billing information.

There is a repair estimate for a 1993 Jeep Cherokee 4x4 Sport reflecting $308.60 in damage for overhaul and repair of the rear bumper. There are photographs of the Jeep with one image showing the rear bumper pushed in below the taillight assembly by several inches and slightly rotated down and away from the tailgate.

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## History

### Chief Complaint

Her complaints consist of an achy sensation across the upper portion of the shoulder blades. The pain ranges between a 2 and a 3. She finds the pain will increase if she does lifting, pushing, or overhead work. It is relieved with heat or ice. Two to three weeks ago she had a day where the pain seemed to extend into arms and at that point she had some tightness and achiness in her trapezius muscles.

### History of Present Injury

On June 22, 2009, (Case # 2010 – 1009) was the right front-seat passenger in a 1995 Jeep Cherokee being

driven by her husband. She was wearing her seatbelt and shoulder harness. The vehicle was transitioning from the feeder road from Carlton, Oregon onto Highway 99W near Newberg, Oregon. The Jeep moved forward momentarily, but stopped on the approach of another vehicle and with this secondary stop, the vehicle was struck from behind by an older model van that had been directly behind the Jeep. The impact moved the vehicle forward perhaps a foot. It depressed the right rear bumper an inch or so under the body adjacent to the tailgate. There was no secondary impact inside of the vehicle.

The drivers were able to exit their vehicles and exchange information. Police were not called to the scene. The claimant noted some immediate neck discomfort with some extension into the upper back.

Later that day she was seen by Dr. Beebe. She had previously treated with him perhaps a month earlier. Dr. Beebe performed an examination and initiated treatment at a frequency of three times a week with treatment consisting of chiropractic manipulation and 60 minutes of massage. She has recently been reduced to once a week. She is doing better and trying to reinstitute some of her exercise routine. Previously she was working out at the gym twice a week. She discontinued this, but continues with home stretching with her husband as well as walking three to four times a week.

**Chart Review**

The Application for Benefits provided no description of the accident. It listed the claimant had neck and back pain and treated with Dr. Beebe.

The claimant presented to Dr. Beebe on the day June 22, 2009, the day of the accident. The initial chart note is typewritten and appears to be either preformed or computer generated in that it has near identical verbiage to the other party in the accident including some of the typographical errors such as the initial complaint reads, "The patient entered the office with complaints related to a new condition in the head and neck region which is acute based on onset of less than six weeks ago and was ". The complaints are in the neck region; again, similar formatting. It referenced the motor vehicle accident and a listing of activities of daily living that were interfered with as a result of pain levels ranging between a 4 and a 7. How some of these limitations in activities were determined since the claimant was in an accident on that same day is unclear, but these include reading, sexual activities, sleep, feeding, extended computer use, lifting children, household chores, and lifting in general. Interestingly, some of the items recorded under the daily activities recap are recorded differently in the functional complaint summary. Specifically under daily activities, for sexual activity it reads, "Capacity for this activity is not limited, but performance exacerbates symptoms." This was also the same wording for sleep; yet, in the recap sexual activity was painful as was sleeping. The formatting brings into question the credibility of the file.

There is a litany of diagnoses similar to those for the other party including multiple levels of segmental dysfunction, sprain/strain, pain, and late affect of a sprain/strain on various musculature. There is also a listing of ligamentous laxity and a space-occupying lesion.

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The notes then repeat themselves on subsequent dates of service with no further clarification.

The claimant apparently received manual therapy from Lisa Ovey, L.M.T. The notes are handwritten and provide no additional clinical information.

In reviewing the billing information, the initial examination is submitted using CPT code 99212 suggesting the claimant is an established patient of the office; yet, there is no discussion of past history or baseline complaints.

Ongoing treatment involves chiropractic manipulation to three to four areas and ultrasound.

There are also a series of charges for manual therapy from Lisa Ovey, L.M.T., for four units (60 minutes) of manual therapy on many of the same dates the claimant received chiropractic treatment.

No other clinical information is provided for review.

**Medical History**

| | |
|---|---|
| Current Medications: | Her medications are limited thyroid. |
| Allergies: | She reports an allergy to sulfa and penicillin. |
| Illnesses: | She has a thyroid problem and takes supplemental thyroid. Beyond that she has no serious medical problems. |
| Operations: | There is no history of any surgeries. |
| Hospitalizations: | There is no history of any hospitalizations. |
| Prior Injuries: | She was involved in a motor vehicle accident some six to seven years ago and had neck problems. She also fractured her leg in her youth. She reports no other injuries. |

**Socioeconomic and Family History**

| | |
|---|---|
| Employment History: | She is self-employed as an artist specializing in oils. She did not miss any time as a result of the accident. |
| Education: | Education includes a bachelor's of fine arts degree. |
| Military History: | She has not served in the military. |

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Marital Status: She is married with two adult children.

Habits: She does not smoke or use tobacco products. Alcohol consumption is limited to wine with dinner.

She does not partake in any other physical activities beyond that described above. At this point she mentions she had been diagnosed by Dr. Beebe with a low back disc problem and as such, she has limited some of her activities that may stress her low back. She reports there have been no imaging studies of the back, but the diagnosis of a disc problem was based on her symptoms. (No past records are provided for review.)

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## Physical Examination

On examination, Ms. (Case # 2010 – 1009) states her height as 5 feet 6 inches and weight of 175 pounds. She is right handed. She is 68 years of age.

She sits comfortably during the course of the history. She stands smoothly with no hesitation. She walks with a normal gait. She can stand on her toes and heels. She can perform a squat, but reports knee pain. Her shoulders and hips are level.

Axial compression at the shoulders or head causes no increase in pain nor does traction. En bloc rotation is unremarkable.

**Lumbar Ranges of Motion:** (measured with dual inclinometers)

| | |
|---|---|
| Flexion | 54 degrees (with low back tightness) |
| Extension | 18 degrees |
| Right lateral bending | 18 degrees |
| Left lateral bending | 14 degrees |

Lateral flexion causes tightness.

Lower extremity deep tendon reflexes are 2+ at the patellar and Achilles tendons on either the right or left side. Lower extremity muscle strength is 5/5. There is no sensory deficit seen.

Seated straight leg raise is negative to 80 degrees on either the right or left side or both legs together. Supine straight leg raise is negative to 80 degrees on the right. Hip flexion is 140 degrees on the right. Cross-leg testing is full, but she has some inguinal discomfort at the end limits of external rotation. Supine

straight leg raising on the left is negative to 80 degrees. Hip flexion on the left is 140 degrees. Cross-leg testing is full. Marxer's test is negative.

She does report tenderness with pressure over either greater trochanter, but no tenderness over the ischial tuberosities. There is slight discomfort or pressure sensation noted with palpation over the SI joints; no paralumbar tenderness. There is slight tenderness noted across both trapezius muscles and down to about T4 with slight extension restrictions at the same level.

**Cervical Ranges of Motion:** (measured with dual inclinometers)

| | |
|---|---|
| Flexion | 52 degrees |
| Extension | 38 degrees |
| Right lateral bending | 26 degrees |
| Left lateral bending | 29 degrees |
| Right rotation | 72 degrees |
| Left rotation | 74 degrees |

There are no complaints of pain with all ranges of motion.

(Note: Rotation measured with a goniometer.)

Upper extremity deep tendon reflexes are 2+ at the biceps, triceps, and brachioradialis. Muscle strength is 5/5 in the upper extremities. No sensory deficit is seen.

There is no tenderness over the acromioclavicular or sternoclavicular joints. There is slight tenderness and guarding bilaterally over the trapezius ridge, right greater than left. There is no tenderness on palpation of the paracervical muscles.

## Diagnostic Studies

No studies are provided for review and none have been taken in conjunction with this incident.

## Conclusions

**Diagnosis**

1. Possible cervicothoracic stress as a result of the accident resulting in mild cervicothoracic strain.

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**Discussion**

In response to specific questions posed in the cover letter, I offer the following comments.

1. History, physical, and medical evaluation of the claimant.

   ***This has been addressed above.***

2. A diagnosis of all conditions found and their relationship to the injury/accident.

   ***The diagnosis is listed above.***

3. A diagnosis of all preexisting conditions and a determination of whether the injury/accident aggravated these conditions. Please delineate the percentage of the claimant's current condition as it relates to the injury/accident to the preexisting conditions.

   ***By history, the claimant had a prior low back condition, although it does not appear this was aggravated or complicated by the accident in question. Apportionment is not a factor.***

4. Are you aware of any injuries and/or congenital factors which may be contributing in any way to the claimant's current medical condition? If so, please elaborate on how this prior condition will affect the claimant's recovery?

   ***There are no apparent congenital factors or other injuries complicating the claimant's recovery.***

5. Do your objective findings support the claimant's subjective complaints?

   ***Within today's evaluation, there are minimal subjective complaints and no objective findings.***

6. Based on the documentation provided and your examination, has the treatment provided to date been reasonable, necessary, and directly related to the accident? If not, please outline why.

   ***The available clinical documentation is specious and does not substantiate a reasonableness or necessity for treatment. A short course of care may have been appropriate, but care beyond perhaps six visits does not appear to be supported as reasonable or necessary.***

7. Would further treatment be considered reasonable, necessary, and directly related to this accident?

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If so, please outline a specific treatment plan for this claimant to include frequency and duration of treatment and prognosis for recovery.

***Additional treatment is not reasonable or necessary as a result of the accident in question.***

Thank you for allowing me the opportunity to participate in the evaluation of this individual. Should you have further questions or need clarification, please do not hesitate to contact STAR Medical.

Sincerely,

Thomas D. Freedland, D.C.
Chiropractor

TDF:gab

Oregon
Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners
3218 Pringle Road SE, Suite 150
Salem, OR 97302-6311
(503) 378-5816
FAX (503) 362-1260
E-mail: oregon.obce@state.or.us
www.obce.state.or.us

21 June 2010

Thomas Freedland DC
Tigard Medical Mall
9735 SW Shady Lane #303
Tigard, OR 97223

RE: OBCE Case No: 2010-1013: Request for Response
Re: Patient:

Dear Dr. Freedland:

The Oregon Board of Chiropractic Examiners has received a complaint regarding your chiropractic care of patient, ter. You are requested to provide a written response to this complaint and a complete copy of the patient's file. The complaint is summarized below:

*"I am writing you to investigate my concerns regarding an IME examination I had on February 17, 2010, by Dr. Thomas D. Freedland. I spent two hours in his office. Approximately the first 45 minutes was a discussion of my 67 year history. The next part was the evaluation which lasted 45 minutes to an hour approximately.*
*When Dr. Freedland proceeded to the examination portion, he said he did not know how much he would hurt me. I thought this would relate to the exam itself; it never occurred to me that I would have such a reaction to the testing that I experienced that evening and the next morning and for three weeks following. The areas that I reported were bothering me at 1 :00 PM on February 17 became more and more tense after I left the office.*
*The next morning (February 18) the pain was severe, and my nerves were affected. I hurt and could hardly walk. My muscles in my neck at the base, which had been a problem since the accident, felt like they were bunched up and tied in a knot. My right arm felt like it had been pulled out of the socket and hurt acutely if extended or raised. I had intermittent headaches. The left arm was particularly hurtful on raising it. It took so much energy, effort, and pain to get to my DC appointment on February 18 that I was crying by the time I got there. In short it took about three weeks to recover from the effects of Dr. Freedland"s . examination. I can best describe the process of the pain from going to nerves and muscles, and then to the hands in which I could not move the fingers well at all for two days.*

*I did not find the examination that I experienced reported on the IME. After some range of motion tests, he took my right arm and held it between his legs on his lap to keep the tension fairly consistent. Then he would put pressure on different parts of the hand, lower arm, and elbow. Some places were extremely painful. When something hurt, he did not press again, but he would ask me where it hurt. Sometimes he used both my hands or arms, but mainly the right arm and hand. This testing went on for about 45 minutes to an hour.*
*I am concerned about the testing that was done on me was not described anywhere in the report. I am concerned about the amount of pain I had to endure as a result of the exam."*

You are requested to respond to this complaint within fourteen days of receipt of this notice so the complaint can be reviewed at the next full Board meeting. After careful consideration of the allegations put forward by the complainant the OBCE has determined that the minimum information necessary to thoroughly investigate this matter is a complete copy of the patient's file.

In order to facilitate this review process, you are required to send a complete copy of the patient's file to the OBCE administrative office within fourteen days of receipt of this letter (OAR 811-015-0006(3) (b)), including your chart notes, x-rays, billing records, as well as copies of any and all correspondence contained in the file to be organized as follows:

- the patient file presented in **chronological order**, **sectioned** and **labeled** in
- examinations,
- daily treatment notes,
- x-ray reports,
- insurance billing and/or invoices, and
- correspondence (i.e. from another profession or an insurance company).

Also be sure to include any written explanation you wish to make or believe will assist the Board in their deliberations. You are required to return a signed copy of the **Certification of Patient Records** form attesting to the completeness of the patient file.

It is in your best interest to respond succinctly so the Board has all the pertinent facts with which to make a decision. As soon as the file is complete the complaint will be put on the Executive Agenda for review.

Thank you for your cooperation in this matter. If you have any questions or need further assistance in this or any other matter, please do not hesitate to contact me at the following phone number 503-373-1615.

Sincerely,

Thomas W. Rozinski
Investigator, OBCE

**Thomas D. Freedland, D.C.**

9735 S.W. Shady Lane
Suite 303
Tigard, Oregon 97223
(503) 684-1273

June 23, 2010

Thomas W. Rozinki
Investigator, OBCE
Oregon Board of Chiropractic Examiners
3218 Pringle Road S.E.
Suite 150
Salem, Oregon 97032-6311

RE:
OBCE Case No.: 2010-1013

Dear Mr. Rozinki:

Thank you for the opportunity to respond to the issues outlined in the letter of complaint (2010-1013). Enclosed is a copy of the records that were provided to me through Medical Management Online, the patient's intake form, the rough notes reflective of the history and examination, and a copy of the final report.

My encounter with Ms. was the result of an Independent Medical Evaluation that had been coordinated through Medical Management Online at the request of Nationwide / Allied Insurance. The evaluation took place in my office on February 17, 2010 and was scheduled for 1:00 p.m. Typically, IMEs are scheduled for a one-hour block of time. I do not have an independent recall of when Ms. arrived at my office; however, I did have an established patient scheduled for treatment at 2:00 p.m. on that day. This established patient is quite punctual and was seen on time and was not delayed. As such, my best recollection of the timeframe involving Ms. F was 60 minutes. For IMEs held in my office, I have the patient complete a one-page intake form that consists of identifying information, a pain diagram, and a consent to the examination (Ms. F 's copy is included with the submitted records). I do not have the patient fill out a history form; I would prefer to sit down and take that information directly from the patient to ensure accuracy and clarification of any issues that are not fully explained. Ms. F alludes to the fact that a detailed history was completed.

At the start of any encounter, I have a standard admonition that I give patients being examined specifically addressing issues about perception of pain or report of pain during the course of the evaluation. The admonition regarding pain is again repeated prior to the actual examination.

> *During the course of the examination, I am going to ask you to do some things as far as some movement and some ranges of motion. I do not want you to do anything you do not think you are capable of doing. If I ask you to do anything causes you pain or discomfort, or you think it may cause you pain, let me know and we will see if can*

*evaluate it in a different fashion. I do not want you to hurt yourself in the course of today's evaluation.*

My report and the raw notes of that encounter reflect what was examined or evaluated during the course of the encounter. Ms. ___ 's description of procedures involving pulling on her hands, pushing on her with body parts, and trapping her hand with my arm or leg is pure fabrication. The typewritten report accurately reflects the nature of the encounter including the history obtained from Ms. Ridler and her examination findings. Also included in the report is a Review of Records, clinical impressions, and response to specific questions.

During the course of this encounter, I had asked my office associate, Lisa Kouzes, D.C., to be present during the examination portion. She served as a scribe for the exam as apparent by her neater handwriting on the copies from the "*yellow note pad*." She served a secondary role in that she was present as a chaperone for an evaluation of a female patient by a male doctor.

I have provided the basic information regarding the complaint to Dr. Kouzes and asked her to submit a separate letter regarding her observations of the evaluation in light of the claims that Ms. Ridler is making. The complaints in this incident are baseless and non-factual. The examination performed is no different than would be performed by any treating doctor to assess an individual. One would expect Ms. R r's attending chiropractor would have performed a similar evaluation upon initially seeing her and with periodic reevaluations.

Her claim of pain as a result of the examination and pain extending for weeks would be inconsistent with the evaluation and I would stand by the observations and conclusions reflected in the final typewritten report.

Sincerely,

Thomas D. Freedland, D.C.
Chiropractor

TDF:gab

**Lisa Kouzes, D.C.**

9735 S.W. Shady Lane
Suite 303
Tigard, Oregon 97223
(503) 684-1273

June 25, 2010

Thomas W. Rozinki
Investigator, OBCE
Oregon Board of Chiropractic Examiners
3218 Pringle Road S.E.
Suite 150
Salem, Oregon 97032-6311

RE:
OBCE Case No.: 2010-1013

Dear Mr. Rozinki:

I have been requested by Dr. Freedland to comment on the matter at hand. I have read the patient's complaint and the report of the Independent Medical Evaluation performed by Thomas D. Freedland, D.C.

I was in the room for the physical exam portion and I scribed the findings of that examination. This was a memorable case as the patient stood in such a way to keep her hips at 90 degrees and a forward flexed posture. I diagramed this and my handwriting is clearly different from that of Dr. Freedland. I can attest I documented all of the examination procedures and their results. I remember Dr. Freedland went to great lengths to make the claimant as comfortable as possible for the exam. I documented that neck ranges of motion were performed while seated and I remember this was specifically done because the patient had such an awkward standing posture that seemed to be uncomfortable.

As Dr. Freedland routinely states, he told this patient to not perform any motions or maneuvers that would cause her undue pain or injury. On procedures she felt she could do, she was to report any change in symptoms and their locations. Other than the modifications made to accommodate the patient, Dr. Freedland's examination was very similar to that he performs on any patient in his practice. I have seen many of these encounters as well as other Independent Medical Examinations. He did not perform any procedures outside of what is accepted in the health field.

He evaluated the areas of complaint with minimally invasive techniques, often active ranges of motion and palpation. I know from watching Dr. Freedland perform strength testing that the patient initiated the resistance and Dr. Freedland allowed her to overpower him and go through some of her ranges of motion. This is a form of resistance testing least likely to cause injury.

I cannot comment on Dr. Freedland's opinions or conclusions in his report, but I can attest to the accuracy of the documented examination within the report.

If I can provide any further insight, please feel free to contact me.

Sincerely,

Lisa Kouzes DC

Lisa Kouzes, D.C.
Chiropractor

LK:gab

February 17, 2010

To: Paul Solano
Nationwide Insurance

Re: Claimant: Case # 2010-1013
Claim No.: 72 36 20 021569 11032009 01
MMO No.: 109668 (109673)
DOL: November 3, 2009

## INDEPENDENT MEDICAL EXAMINATION

### INTRODUCTION:

The following is the report of the Independent Medical Examination for (Case #2010-1013) on Wednesday, February 17, 2010, by Thomas D. Freedland, D.C., Chiropractor, with the report being dictated by Dr. Freedland. Lisa Kouzes, D.C., was present during the examination to serve as a chaperone and scribe.

The claimant was informed that this exam should not in any way substitute for any treatment or care she was receiving from her personal or private physician. A limited doctor-patient relationship was established for today's examination only. She was also told not to perform any activities that would cause undue pain or discomfort.

Available for review is a brief cover letter describing the incident and the available records. There is a copy of the Application for Benefits and an authorization to release medical information. There is a repair estimate completed on December 11, 2009 on the claimant's 1997 Mercury Grand Marquis LS reflecting $959.89 for replacement of the bumper cover and to replace a steering column switch apparently from the driver striking the steering wheel. There is a revised repair estimate on January 6, 2010 where they had to replace rivets and clips in addition to the other damage and reflects a total of $1,345.84. There are photographs showing scuffmarks on the rear bumper below the left taillight assembly and a vertical gouge in the rear bumper to the right of the license plate. When the bumper cover is removed, there is a slight dent or depression in the bumper; however, this depression is slightly left of midline based on the positioning of the license plate. There are additional close-up shots of the scuffs and scrape marks. The is a picture of the steering wheel that shows extensive wear on the leather cover where portions of the leather cover have been pulled away.

There is an emergency room bill and report from OHSU dated November 3, 2009, records attributed to Duane Snyder, D.C., in Kennewick, Washington dated December 2, 2009, records from Wilsonville Family Chiropractic, David Duemling, D.C., dated December 9, 2009 through January 11, 2010, massage therapy notes from Wilsonville Family Chiropractic dated December 14, 2009 through January 8, 2010, and a report from Randell Jura, M.D., collocated at Wilsonville Family Chiropractic dated January 8, 2010.

**HISTORY OF PRESENT INJURY:**

On November 3, 2009, Ms. (Case #2010-1013) was the driver of a 1997 Mercury Grand Marquis. She was wearing her seatbelt and shoulder harness. She was stopped behind several cars at the intersection of Macadam and S.W. 68th. Traffic had been stop and go; she had moved forward a couple of times and then stopped. After having been stopped for a few moments without warning, she was hit from behind by a Ford F150. She reports with this single impact, she remembers being thrown forward three times and striking her head on the metal bracket of the sun visor. Impact was to the left parietal area, but adjacent to the temple and extended back toward the occiput with each rock forward. She described immediate pain in her head, neck, and back as well as some stress to her low back. She recalls her foot was on the brake and both hands on the steering wheel. She reports she felt as if she rotated to her left, which would be into the shoulder harness, and she may have hit her head on the roof, but she is not sure. She believes the vehicle was displaced forward perhaps a yard. She did not strike the vehicle in front of her.

She stayed in the vehicle. Her grandchild, a little over one year of age, was in the backseat. Police and fire department responded to the scene. Police assisted with an exchange of information, but she does not believe a formal report was completed. She believes the damage to her vehicle was $1660 and it has been repaired. She describes the vehicle as an older model "police style" vehicle and it was "very stiff and rigid."

She was eventually able to get out of the vehicle and her daughter drove her to the emergency room at OHSU where she was evaluated. She reports it was very crowded and they did not seem to give her much attention. She was given three medications, but by the time she was released, there was no place she could fill them. She was told she could use Aleve because it is a "muscle relaxant." She subsequently stayed in bed for a week. After that she felt better and was able to move about.

She recalls when preparing the Thanksgiving meal, she turned and had a twinge of pain in her neck, upper back, and shoulder area and this became quite problematic. She had recently moved to the Portland area and was not comfortable seeking out a new doctor at this point in time. In early December she drove back to the Tri-Cities area where she was seen by her prior chiropractor, Dr. Snyder, and he adjusted her atlas and she felt extremely better.

She returned to Portland and on a referral from a friend, sought treatment from Dr. Duemling. Dr. Duemling performed an examination, took x-rays, and treatment started at a frequency of three times a week including massage three times a week. She has progressed to where she is now treating with chiropractic twice a week and massage treatment once a week. She reports the massage treatments relax her to the point where Dr. Duemling is able to perform an adjustment. Very recently she has been given stretching activities to do and she does knee bends, but she is not provided with exercise instruction on every visit.

She also reports her jaw started to hurt at some point during the course of care. She had a prior night guard, which was made for her about five years ago, and she attempted to insert it, but it would not fit. She has since treated with her dentist and now the night guard fits in her mouth, but she still has clicking in the right TMJ. She is apprehensive about the clicking, fearful that her jaw will lock open.

She reports she has consulted with two medical doctors; one in the Tri-Cities area and Dr. Shields, but neither has provided any treatment. (There is no mention of having seen Dr. Jura.)

**CURRENT COMPLAINTS:**

Her current complaints are an achy sensation through the neck, upper back, and out to the shoulders. She describes it as stiff as well. She gets clicking in her neck and clicking in her jaw. She rates the pain in her back and shoulders as about a 6 and her jaw as an 8. She will also get headache pain. She describes her pain relative to the accident at this point is limited to her neck and upper back. She has problems in her knees and hips that predate the accident in question.

She reports the pain increases with prolonged periods of sitting, walking, or lifting. Stress is irritating and the discomfort presents itself as fatigue. Rest seems to decrease the discomfort. She found it was difficult to sleep for prolonged periods of time. At one point she was sleeping for four hours and then got up for four hours. She has now been able to resume a normal sleep cycle.

**CURRENT MEDICATIONS:**

Her medications include Avapro and thyroid. She is not taking any over-the-counter or prescription pain medication.

**ALLERGIES:**

She reports allergies to sulfa medication, most antibiotics, as well as alpha and beta-blockers and a variety of other medications but she cannot recall which ones.

She remembers having had an allergic reaction to some medication on one of her hospital stays.

## PAST MEDICAL HISTORY:

She reports she has problems involving her knees and right hip as a result of an assault that occurred on a high school campus where she was teaching two years ago. She finds the wet weather in Portland makes her unstable and she is fearful her cane will slip and she will fall. She fell about four years ago and injured her knee at that time as well.

In 1992 she had to have mesh screens placed in her abdomen subsequent to a hernia procedure. She underwent a repair of the protective structure in 2000. She reports having had a total of three procedures relative to the hernia. She also had a lipoma removed.

She has been diagnosed with hypertension and low-functioning thyroid. About five years ago she was described with lumbar spinal stenosis in the area of L3-L4. She was told she was not a surgical candidate. There has been no ongoing treatment to the area.

## HABITS:

She does not smoke or use tobacco products. She does not consume alcoholic beverages.

Prior to the accident she would walk, shop, and lift, but she finds that is difficult now. She previously would spend a lot of time in the pool, but she has not done any type of pool activities since the accident for fear of falling on the decking.

## SOCIOECONOMIC HISTORY:

She is divorced. She will occasionally baby-sit and assist with caring of her now 19-month-old grandson, but she is not the primary custodian. She generally will assist in taking him to daycare and babysitting.

She is a retired schoolteacher, although she currently is active with a bible study group. She has had to limit herself to sitting activities with the group and she has difficulty in moving up stairs.

Education includes class work to a Ph.D., but she did not complete the degree requirements.

She has not served in the military.

**MEDICAL RECORDS REVIEW:**

The cover letter described the incident as occurring at 68th and Macadam In Portland, Oregon. The claimant's vehicle was identified as a 1997 Mercury Grand Marquis and the other vehicle was an unknown year Ford F250. The claimant reported she was in her vehicle waiting for traffic to start moving when her vehicle was rear-ended by the other vehicle. The claimant related there was no outside physical damage to her vehicle, but repair estimates were later submitted. With this rear impact, the claimant was thrown forward and back and sustained a whiplash injury at the base of her neck. She may have hit her head on the sun visor. She was seen at OHSU, then at Snyder Chiropractic, and then later at Wilsonville Family Chiropractic. She also consulted with a dentist, Martha Rich, D.D.S., about TMJ issues experienced after the accident. The cover letter reported no copies of the bills had been provided. There was a brief recap of the records that were submitted.

The emergency room staff of OHSU saw the claimant at 1:37 a.m. on November 4, 2009. She arrived in the emergency room on November 3, 2009 at 1835 (6:35 p.m.). She was seen by Joan Newby, F.N.P., who identified the claimant as a 67-year-old involved in a motor vehicle accident. Her vehicle was rear-ended by a large truck and there were two impacts. She was pushed into the car in front of her. She had her foot on the brake and was wearing her seatbelt. There was no loss of consciousness. She had an initial headache on arrival at the emergency room, but that was gone by the time she was evaluated by the nurse practitioner. She felt dazed and her left vision was blurred, but that had resolved. She complained of pain in the base of the neck and left lateral leg pain. She did not strike her leg on anything, but she was pushing down on the brake and it felt achy. She used a cane because of a baseline of "bad knees." She generally felt stiff all over. Other conditions included hypothyroidism, cartilage damage in the knees, a history of bowel obstruction, lipoma excision, and tonsillectomy. She was allergic to penicillin and sulfa. She did not smoke and did not currently use alcohol. She was oriented. There were normal ranges of motion, but bilateral paraspinal tenderness. There was no midline tenderness. The musculoskeletal system had normal ranges of motion, but she exhibited tenderness. There was no edema noted. The left lateral calf was mildly tender. She did not have a primary care physician. She was to followup with OHSU Family Medicine. She did not warrant any pain medication. She was diagnosed with musculoskeletal pain. She was discharged in stable condition. She did not want pain medication, but was given prescriptions for Percocet, Valium, and ibuprofen 800 mg. The discharge medication was diazepam, oxycodone, and ibuprofen. It was noted she would be painful for the next two days.

The encounter is submitted as a low to medium level emergency room visit.

There is no documentation of any treatment for nearly a month when Dr. Snyder saw the claimant on December 2, 2009. This described pain as about an 8 in the neck and upper back. Under subjective findings it reported she was sore from banging head on sun visor. It marked she had moderate muscle spasm, mild muscle splinting, and moderate muscle inflammation. Nothing else was marked. It listed that manipulation

was performed both in the prone position and with a drop table. She was diagnosed with cervical, thoracic, and lumbar sprain/strain injuries. There was no discussion of history. The encounter was limited to a charge for manipulation to three to four areas (CPT code 98941).

On December 9, 2009 the claimant presented to Wilson Family Chiropractic. She was described as retired. It marked she had been under regular chiropractic care, although it did not further clarify. It identified she was in an accident on November 3, 2009 and a prior accident in May 2008. Her request was for wellness treatment, but it also described she was recovering from an accident. She marked on her diagram irritation in the jaw, neck, mid back, and left arm. She marked complaints of headache, fatigue, stiffness in the neck with pricking, back pain, neck pain, and back tension. There was a recap of the collision. She reported hitting her head on a piece of metal that holds the visor. Her body got tossed about. Her head was near the steering wheel on impact and the top of her head struck the visor. She reported neck, back, and jaw pain right after the accident. A week later the central area of her back and left arm hurt. She reported having gone to OHSU and given medications. She described having stayed in bed for three days following the accident. She reported she saw Dr. Snyder in Kennewick, Washington and was adjusted one time, but since then she still had pain. She also saw a massage therapist. She completed a neck disability index questionnaire that was scored at 44 percent and the low back questionnaire was scored at 53 percent.

A static surface EMG study was performed; the necessity is unclear.

Cervical and thoracic x-rays were taken and moderate to severe degenerative changes were noted in the cervical spine and moderate changes in the thoracic spine. General osteopenia was described.

She was diagnosed with cervical and thoracic spondylosis, subluxations, thoracic strain, and tension headache. She was to treat two to three times a week for four to six weeks and be reevaluated.

There is an examination form with a date stamp for December 9, 2009. Cervical ranges of motion appear somewhat limited apparently with pain. Maximum foraminal compression test was negative. Distraction test relieved the pain. Valsalva was negative. The form is largely unremarkable. Shoulder ranges of motion were assessed, but the numbers appear near normal.

A reevaluation was performed on January 8, 2010. The neck disability was increased to 50 percent and the low back was 49 percent.

The daily chart notes consist of a preprinted form that is date stamped. The notations on the form are unintelligible.

In response to an inquiry, Dr. Duemling apportioned all of her condition to the accident in question.

The initial examination is billed using CPT code 99202. There is a charge for a two to three-view cervical x-ray study.

Ongoing treatment consists of manipulation to one to two areas (CPT code 98941) as well as manual therapy (CPT code 97140) listed as being performed to the same areas of complaint.

There is a charge for activities of daily living (CPT code 97535) on December 14, 2009. Later, there are also charges for this procedure as well as instruction in exercise. There is nothing identifiable in the notes regarding this.

On January 8, 2010 there is a bill from Wilsonville Family Chiropractic for Dr. Randell Jura's evaluation billed using CPT code 99204.

There is a reevaluation charge by Dr. Duemling on January 11, 2010 using CPT code 99212.

The massage therapy notes identify areas of treatment, but little else was described. There are separate charges for four units (60 minutes) of massage starting on December 14, 2009 through to January 8, 2010.

Dr. Jura performs an examination on January 8, 2010. There is a recap of the collision. It described the other vehicle as a Ford F150. The claimant had been in a line of cars when her vehicle was struck from behind and she hit her head on a piece of metal on the visor. This did not describe a secondary impact. She reported she went to the emergency room and was given medication and released. She tried to wait out her symptoms and then she sought treatment from the chiropractor on December 9, 2009. She went back to see the chiropractor she had seen in Kennewick, Washington before she moved and had one visit and a massage. Her complaints included neck pain, headache, and her jaw clicked when she opened her mouth. She was treating with her dentist for her TMJ. There was a history of L4-L5 lumbar stenosis. She had no problems in her lower extremities that Dr. Jura related to the accident. Her past history reported "no other medications from her prior assault injuries in Washington." She also had hypothyroid and hypertensive disorders. It then explained the claimant had a history of a work injury by an assault in a high school two years ago. The claimant injured her knees and right hip, but otherwise was treated under a work injury and the claim was closed. The claimant had residual symptoms, but was not getting any medication or treatment. Interestingly, Dr. Jura reported the claimant had no history of arthritis, and "no clinical degenerative joint disorders of peripheral or axial skeleton," despite what the imaging reports showed and her prior reported history of damage to the cartilage in her knees.

Dr. Jura found reduced cervical lateral flexion and rotation, although the numerical values were identical for the right and left side. Muscle strength was normal. Dr. Jura diagnosed cervical and thoracic sprain/strain and TMJ disorder; yet, there was no evaluation of the TMJ. There was no discussion of proposed treatment. While Dr. Jura

submitted this using CPT code 99204; the documentation might warrant CPT code 99202.

**PHYSICAL EXAMINATION:**

The claimant appears her stated height of 5 feet 5 inches and weight of 263 pounds. She is right handed and states her age as 67 years.

She ambulates with a cane and walks with a very forward antalgic posture with a significant tilt at the waist and an increase in upper thoracic kyphosis.

She sits comfortably in the waiting room, but when she stands she walks with at least a 45-degree forward tilt at the hips and she describes tension in her shoulders and back as well as pain in the anterior thigh. When seated, she is able to sit upright and erect. As such, cervical ranges of motion are done in a seated position with dual inclinometers. Forward flexion is 36 degrees; she describes pain in the upper trapezius muscles bilaterally, extension is 40 degrees, right lateral flexion 18 degrees, left lateral flexion 16 degrees, right rotation 64 degrees, and left rotation 52 degrees. (Note: Rotation measured with a goniometer.) At other times during the examination she displays greater cervical ranges of motion with rotation close to 80 degrees and cervical flexion to near 60 degrees; this describes how she is able to relax her neck.

Upper extremity deep tendon reflexes are 2+ at the biceps, triceps, and brachioradialis on either the right or left side. Upper extremity muscle strength is 5/5, but she describes "terrible pain" in the cervicothoracic junction with resisted left shoulder extension. She also reports there is significant pain in her left wrist and shoulder with pronation. Sensation is intact to light touch and sharp touch in the upper extremities.

Tinel's test when performed over the left ulnar nerve causes pain extending up into the trapezius muscle, but when performed over the left median nerve, she also gets pain up the arm to the shoulder. Tinel's testing on the right arm is unremarkable.

There is no tenderness on palpation of the acromioclavicular joints or on the right sternoclavicular joint, but with mere contact to the left sternoclavicular joint causes pain across the collarbone and then pain over the supraclavicular fossa toward the shoulder. Active shoulder ranges of motion reveal right abduction 90 degrees and left abduction 80 degrees, flexion on the right is 90 degrees and the left is 90 degrees, extension on the right is 30 degrees and the left is 30 degrees, internal rotation on the right is 80 degrees and the left is 80 degrees, external rotation is 70 degrees on the right and 70 degrees on the left, and adduction is full on both the right and the left. Passive ranges of motion of the shoulders show better ranges of motion than active, but no overt spasm or other restriction is noted. There is no crepitus noted.

Palpation of the TMJ reflects slight clicking in the right joint, but there is no significant sway or alteration in the jaw.

During the course of the exam, she states she will get headache pain on occasion, sometimes along the pathway that she reports struck the sun visor and at other times on the opposite side.

## DIAGNOSTIC IMAGING STUDIES:

No imaging studies have been provided for review. A review of the reports has been outlined in the Records Review above.

## DIAGNOSES:

1. Possible mild cervicothoracic strain secondary to the described incident, superimposed on preexisting degenerative change.
2. Inconsistent examination with symptom amplification.
3. By history, preexisting degenerative changes in the low back resulting in spinal stenosis.
4. Prior bilateral knee injury from assault two years earlier.
5. History of TMJ problems, no clinical correlation to the accident.

## DISCUSSION:

The following is in response to the questions posed.

1. *What is your assessment of the examinee's current conditions? Please describe the mechanism of injury for all diagnoses.*

   The current conditions and complaint of pain are without objective findings. There is a historic reference to a cervicothoracic strain, now resolved.

2. *Were these injuries solely a result of the above-referenced motor vehicle accident? If not, please explain.*

   The claimant has preexisting degenerative changes and these may have led to her being more susceptible to injury and may have prolonged the overall course of care. By her own description, the conditions stabilized after one week and flared up with an independent activity near the end of November 2009. As such, the likelihood of the complaints being related to the motor vehicle accident are remote.

3. *Are the examinee's subjective complaints supported by objective findings? If not, please explain fully.*

Within today's evaluation, there are subjective complaints without valid objective findings as described above.

4. *Has all treatment rendered to date been reasonable, necessary, and directly related to the accident? If not, please explain fully. Has the treatment to date been supported by objective medical examination findings?*

The visit to the emergency room would be reasonable, appropriate, and related to the accident in question. The initiation of chiropractic care some one month later with Dr. Snyder in Kennewick, Washington, and then subsequently with Dr. Duemling does not appear to be related to the incident. It may have been triggered by some incidental endeavor.

5. *Has all treatment rendered to January 25, 2010 been reasonable, necessary, and directly related to the accident? If not, please explain fully. Has the treatment to date been supported by objective medical examination findings?*

This has been addressed in response to question #4 above.

6. *Is any portion of the patient's treatment related to a preexisting condition or injury? If so, please provide an apportionment.*

As described above, the emergency room visit would be appropriate. There are preexisting degenerative changes that may have made her more susceptible to injury, but from the provided information, it does not appear as if the complaints are related to the accident in question.

7. *Has the examinee reached a medically stationary and/or pre-injury status from injuries sustained in this accident?*

The claimant has reached a medically stationary and/or pre-injury status.

8. *Do you believe that future medical treatment is medically necessary for injuries related to the motor vehicle accident in question? If so, would future treatment lead to a significant improvement in the examinee's condition?*

Future medical treatment is not medically necessary as a factor from the accident in question.

9. *If you believe future medical treatment is necessary to return this patient to a pre-accident status and/or maximum medical improvement, please provide an appropriate treatment plan including the type, frequency, and duration of recommended treatment.*

   This is not applicable.

10. *Is the examinee currently impaired in whole or in part as a result of injuries sustained in the accident? If so, please describe the specific physical limitations for both work and activities of daily living. Please fully explain the cause of any such limitations. Was the examinee at any time impaired in whole or in part as a result of injuries sustained in the accident?*

    Relative to the accident, the claimant has no impairment. There may be limitations on her activities as a result of her preexisting degenerative change and knee injuries, but nothing that is seen within today's evaluation that would be attributed to the accident of November 3, 2009.

11. *Has the insured's impairment to January 25, 2010 and associated Loss of Income been reasonable, necessary, and related?*

    The limitations on the claimant's activities are not related to the accident in question.

12. *Was there any functional overlay or pain behaviors exhibited by the examinee?*

    There is suggestion of function overlay and pain behaviors as described above.

Thank you for the opportunity to assist you in the evaluation of this particular individual. Should you have other questions or concerns, please feel free to contact me through Medical Management Online.

Thomas D. Freedland, D.C.
Independent Chiropractic Consultant

TDF:vr

Oregon
Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners
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27 August 2010

Thomas Freedland, DC
9735 SW Shady Ln. Ste. 303
Tigard, OR 97223

RE: OBCE Case No: 2010-1025: Request for Response
Re: Patient: [redacted]

Dear Dr. Freedland:

The Oregon Board of Chiropractic Examiners has received a complaint regarding your chiropractic care of patient, [redacted]. You are requested to provide a written response to this complaint and a complete copy of the patient's file. The complaint is summarized below:

*"I arrived at Dr. Freedland's office at 3 pm. When we sat down he was yawning and complained about being so tired. He continued to yawn throughout our interview and even kept his eyes closed except for when jotting down notes. In fact I remember being surprised about 20 minutes into our appointment that he had blue eyes - because his eyes were closed throughout the interview. He was literally talking to me for 20 minutes while yawning and keeping his eyes closed.*

*When he conducted the exam he took no notes. Even when I wasn't able to turn my head, not even when I expressed pain in certain areas of my back. After the exam he asked if I had brought x-rays, which I had not. He said he would request them. I then left.*

*I then received a copy of the report and I inquired whether he had copies of my x-rays. I was told he didn't see my x-rays nor had he requested copies of my chart notes from prior to the accident. He also didn't mention in his report any of the areas of pain nor did he mention any limited mobility that he saw during my visit.*

*It's my guess that this is a "copied and pasted" report because there were no facts in it that were discovered during his exam. His report was not thorough nor accurate nor detailed nor showed any concern for the truth.*

*I had a follow up exam from my chiropractor which shows the truth and the amount of injury I still have.*

*I find Dr. Freedland's behavior egregious."*

You are requested to respond to this complaint within fourteen days of receipt of this notice so the complaint can be reviewed at the next full Board meeting. After careful consideration of the allegations put forward by the complainant the OBCE has determined that the minimum information necessary to thoroughly investigate this matter is a complete copy of the patient's file.

In order to facilitate this review process, you are required to send a complete copy of the patient's file to the OBCE administrative office within fourteen days of receipt of this letter (OAR 811-015-0006(3) (b)), including your chart notes, x-rays, billing records, as well as copies of any and all correspondence contained in the file to be organized as follows:

- the patient file presented in **chronological order**, **sectioned** and **labeled** in
- examinations,
- daily treatment notes,
- x-ray reports,
- insurance billing and/or invoices, and
- correspondence (i.e. from another profession or an insurance company).

Also be sure to include any written explanation you wish to make or believe will assist the Board in their deliberations. You are required to return a signed copy of the **Certification of Patient Records** form attesting to the completeness of the patient file.

It is in your best interest to respond succinctly so the Board has all the pertinent facts with which to make a decision. As soon as the file is complete the complaint will be put on the Executive Agenda for review.

Thank you for your cooperation in this matter. If you have any questions or need further assistance in this or any other matter, please do not hesitate to contact me at the following phone number 503-373-1615.

Sincerely,

Thomas W. Rozinski
Investigator, OBCE

**Thomas D. Freedland, D.C.**

9735 S.W. Shady Lane
Suite 303
Tigard, Oregon 97223
(503) 684-1273

September 2, 2010

Thomas W. Rozinki
Investigator
Oregon Board of Chiropractic Examiners
3218 Pringle Road S.E.
Suite 150
Salem, Oregon 97032-6311

RE:
OBCE Case No.: 2010 - 1025

Dear Mr. Rozinki:

Thank you for the opportunity to respond to the above-referenced complaint. From what I am able to determine from the material included in your August 27, 2010 letter, Ms. e was dissatisfied with the encounter she had with me in conjunction with an Independent Medical Examination that I performed on April 2, 2010 at the request of Safeco Insurance and coordinated by Medical Management Online. Ms. reportedly suffered injuries from a motor vehicle collision on October 13, 2009. I have included a copy of the file as was provided to me which contains the cover letters from both Medical Management Online and from Safeco Insurance. Additionally, I have enclosed a copy of my report, her intake paperwork, and my rough notes from the encounter which were used to dictate my report immediately after the exam.

I am rather confused by her observations. From my report, it is apparent that I was interactive with Ms. My rough notes of the encounter with Ms. show that I did take notes during her exam.

I have concerns about Ms s recollection of the encounter given that my eyes are not blue. My eyes are normally described as hazel, green, or gray; certainly not blue.

Since many of the IME companies include letters to the patient requesting they bring films, I may have inquired about her x-rays. When films are provided I review them and comment. The referring claims representative or IME company obtains records and studies in conjunction with scheduling the Independent Medical Evaluation. Interestingly in this case, the treating doctor did not mention his prior treatment of Ms , but he billed the initial evaluation as a new patient encounter; thus, obscuring the patient history.

I am at a loss to understand how Ms. determined that my report is "copied and pasted" from other items. With the exception of the first two paragraphs and the closing paragraph above the signature, the document is completely dictated. The general headings are outlined, but the content of

any portion of the report is contemporaneously dictated for each patient and the report is an accurate representation of the provided history and examination of Ms. [redacted] as well as a review of the available clinical records.

Her alleged complaint focuses on her perception that I was tired and uninvolved during the exam, but her own statements appear to be unreliable. My report suggests a detailed and attentive encounter.

I hope this assists you in the evaluation of this particular matter. Should you require any additional information, please do not hesitate to contact me.

Sincerely,

Thomas D. Freedland, D.C.
Chiropractor

TDF:gab

April 2, 2010

To: Sherri Ellingson
Safeco Insurance

Re: Claimant: Case #2010-1025
Claim No.: 1312 7731 4008
MMO No.: 109939
DOL: October 13, 2009

## INDEPENDENT MEDICAL EXAMINATION

### INTRODUCTION:

The following is the report of the Independent Medical Examination for (Case #2010-1025) on Friday, April 2, 2010, 2009, by Thomas D. Freedland, D.C., Chiropractor, with the report being dictated by Dr. Freedland.

The claimant was informed that this exam should not in any way substitute for any treatment or care she was receiving from her personal or private physician. A limited doctor-patient relationship was established for today's examination only. She was also told not to perform any activities that would cause undue pain or discomfort.

Available for review is a copy of the Application for Benefits. There is a repair estimate on the claimant's 2008 Nissan Versa reflecting damage of $502. There are photographs of the claimant's vehicle showing a slight dent or depression in the left rear bumper to the left of the license plate. There are treatment records from Ryan Nienaber, D.C., Boones Ferry Chiropractic and Massage in Wilsonville, Oregon, dated October 14, 2009 through March 11, 2010, massage therapy with Nicole Sanders, L.M.T., dated November 9, 2009 through March 5, 2010, and billing information.

### HISTORY OF PRESENT INJURY:

On October 13, 2009, Ms. (Case #2010-1025) was driving a 2009 Nissan Versa. She was proceeding north on Interstate 5 near the Macadam off ramp. She had come to a stop at the stop sign; a bus had pulled up. She started to move forward and saw another vehicle. She stopped again and her vehicle was struck from behind by an Audi sedan. At the time of the impact she was wearing her seatbelt and shoulder harness.

She had her head turned to the left and had her foot on the brake. She describes the impact as a "good bump," but there was no forward displacement. She did not strike anything inside of the vehicle and there were no other vehicles involved. She had immediate pain in her right shoulder with a shooting sensation down her right arm to her elbow, perhaps beyond.

She was able to exit her vehicle and exchange information with the other party. She states there was no visible damage to the other vehicle. She recalls there was a dent in her rear bumper. It was repaired, but she does not recall the repair estimate. Police and emergency personnel were not called to the scene.

She reports that afternoon she sought care from her chiropractor, Ryan Nienaber, D.C. She had previously treated with him within the preceding months. She did not wish to file a claim; she thought it would be "okay." She received an adjustment. When the pain persisted the next day, she returned and filled out intake paperwork. An examination was performed and x-rays were taken. (Note: The medical records do not describe this treatment on October 13, 2009 nor do they identify any prior treatment of the claimant.) Treatment consisted of chiropractic manipulation and about a month into care, massage was added. She initially treated twice a week and she continues to treat twice a week.

She has noticed improvement overall, but she has not been provided with any type of prognosis and she has not been referred to any other providers.

**CURRENT COMPLAINTS:**

Her current complaints consist of an extreme stiffness, perhaps very low back bilaterally in the neck, mid back, and low back. She rates the pain as a 1 on a scale of 0 to 10. The pain improves with chiropractic manipulation and exercise. It seems to increase with stress.

**CURRENT MEDICATIONS:**

She is not currently taking any medication.

**ALLERGIES:**

She has no known allergies to medication.

**PAST MEDICAL HISTORY:**

She reports having been involved in three or four other motor vehicle accidents, all before age 20. One resulted in some injury to her neck, but the problem resolved. She reports no other serious injuries.

She reports no serious illnesses. She has been hospitalized for gallbladder surgery, a hernia surgery, and a cesarean section.

**HABITS:**

She does not smoke or use tobacco products. She does not consume alcoholic beverages.

She does partake in Pilates twice a week.

**SOCIOECONOMIC HISTORY:**

She is married with three children, ages 8 and 5-year-old twins.

She is employed as a loan officer. Her work ranges from 0 to 40 hours a week, but on average 15 hours. She did not miss any time from work.

Education includes high school.

She has not served in the military.

**MEDICAL RECORDS REVIEW:**

The initial examination had the claimant presenting with neck and mid back pain as well as tingling into her right shoulder. It stated her vehicle was hit from behind while at a stoplight. Her pain was rated as a 5 to a 7 on a scale of 0 to 10. The claimant was looking to her left at the time of impact and was unaware of the impending collision. She was wearing her seatbelt and had both hands on the wheel. She did not lose consciousness. Past history is included on a separate form which is not provided for review. Limited cervical ranges of motion were noted. Reflexes and muscle strength were normal. Tenderness was identified. X-rays were taken. She was treated with chiropractic.

Subsequent notes are typewritten and largely cut and paste; subtle changes are noted, but minimally so.

The initial evaluation is billed using CPT code 99203. Without including the past history, it warrants no higher than CPT code 99202; however, from her history she reports she is an established patient of Dr. Nienaber, thus CPT code 99212 may be more appropriate.

The listed diagnoses are cervicothoracic strain and lumbar nonallopathic lesion. Manipulation to three to four areas is performed along with electrical stimulation, manual therapy, and application of a hot or cold pack on virtually every visit. Later, there are charges for instruction in exercise.

The massage therapy notes reflect four units (60 minutes) of massage and application of a hot pack. The notes primarily describe areas of treatment.

No other clinical information is provided.

**PHYSICAL EXAMINATION:**

The claimant appears her stated height of 5 feet 5 inches and weight of 250 pounds. She is right handed and states her age as 42 years.

She stands with level shoulders and hips. There is anterior head carriage with sight forward rotation of the shoulders.

Axial compression, traction, and en bloc rotation are unremarkable.

She can stand on her toes and heels. She performs a full squat with no complaint of pain.

Lumbar ranges of motion measured with dual inclinometers reveal flexion 52 degrees, extension 24 degrees, right lateral flexion 26 degrees, and left lateral flexion 23 degrees. She describes slight low back discomfort at the limits of flexion and extension.

Lower extremity deep tendon reflexes are 2+ at the patella and Achilles tendons on either the right or left side. Lower extremity muscle strength is 5/5. No sensory deficit is seen.

Seated and supine straight leg raise are negative to 80 degrees on either the right or left side or both legs together with no increase in pain. Cross-leg testing is full. Hip flexion is 130 degrees bilaterally. Reverse straight leg raise (Marxer's test) is negative on either the right or left side.

There is no tenderness with compression over the greater trochanters. There is tenderness noted over the ischial tuberosities on either the right or left side. There is no pain with motion palpation over the SI joints, but palpation finds tenderness to the left of L2. No overt muscle spasm or joint restriction is noted.

Cervical ranges of motion measured with dual inclinometers reveal flexion 52 degrees; she describes a pulling sensation at the base of her neck. Extension is 58 degrees, right lateral flexion 46 degrees, left lateral flexion 45 degrees, right rotation 80 degrees, and left rotation 80 degrees. (Note: Rotation is measured with a goniometer.)

Upper extremity deep tendon reflexes are 2+ at the biceps, triceps, and brachioradialis on either the right or left side. Upper extremity muscle strength is 5/5. Sensation is intact to light touch and sharp touch in the upper extremities.

There is no tenderness over the acromioclavicular or sternoclavicular joints. There is no tenderness on palpation of the paracervical or parathoracic muscles. There is no tenderness in the midline.

## DIAGNOSTIC IMAGING STUDIES:

No studies are provided for review.

## DIAGNOSES:

Within the context of today's examination, there are no complaints attributed to the accident in question. There is historic reference to a possible mild cervicothoracic strain.

## DISCUSSION:

The following is in response to the questions posed.

1. *A history, physical, and medical evaluation of the claimant.*

   A history, physical, and medical evaluation of the claimant has been provided above.

2. *A diagnosis of all conditions found and their relationship to the injury/accident.*

   As described above, there may have been stress to the neck and upper back which could have resulted in a mild cervicothoracic strain. This would have been self-limiting and would be expected to resolve in six to eight weeks. Within the context of today's evaluation, there is no evidence of any musculoskeletal conditions that would be attributed to the accident in question.

3. *A diagnosis of all preexisting conditions and a determination of whether the injury/accident aggravated these conditions. Please delineate the percentage of the claimant's current condition as it relates to this injury/accident and to preexisting conditions.*

   By history there are no preexisting conditions. The claimant was on a maintenance program of some sort with Dr. Nienaber. Past medical records are not submitted for review and Dr. Nienaber's notes make no reference of prior history and appear to commence after at least one accident-related treatment as represented by the claimant. Additionally, the records suggest the claimant was a prior patient of Dr. Nienaber having been seen within a month of the accident. This is not reflected within Dr. Nienaber's notes and his initial encounter is submitted as a new patient evaluation and management service.

4. *Are you aware of any injuries and/or congenital factors which may be contributing in any way to the claimant's current medical condition? If so, please elaborate on how this prior condition will affect the claimant's recovery.*

   There are no identified prior injuries or congenital factors affecting the claimant's recovery.

5. *Do your objective findings support the patient's subjective complaints?*

   Within the context of today's evaluation, there are subtle subjective complaints and no objective findings.

6. *Based on the documentation provided and your examination, has the treatment provided to date been reasonable, necessary, and directly related to this accident? If not, please outline why.*

   As described above, the claimant may have required between six and eight weeks of treatment as a factor from the accident in question. The need for additional treatment is not substantiated by the records.

7. *Would further treatment be considered reasonable, necessary, and directly related to this accident? If so, please outline a specific treatment plan for this claimant to include frequency and duration of treatment and prognosis for recovery.*

   No additional treatment is necessary as a factor from the accident in question.

8. *Based on the documentation provided and your examination, has the disability/wage loss to date been reasonable, necessary, and directly related to this accident? If not, please outline why.*

   The records do not reflect any issue of disability or wage loss.

9. *Is the claimant capable of working on a reasonably continuous basis? If so, are there any restrictions? Are the restrictions permanent and due to the injury/accident under consideration? If there are any restrictions, are they temporary? If so, for how long?*

   There are no identified limitations on the claimant. She is capable of working on a reasonably continuous basis.

10. *If the claimant is unable to comply with the described regular work requirements, is she capable of light or modified duty?*

    This is not applicable.

11. *Has the patient returned to pre-accident status?*

The claimant has returned to pre-accident status.

Thank you for the opportunity to assist you in the evaluation of this particular individual. Should you have other questions or concerns, please feel free to contact me through Medical Management Online.

Thomas D. Freedland, D.C.
Independent Chiropractic Consultant

TDF:vr
[redacted]04022010-TFreedland

Oregon
Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners
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8 September 2010

Thomas Freedland, DC
9735 SW Shady Ln. Ste. 303
Tigard, OR 97223

RE: OBCE Case No: 2010-1027: Request for Response
Re: Patient: [redacted]

Dear Dr. Freedland:

The Oregon Board of Chiropractic Examiners has received a complaint regarding your care of patient, K[redacted] n. You are requested to provide a written response to this complaint and a complete copy of the patient's file. The complaint is summarized below:

> *"[redacted] saw you for an IME after initial treatment for an MVA. Her vehicle was struck from behind and she claimed it cause her pain in her low back. She saw a PT and LMTs for a while before seeing Dr. Beebe for chiropractic care. After about 1 month of care, she saw you for the IME, after which you found that her back pain was not related to the MVA, which resulted in her being upset that she was responsible to pay for about $4000 worth of treatments. She felt you disregarded her presentation of her condition, and are biased in your opinions."*

You are requested to respond to this complaint within fourteen days of receipt of this notice so the complaint can be reviewed at the next full Board meeting. After careful consideration of the allegations put forward by the complainant the OBCE has determined that the minimum information necessary to thoroughly investigate this matter is a complete copy of the patient's file.

In order to facilitate this review process, you are required to send a complete copy of the patient's file to the OBCE administrative office within fourteen days of receipt of this letter (OAR 811-015-0006(3) (b)), including your chart notes, x-rays, billing records, as well as copies of any and all correspondence contained in the file to be organized as follows:

- the patient file presented in **chronological order**, **sectioned** and **labeled** in
- examinations,
- daily treatment notes,
- x-ray reports,
- insurance billing and/or invoices, and

- correspondence (i.e. from another profession or an insurance company).

Also be sure to include any written explanation you wish to make or believe will assist the Board in their deliberations. You are required to return a signed copy of the **Certification of Patient Records** form attesting to the completeness of the patient file. This should be signed by yourself and Dr. White.

It is in your best interest to respond succinctly so the Board has all the pertinent facts with which to make a decision. As soon as the file is complete the complaint will be put on the Executive Agenda for review.

Thank you for your cooperation in this matter. If you have any questions or need further assistance in this or any other matter, please do not hesitate to contact me at the following phone number 503-373-1615.

Sincerely,

Thomas W. Rozinski
Investigator, OBCE

**Thomas D. Freedland, D.C.**

9735 S.W. Shady Lane
Suite 303
Tigard, Oregon 97223
(503) 684-1273

September 10, 2010

Thomas W. Rozinski
Investigator
Oregon Board of Chiropractic Examiners
3218 Pringle Road S.E.
Suite 150
Salem, Oregon 97032-6311

RE: OBCE Case #2010 - 1027

Dear Mr. Rozinski:

I appreciate the opportunity to provide information and clarification regarding the above-referenced complaint. Your September 8, 2010 letter suggests Ms. n disagreed with my April 1, 2010 clinical assessment. I have enclosed the records that were provided to me by Medical Consultants Network who coordinated the exam on behalf of State Farm Insurance, a copy of my report, the patient intake form that was completed by Ms. n prior to the examination, and my rough notes of her history and examination findings. The final report was dictated immediately after the examination.

As discussed in the history and review of records, Ms. sought treatment immediately following her collision on May 21, 2009 at an urgent care facility, then with her primary care physician, a massage therapist, and physical therapists, with the last treatment on October 8, 2009. There is then a gap of four months with no treatment until she sees Dr. Beebe on February 9, 2010.

I am sorry that Ms. n disagreed with my professional conclusions and recommendations; however, these are based on standard examination procedures, her history, and the review of her medical records. I do not understand what aspect of the evaluation reflects any form of bias.

Should you have any other questions or concerns, or if there is additional information that is necessary, please feel free to contact my office.

Sincerely,

Thomas D. Freedland, D.C.

April 1, 2010

Mark Bletscher
Claims Representative
**STATE FARM INSURANCE**
Salem Operations Center
P.O. Box 221
DuPont, Washington 98327-0221

**Re: Case # 2010-1027**
**Claim Number: 37-3922-833**
**Date of Loss: May 21, 2009**
**MCN Number: 1-19FN21**

Dear Mr. Bletscher:

Thank you for allowing Medical Consultants Network, Inc., to schedule an independent medical examination of **Case # 2010-1027**. The following is a report of this examination prepared on Thursday, April 1, 2010. Thomas D. Freedland, D.C., examined the claimant and dictated this report.

The opinions expressed in this report are those of the physician, and do not reflect the opinions of **Medical Consultants Network, Inc.**

The dictated report is as follows:

Available for review are photographs of a newer model Jeep Cherokee with some denting of the rear bumper cover with marks on the trailer hitch. There is an Application for Benefits identifying the accident as occurring on Highway 217 between Canyon Road and Walker. There are treatment records from Providence Medical Group – Scholls Immediate Care dated May 21, 2009 including imaging reports, a May 27, 2009 partial chart note; the font is consistent with later notes attributed to Daniel Mangum, D.O., at Advantage Medical Group, records attributed to Equilibria LLC for massage, physical therapy records from Walton Physical Therapy and Sports Medicine starting on August 3, 2009 through October 8, 2009, treatment records from Daniel Beebe, D.C., beginning on February 9, 2010 through to March 25, 2010, and billing information from various providers.

**HISTORY OF PRESENT INJURY:**

On May 21, 2009, Ms. **(Case # 2010-1027)** was driving her 2000 Jeep Grand Cherokee. She was proceeding south on Highway 217 between Walker and Canyon Road. She reports traffic was heavy; she was not able to approach freeway speed, but it was not stop and go. Traffic then slowed to a stop and she came to a stop when her vehicle in turn was struck from behind by a Honda Accord. At the time of the impact she was wearing her seatbelt and shoulder harness. She had her foot on the brake. She had her hands on the wheel. She looked in the rear-view mirror and saw the Honda approaching. She suspected she was going to be hit. With the impact her vehicle moved forward, but did not strike the car in front of her. She does not recall how far it moved. She did not strike anything inside of the vehicle. She reported she had immediate chest pain.

Both parties were able to pull to the side of the road. She was able to exit the vehicle and exchange information with the other party. She describes damage to her bumper and to the exhaust pipe. She believes most of the impact was to the trailer hitch. Her vehicle was repaired; she believes the estimate was about $1500. The Honda had damage to the left front and hood. She believes it was leaking fluid, but did not know the extent of damage. Police responded to the scene and oversaw the exchange of information. Other emergency personnel did not respond. She does not know if the other vehicle could be driven from the scene. She was able to drive her vehicle away once the police were assured of appropriate information exchange.

She believes she had some neck discomfort and perhaps some low back pain at the scene, but she is not sure. She went to Providence Scholls Ferry Urgent Care that same day. She was evaluated and x-rays were taken. She was offered pain medication, but she reported she had some on hand already and was referred to her primary care physician.

Within a few days she sought care from Daniel Mangum, D.O. She reports Dr. Mangum did not want to proceed with multiple modes of treatment. Because she had success with massage therapy from an earlier accident, he referred her for massage. She had seven or eight visits, but did not notice any relief.

Subsequent to the massage, Dr. Mangum referred her to physical therapy where she was given exercises. She noticed a little bit of improvement, but she recalls by October the therapist said there was nothing more that could be done and she was provided with home exercises to do.

Overall she felt better and thought she was stable. She had inquired about chiropractic, but she reported that her doctor "did not like chiropractors." She had a flare up of back pain in January 2010 and went to the emergency room at St. Vincent Medical Center. She also described she had tingling in her fingers and feet, but on a random basis. In the emergency room she was given Flexeril that seemed to help, but it made her sleepy. She followed up with Dr. Mangum who in turn gave her the name of a chiropractor, but she

did not followup with this referral. Some friends had suggested she should seek chiropractic care and one friend referred her to Dr. Beebe. She believes she first started treatment in early February. An examination was performed and x-rays were taken. Treatment started at a frequency of three times a week consisting of chiropractic manipulation / adjustment and electrical stimulation or ultrasound depending on the visit. Treatment continued at three times a week for four to five weeks up until she became sick. There has been no treatment for the last three weeks.

During the chiropractic care she was also referred to a massage therapist and received one hour of massage one time a week. She has noticed some improvement, but with the gap in care she has noticed that her condition seems to be getting worse.

**CURRENT COMPLAINTS:**

Her current complaints consist of low back pain. She rates it as an 8/10. She finds it difficult to sit for long periods of time. It improves with chiropractic and massage, although she has not had any treatment for the last three weeks. She reports having been ill and her doctor was on vacation. She was then notified regarding today's evaluation.

The pain is an aching, burning, and stabbing sensation.

**PAST MEDICAL HISTORY:**

She reports she was in a minor rear-end collision in September 2008 while driving her Jeep Grand Cherokee. She had a flare up of low back pain and had a couple of sessions with a massage therapist; the problem seemed to clear. She reports in August 2009 she rear-ended a vehicle that had stopped in front of her. She does not recall any damage to her vehicle and she reports there was no change in her condition.

She reports no other injuries either before or subsequent to the accident in question.

Illnesses include a history of endometriosis and cysts for which she had a supply of Vicodin for pain management. She reports no other serious illnesses.

She has had two surgical procedures, a tonsillectomy and a laparoscopic procedure for the endometriosis all within the last five years.

She is currently taking Flexeril a couple of times a week. This has been continued by Dr. Mangum. (Note: No records from Dr. Mangum for visits subsequent to September 11, 2009 are provided.)

She reports no known allergies to medication.

**SOCIOECONOMIC DATA:**

She is single with no dependents.

She is employed as a receptionist at a medical office. She is currently able to work 32 hours a week. Prior to the accident she was working 40 hours. She reports it is difficult for her sit for a 40-hour work week. She finds she has to limit her lifting, bending, and twisting.

Education includes some college.

She has not served in the military.

**HABITS:**

She does not smoke or use tobacco products. She does not consume alcoholic beverages.

She reports her back prevents her from doing any physical activities at this time, although prior to the accident she would ride her bike two to three times per week.

**CHART REVIEW:**

The photographs display minimal damage to the vehicle, but these are of less than optimum quality. There is no other independent information regarding the accident in question.

The claimant first sought treatment at Providence Medical Group with a complaint of left shoulder, arm, and back pain. The claimant was proceeding south on Highway 217 near Walker Road when traffic slowed in front of her and her vehicle was struck by the vehicle behind. She recalled her belt catching; she did not hit the steering wheel or windshield. Since the accident she had neck pain and left shoulder pain. Cervical ranges of motion were reduced. She had tenderness in the lumbar spine. There was some blotchy erythema over the outer arms and upper back, but no ecchymosis or abrasion. She was diagnosed with a cervical strain, chest and abdominal contusion, left shoulder contusion, and she was to followup with her primary care physician.

A cervical x-ray study was taken describing mild straightening of the lordosis possibly due to muscle spasm.

On May 27, 2009 she presented to Daniel Mangum, D.O. The collision was recapped noting her vehicle had been rear-ended by a Honda Accord. She was semi prepared. She reported neck and back pain as well as left arm numbness. The numbness resolved, although there was an ache in her arm. Her neck and mid back pain were a 3 to a 4 and her low back pain was a 5 to a 6. She had a prior motor vehicle accident in

September 2008, but this resolved with two massage therapy sessions. She had another motor vehicle accident years before with no injuries. Cervical ranges of motion were good, but there was some neck pain with flexion. Her low back was painful starting at 15 degrees, but she was able to move on to 80 degrees of flexion. Mild tenderness was noted. The note was incomplete stopping halfway through the examination.

There are then records from Equilibria for massage therapy. The notes are typewritten, but largely identify areas of treatment. The notes are virtual carbon copies from one visit to the next with the only change principly being the date.

She returned to Dr. Mangum on July 15, 2009; at this point, her pain was a 1 to a 2. She had a history of depression. Ranges of motion were good with slight tenderness noted. She reported pain with Waddell's compression and torsion. The diagnosis was cervical and lumbar strain. Dr. Mangum discussed this area was not typically injured in this type of collision. She was concerned there might be a fracture. She was assured this was not likely. He did not share his concerns regarding pain behavior with her, but he did proceed with a recommendation for physical therapy. Massage was to be discontinued.

She was seen at Walton Physical Therapy. She had some difficulty with the initial home exercise program. Therapy continued and by September 1, 2009 her ranges of motion had improved. She had an improved understanding of her home exercise program.

She saw Dr. Mangum on September 11, 2009; she was last seen two months earlier. She was four months post accident. She stated her low back was somewhat better. With this encounter she stated her low back was a 10 after the incident, it was a 9 at the start of physical therapy, and it had dropped to a 5 to a 6. She reported to Dr. Mangum she had a second motor vehicle accident three months after the accident under review on August 21, 2009. In this incident she rear-ended another vehicle at the Barnes Road Exit at Highway 217. She was looking left; she did not think the car was going to stop. She had more pain that day. She used ice and was better overall. She did not believe this caused a worsening of her pain. Her posture remained normal, although wearing high-heeled shoes, her paralumbar region was soft and flexible, but there was pain midline. Her cervical strain had resolved. Her lumbar strain was slow to recover. Additional physical therapy was recommended.

By the end of September 2009 she was to be weaned to a home exercise program. As of the last physical therapy note on October 8, 2009, it was hoped she would be discharged on the following visit. There are no follow-up visits.

There is no documentation of any treatment until she presented to Dr. Beebe on February 9, 2010. She had head and neck pain, spine, rib, and pelvic complaints. The typewritten chart note appears preformatted with default language stating the condition was acute in that the onset was less than six weeks ago; yet, it referenced a motor vehicle accident in May 2009. With this rear-end collision the claimant reported her body was

thrown forward and with this forward movement, her head hit the headrest. This stated the patient was hospitalized and x-rayed.

Cervicothoracic x-rays were to be taken; the necessity is unclear. She was diagnosed with late effect of a sprain/strain injury, segmental dysfunction, radiculitis, cervical, thoracic, and lumbar sprain, neuritis, and a space-occupying lesion with a secondary diagnosis of back pain.

Subsequent notes are virtual carbon copies of the initial note and give little clinical information.

Dr. Beebe bills the initial examination using CPT code 99203. Treatment consists of manipulation to three to four areas and unattended electrical stimulation.

Dr. Mangum bills for an established patient encounter.

The massage therapy clinic bills for an initial physical therapy procedure on February 18, 2010 which would be outside of the scope of a massage therapist.

Subsequent services for massage are billed for four units (60 minutes) as well as application of a hot or cold pack.

No other clinical information is available for review.

**PHYSICAL EXAMINATION:**

Ms. Corkran appears her stated height of 5 feet 10 inches and weight of 185 pounds. She is right handed and states her age as 22 years.

She stands with level shoulders and hips, but there is a forward rolling of the shoulders with an anterior head carriage and a general slouch to posture.

Axial compression at the shoulders or on the head with minimal pressure causes pain in the mid back and low back. Traction causes pain in the low back as does en bloc rotation.

She is able to stand on her toes or heels with no change in pain. She can perform a full squat with no increase in pain. She walks with a normal gait.

Lumbar ranges of motion measured with dual inclinometers reveal: Flexion 52 degrees with an increase in low back pain at the end limits of motion, extension 28 degrees, right lateral flexion 30 degrees, and left lateral flexion 28 degrees with lumbosacral pain at the limits of motion.

Lower extremity deep tendon reflexes are 2+ at the patellar and Achilles tendons on either the right or left side. Muscle strength is 5/5. No sensory deficit is seen.

Seated straight leg raise is negative to 90 degrees on either the right or left side or both legs together. There is no backward lean or grimace. In the supine position, she reports an increase in low back pain while merely lying on the table. To perform straight leg raise, the opposing leg is bent to 90 degrees and the foot rested on the table which seems to ease her pain. Right straight leg raise causes an increase in low back pain at 18 degrees elevation with an increase in pain with dorsiflexion and plantarflexion. She is unable to tolerate any further movement; as such, cross-leg testing is not performed. The leg position is reversed and left straight raise is then performed. She has an increase in low back pain at 10 degrees elevation with an increase in pain with dorsiflexion. Again, cross-leg testing is not attempted

In the prone position, she describes an increase in low back pain with reverse straight leg raise (Marxer's test) on either the right or left side, both in the pre-Marxer's phase and with the leg bent to 80 degrees of knee flexion.

Pressure over the greater trochanters relieves the pain. Pressure over the ischial tuberosities causes an increase in lumbosacral pain. Light palpation over the SI joints causes no increase in pain, although motion palpation individually to either the right or left SI joint causes an increase in lumbosacral and thoracolumbar pain.

There is generalized tenderness on palpation through the paralumbar region. Palpation through the paracervical muscles starting at the occiput through to the mid thoracic region causes a referral of pain to the lumbosacral region. She describes a generalized inflamed response with light palpation.

Cervical ranges of motion measured with dual inclinometers reveal: Flexion 42 degrees causing an increase in lumbosacral pain and extension is to 47 degrees, again with an increase in lumbosacral pain. Right lateral flexion is 50 degrees, left lateral flexion 48 degrees, right rotation 70 degrees, and left rotation 72 degrees. (Note: Rotation measured with a goniometer.)

Light pressure over the acromioclavicular joints causes lumbosacral pain as does light pressure on the sternoclavicular joints.

Upper extremity deep tendon reflexes are 2+ at the biceps, triceps, and brachioradialis on either the right or left side. Muscle strength is 5/5. No sensory deficit is seen.

**DIAGNOSTIC IMAGING STUDIES:**

I am provided with plain film x-rays taken at Providence Medical Group on May 21, 2009. The cervical study shows subtle reversal of the cervical lordotic curve with apex at C3-C4. The disc spaces are well preserved with no degenerative changes. The films are otherwise unremarkable.

**IMPRESSION:**

1. Possible cervicothoracic strain, by history, based on the mechanics of the collision, resolved.

2. Lumbosacral pain without specific mechanism of injury with inconsistent examination and symptom amplification.

**DISCUSSION:**

In response to specific questions:

1) *What is the etiology of the diagnosed injury(ies) or condition(s)?*

The cervicothoracic strain listed above would be as a result of the accident in question. This condition has resolved and is stable. The etiology of the low back pain is unidentified and is inconsistent; there is symptom amplification as described above.

2) *Based on your examination of the patient, your review of the submitted records, your clinical experience, and any applicable research, was the patient's condition caused by the May 21, 2009, accident?*

As listed above, the cervicothoracic strain can be attributed to the accident in question. The mechanism for an injury to the low back is not identified. If it did occur, the condition would be stable. Within the context of today's examination, there are inconsistent findings suggesting a non-physiologic origin.

3) *Are the type, intensity, frequency, and duration of the provided treatment/services/products consistent with accepted medical standards and appropriate for the severity of the documented injury(ies) or condition(s)? If not, please provide the rationale for that opinion.*

The initiation of treatment at the Urgent Care and followup with Dr. Mangum would appear to be appropriate. A trial course of massage therapy would be reasonable. If this was not providing relief, a transition to an alternate form of treatment such as physical therapy would be appropriate. Treatment through

October 2009 would appear to be appropriate in light of the accident and the complaints. Dr. Mangum makes note of concern about the relatedness of the low back pain and documents non-physiologic findings. The initiation of treatment with Dr. Beebe does not appear to be supported as a factor from the accident in question.

4) *What is/are your diagnosis(es) of the patient's injury, disease, or disorder?*

The diagnoses are listed above.

5) *Has the patient reached maximum medical improvement relative to the injury(ies) or condition(s) sustained in the May 21, 2009, accident? If yes, when?*

The claimant has reached maximum medical improvement relative to the injuries sustained in the motor vehicle accident of May 21, 2009. From the provided records, this would appear to have occurred in October 8, 2009.

6) *What timeframe is expected for the patient's condition to stabilize, relative to injuries sustained in the May 21, 2009, accident?*

Relative to the accident in question, the claimant's condition has stabilized.

7) *Is the current treatment plan appropriate for and consistent with the severity of the injury(ies) or condition(s)?*

The current treatment plan does not appear to be appropriate or consistent with the severity of the injuries or conditions.

8) *Are the injury and course of treatment a sole result of the May 21, 2009 motor vehicle accident? If not, please provide an apportionment by percentage as to which portion of injury and care is motor vehicle accident related.*

The course of treatment through October 2009 would be the sole result of the accident of May 21, 2009. There may have been a flare up as a result of her accident in August 2009, but there is nothing within Dr. Mangum's notes to provide a clear apportionment. If there was a flare up, it is relatively short lived and does not appear to warrant further separation.

Thank you for the opportunity to assist you in the evaluation of this particular individual.

Should you have other questions or concerns, please feel free to contact me through Medical Consultants Network, Inc.

Thomas D. Freedland, D.C.
Chiropractor

TDF:gab [redacted]Freedland

# BEFORE THE
# BOARD OF CHIROPRACTIC EXAMINERS
# STATE OF OREGON

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | NOTICE OF PROPOSED |
| Thomas Freedland , D.C. | ) | DISCIPLINARY ACTION |
| | ) | |
| | ) | |
| | ) | |
| Licensee. | ) | Case # 2010-1008, 2010-1009, 2010-1013, 2010-1025 |

The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Thomas Freedland, D.C. (Licensee), is licensed by the Board to practice as a chiropractic physician in the State of Oregon. The Board proposes to discipline Licensee for the following reasons.

1.

The Oregon Board of Chiropractic Examiners received several complaints regarding patients who had received I M E's (independent medical exams) from Licensee. The complaints ranged from being injured during the examination, to allegations that Licensee ignored the physical complaints that patients had indicated in the writing of his reports and had not been thorough or accurate in his report writing based on his chart reviews, his own objective examination findings and failed to address significant information that the patients allegedly relayed to him during these encounters.

The Board received 4 patient files and reviewed those in this matter. These are patient files of Patient 1, 2, 3, and 4.

Patient 1

2.

Patient 1 was a 68 year old man who was rear-ended by another vehicle. He complained of dull ache on the right side of his neck which was aggravated by driving over an hour or stress. Patient 1 rated this at 2/10 on a-written 0-10 point visual analog scale. On examination by Licensee which occurred on August 26, 2009, there were objective findings that demonstrated hypomobility of the cervical spine as well as palpable findings in the trapezius musculature bilaterally with more soreness elicited on the right than the left. Tenderness to palpation also was noted in the right parathoracic margin extending down to T3. There was no notation of degree of muscle tone associated with this examination. Despite these objective findings, on page 5 of

Licensee's IME report with summary responses to the Insurer's specific questions, Licensee stated "there were no overt objective findings." Clearly, the examination by Licensee demonstrates that his own objective criteria did not support his conclusions, specifically; his response to Question 5 when asked "did the objective findings support the patient's subjective complaints?" Licensee responded that Patient 1 had minimal subjective complaints and no overt objective findings. As demonstrated above, in fact, his examination of the patient indicated pertinent positive objective findings.

Licensee also failed to follow up on the treating chiropractor's indication of a space occupying lesion or thoracic spinous fracture. Because these are significant diagnoses that could have either long term sequelae or significant contributing underlying impact on even a minor injury, if Licensee felt there was no clinical possibility of this, he should have addressed this in his report, discussing his clinical reasoning that these conditions did not exist. Importantly, in Question 3 on the summary report of findings to the Insurer, Licensee eliminates any pre-existing condition as a contributing element without addressing these possible underlying conditions or any other possible pre-existing conditions. Therefore, Licensee's exam findings and his conclusions that Patient 1 had no change from baseline as a result of this injury are not clearly supported.

Licensee has minimized his diagnostic assessments and conclusions in direct contradiction to his own exam findings. Licensee does not address his own positive objective findings upon exam. He does not discuss any possible correlation between his own objective findings and the Patient 1's complaints. Licensee has ignored the clinically significant reduced cervical range of motion and does not address it in his report. There is no X ray review, comment nor discussion of the likely etiology of Patient 1's restricted cervical ranges of motion which is an area of clinical concern in this patient's injury case. No discussion occurred as to the absence or presence of x-rays or MRI's with this patient by Licensee. There was disconnect between his own exam findings and his reported conclusions, and no discussion of any pre-existing condition that could have been a contributing element to his exam findings and recommendations to the insurer. The examination, therefore fails to meet minimal standards.

Patient 2

3.

Patient 2 is the wife of Patient 1 and was in the same motor vehicle accident with Patient 1. She was 68 years old and her complaints were an achy sensation across the upper portion of the shoulder blades and tightness in her trapezius muscles. It was also noted that the Patient had a history of increased symptoms two to three weeks prior to the date of the IME with Licensee resulting in increased tightness and achiness extending into the upper extremities and bilateral trapezius regions. One month previous to the motor vehicle collision referenced above, Patient 2 had treated with her chiropractic physician of record for an undisclosed reason. She sustained a neck injury in another motor vehicle incident approximately six years prior. She is on supplemental thyroid medication. However, in Licensee's conclusions (questions 3 and 4 of the IME) he discounts any pre-existing conditions with respect to this patient's recovery and

subsequent residual findings. From Licensee's examination, there were objective conclusions demonstrating loss of ranges of motion of the cervical spine with digital palpatory findings. No information is recorded as to muscle tone in either the cervicothoracic or lumbar regions. He reports "Axial compression at the shoulders or head causes no increase in pain nor does traction." Further, although he reports decreased cervical extension and lateral bending bilaterally and decreased lumbar extension and left lateral bending, he states in response to the Insurer's Question 5 that "within today's evaluation, there are minimal subjective complaints and no objective findings." Licensee also states on page 6 of the report that his diagnosis is "possible cervicothoracic stress as a result of the accident resulting in mild cervicothoracic strain." Licensee has minimized his conclusions with respect to question 5 in which he states there are no objective findings, when in fact, his own examination demonstrated digital palpatory findings and restricted range of motion findings of the cervical spine. Licensee fails to discuss his own stated objective finding and/or why he chose to ignore them in his conclusions. He also discounts any pre existing condition as an element in her current residuals with respect to this motor vehicle accident. Licensee bases his conclusion upon an incomplete neuro-musculoskeletal examination that did not include significant palpatory findings of hypertonia or muscular imbalance.

Licensee concluded that 6 visits would have been appropriate but provided no reference as to how that conclusion was reached. There is no reference to the Oregon Chiropractic Practices and Utilization Guidelines (OCPUG) or any other guidelines. The OCPUG would indicate more treatment than 6 visits unless there were factors that suggested less, which were not indicated/discussed in his examination findings and report.

The treating chiropractor reported initial concern as to the potential presence of a thoracic compression fracture and a possible space occupying lesion, but no x rays were taken. Licensee should have pursued this clinically to determine if these pathologies existed and how they related to the patients continued complaints and any relevant objective findings. The reporting and narrative of Licensee's report is not within the standard of care.

Patient 3

4.

Patient 3 was a 67 year old female who was involved in a rear end motor vehicle accident in November 2009. Patient 3 complained that she went through the examination administered by Licensee and the next day could hardly walk. The muscles in her neck at the base felt like they were tied in knots. The Patient complained that her right arm felt as if it were pulled out of the socket and was painful. Her left arm hurt when raising it and she had headaches. It took Patient 3 three weeks to recover from her IME examination in terms of the aggravation to the injuries she sustained. Patient 3 also averred that when reading her IME report, it didn't state what she recalled from her examination experience with Licensee. She stated that the testing that was performed by him spanned 45 minutes. Patient 3 alleged that the testing performed by Licensee was not described in detail anywhere in the report.

On examination, there is no indication that Licensee evaluated this patient for muscle tone or palpable tenderness. These required components of a chiropractic examination were absent and have a direct bearing on the determination of Patient 3's medical condition.

In his IME report, paragraph 4, Licensee described that while strength testing Patient 3 in the upper extremities, Patient 3 described terrible pain in the cervicothoracic junction with resisted left shoulder extension. She also reported significant pain in the left wrist and shoulder with forearm pronation. The Tinel's test also noted that while performed over the left ulnar nerve, caused pain to extend into the trapezius muscle. When performed over the left median nerve, Patient 3 experienced pain up the arm to the left shoulder. Further, Licensee noted that Patient 3 reported achy sensation through her neck and upper back and out to the shoulders and described stiffness as well. In the history, Patient 3 reported she also experienced headaches and increased pain with prolonged periods of sitting, walking and lifting. Yet in answer to question 1 on page 9 of the report, Licensee states "current conditions and complaints of pain are without objective findings and there are historical references to cervical, thoracic strain now resolved." When Licensee states in his report "without objective findings" he is in direct contradiction to his own exam findings noted on page 8 of the physical examination. The examination findings are incomplete for the standard of a neuro-musculoskeletal chiropractic examination. It did not include palpatory findings in the thoracocervical region. Absent a relevant complete examination, the opinion of Licensee has little merit. Licensee has ignored and/or minimized his own examination findings in support of the opinion he renders such that his summary responses to the Insurer's questions are in fact contradictory to his own findings. Licensee did not even complete the required examination elements upon which such conclusion necessarily would be based.

Licensee's conclusive statements in Question 1 are without foundation. For example, in paragraphs 4-8 the findings are not followed up with appropriate supplemental history and/or examination. Licensee did not ask supplemental questions as to the frequency of the pain in the neck, shoulder or jaw. There is no indication of any questions regarding her headaches. Although Licensee states reduced ranges of motion in cervical and trapezius areas, he does not specify how, when or why these occur. If there was evidence of pain behavior during the examination, a more in depth discussion of what Licensee found and how he came to his conclusion should have been provided. The mere presence of pain behavior does not negate the possibility of injury or pathology. All objective findings must be taken into consideration when rendering an opinion of treatment for a patient.

Patient 4

5.

Patient 4 is a 42 year old female who was involved in a rear end motor vehicle accident on October 13, 2009. Patient 4 complained of stiffness and low back and neck pain. Upon her IME examination Patient 4 indicated to Licensee that when he requested she turn her head that she was not able to do so. She also expressed pain in certain areas of her back that were not written

in his examination findings. Patient 4 stated that Licensee failed to mention any of her mobility limitations in the examination report as well. In his report and exam findings, Licensee found on page 4 that there is no pain with motion palpation over the SI joints.

Although the patient says she was unable to perform the different tests, Licensee's report indicates that she was able to perform the tests without pain and her range of motion measurements are all normal.

In addition, the examination performed by Licensee did not rise to the level required for a minimally competent chiropractic neuro-musucoloskeletal examination. Licensee does not appear to have observed or palpated for overt muscle spasm in the lumbosacral region and there is no indication that hypertonia or spasm was checked in any other spinal areas.

6.

Licensee's records for the above listed patients are inadequate and do not meet minimal required standards of care. This conduct constitutes a violation 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). Licensee's diagnosis of these patients medical status is inadequate based on the history, presenting complaints and examinations performed by Licensee. The conclusions and diagnoses of Patients 1-4 by Licensee 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. The conclusions, unsupported by documented examination findings, therefore are specious and fail to meet the minimal standard of care of chiropractic care in the state of Oregon and violate ORS 684.100(1)(f)(A) and OAR811-015-0010(1)-(5).

7.

Due to the aforementioned violations, the OBCE proposes to issue a Letter of Reprimand to Licensee.

8.

Licensee shall pay costs of this disciplinary proceeding, including investigative costs and attorney fees pursuant to ORS 684.100(9)(g).

9.

Licensee has the right, if Licensee requests, to have a formal contested case hearing before the OBCE or an Administrative Law Judge to contest the matter set out above. At the hearing, Licensee may be represented by an attorney and subpoena and cross examine witnesses. That request for hearing must be made in writing to the OBCE, must be received by the OBCE within 30 days from the mailing of this notice (or if not mailed, the date of personal service), and must be accompanied by a written answer to the charges contained in this notice.

10.

The answer shall be made in writing to the OBCE and shall include an admission or denial of each factual matter alleged in this notice, and a short plain statement of each relevant affirmative defense Licensee may have. Except for good cause, factual matters alleged in this notice and not denied in the answer will be considered a waiver of such defense; new matters alleged in this answer (affirmative defenses) shall be presumed to be denied by the agency and evidence shall not be taken on any issue not raised in the notice and answer.

11.

If Licensee fails to request a hearing within 30 days, or fails to appear as scheduled at the hearing, the OBCE may issue a final order by default and impose the above sanctions against Licensee. Licensee's submissions to the OBCE to-date regarding the subject of this case automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a prima facie case.

DATED this 2nd day of December 2010.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

By: 
Dave McTeague, Executive Director

**Certificate of Service**

I, Dave McTeague, certify that on December 2, 2010 I served the foregoing Notice of Proposed Discipline upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Thomas Freedland DC
Tigard Medical Mall
9735 SW Shady Lane #303
Tigard, OR 97223

By regular mail to:

Frank Moscato AAL
1001 SW Fifth Ave, 16th Floor
Portland, Oregon 97204-1116

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners

| | | | |
|---|---|---|---|
| State of Oregon | ) | Case # 2010-1008, 2010-1009, 2010-1013, 2010-1025 |
| County of Marion | ) | Thomas Freedland DC |

I, Dave McTeague, being first duly sworn, state that I am the Executive Director of the Oregon Board of Chiropractic Examiners, and as such, am authorized to verify pleadings in this case: and that the foregoing Notice of Proposed Discipline is true to the best of my knowledge as I verily believe.

Dave McTeague, Executive Director
Oregon Board of Chiropractic Examiners

OFFICIAL SEAL
KATELYN A HAMBELTON
NOTARY PUBLIC - OREGON
COMMISSION NO. 444914
MY COMMISSION EXPIRES DECEMBER 8, 2013

SUBSCRIBED AND SWORN to before me this 1st day of December, 2010

NOTARY PUBLIC FOR OREGON
My Commission Expires: Dec. 8th 2013

## Confidential Patient Identification Key

| Patient Letters: | Patient Names: |
| --- | --- |
| Patient 1 | |
| Patient 2 | |
| Patient 3 | |
| Patient 4 | |

## NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

**You should read this information to prepare for the hearing**

1. **Law that applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in chapter 183 of the Oregon Revised Statutes and the administrative rules and statutes of the Oregon Board of Chiropractic Examiners (OBCE), OAR chapter 811, ORS chapter 684, and the Attorney General's Office of Administrative Hearing Rules, OAR Chapter 137-003-0501 to 137-003-0700.

2. **Right to attorney.** The OBCE will be represented by an attorney. You are not required to be represented by counsel, unless you are an agency, corporation or association. You have a right to be represented by an attorney at your own expense. If you are not represented at the hearing and determine in the course of the hearing that an attorney is necessary you may request a recess to allow you an opportunity to secure the services of an attorney. The ALJ will decide whether to grant such a request. Legal Aid Organizations may be able to assist you if you have limited financial resources.

3. **Subpoenas.** You may subpoena witnesses. The OBCE will issue subpoenas upon request and upon a showing of good cause and general relevance of the evidence sought. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness and mileage fees to a witness you subpoena is your responsibility.

4. **Administrative Law Judge.** The person presiding at the hearing will be an Administrative Law Judge from the Office of Administrative Hearings. The ALJ will rule on all matters that arise at the hearing, subject to any agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640 and 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings. The Office of Administrative Hearings consists of employees of the Employment Department and independent contractors with the Office of Administrative Hearings. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by the Board.

5. **Discovery** . Discovery is permitted by the parties and requests for discovery should be in writing. Discovery should be requested first by informal means by the parties. You have the right to respond to all issues properly before the ALJ and should present evidence and witnesses. Discovery is provided in OAR 137-003-0570, OAR 137-003-0572 and OAR 137-003-0570(8).

6. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the OBCE's actions are appropriate. The order of presentation of evidence is normally as follows:

   a. Testimony of witnesses and other evidence of the Board in support of its proposed action.
   b. Testimony of your witnesses and your other evidence.
   c. Rebuttal evidence by the Board and by you.

6. **Burden of presenting evidence.** The burden of presenting evidence to support a fact or a position rests upon the party who proposes that fact or position. If you have the burden of proof on an issue, or if you intent to present evidence on an issue in which the agency has the burden of proof you should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ.

7. **Witnesses.** All witnesses must testify under oath or affirmation to tell the truth. All witnesses, including yourself, are subject to cross-examined by other parties or by the ALJ.

8. **Admissible Evidence.** Evidence that may be admitted at the hearing is that which is commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much reliance the Board will place on it in reaching a decision.

Four kinds of evidence may be admitted.

a. Knowledge of the OBCE. The ALJ may take "official notice" of commonly known facts and of facts and conclusions developed from the experience in the specialized field of activity. This includes notice of technical or scientific facts. You will be informed at the hearing if the OBCE takes "official notice" of any fact so that you may contest those facts. The agency may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

b. Testimony of witnesses. This includes your own testimony.

c. Writings. This includes letters, maps, diagrams and other written material offered as evidence.

d. Photographs, experiments, demonstrations and similar means to prove a fact.

9. **Objections to evidence.** Evidence may be objected to on any legal grounds; including:

a. Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.

b. Immaterial. The evidence is offered to prove a proposition which is not a matter in issue at the hearing.

c. Unduly repetitious. The evidence is merely repetitive of what has already been offered and admitted.

d. Hearsay, authenticity or foundation. To the extent that such evidence would not commonly be relied upon by reasonably prudent persons in the conduct of their serious affairs.

10. **Continuances.** Unless allowed by the OBCE or ALJ, there will be no continuance and the record will not be reopened regarding any matters determined at the conference or hearing. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.

11. **Proposed Order and Exceptions to proposed order.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions" to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed. You will also be notified when you may appear and make oral argument to the Board if applicable

Not later than 10 days after the date of the filing of the proposed order with the Board, you may file and serve on the OBCE and the ALJ, your written exceptions to the proposed order.

a. The exceptions shall be confined to the factual and legal issues which are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:

A. A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;

B. A necessary legal conclusion is omitted or is contrary to law or the Board's policy; or

C. Prejudicial procedural error occurred.

b. The exceptions shall be numbered and shall specify the disputed findings, opinions or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.

After the OBCE has received and reviewed the proposed order and the exceptions, if any, the OBCE shall:

a. Entertain such oral argument as it determines necessary or appropriate to assist it in the proper disposition of the case; and

b. Remand the matter to the hearings officer for further proceedings on any issues of fact which the OBCE believes were not fully or adequately developed; or

c. Enter a final order adopting the recommendation of the ALJ as the OBCE's order or rejecting the recommendation of the ALJ. If the OBCE elects to reject the recommendation of the ALJ, the final order shall contain necessary findings of fact and conclusions of law.

12. **Final Order** The agency will render the final order in this matter. The agency may modify the proposed order issued by the ALJ. If the agency modifies the proposed order in any substantial matter, the agency in its order will identify the modification and explain why the agency made the modification. The agency may modify a proposed finding of "historical" fact only if there is clear and convincing evidence in the record that the proposed finding is wrong.

13. **Conferences.** Prior to a hearing, the ALJ may schedule conferences to:

a. Establish a procedural schedule, including dates for prefiled testimony and exhibits;

b. Identify, simplify or clarify issues;

c. Eliminate irrelevant or immaterial issues;

d. Obtain stipulations, authenticate documents, admit documents into evidence and decide the order of proof; and

e. Consider other matters which may expedite the orderly conduct and disposition of the proceeding.

Except as provided in the following paragraph, the record shall reflect the results of any conferences, which shall be binding on all parties.

14. **Record.** A record will be made of the entire hearing to preserve the testimony and other evidence for appeal. This will be done by a tape recorder. Ordinarily the record will not be transcribed unless you appeal to the Court of Appeals. If you appeal, you will not have to pay for the cost of transcribing the record, unless the petition is frivolous or you unreasonably refuse to stipulate to a limited record. If you do not appeal, a copy of the record will be made available to you upon payment of the cost of making it.

15. **Appeal.** If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served on you. See Oregon Revised Statutes 183.480 et seq.

FRANK A. MOSCATO
Admitted in Oregon and Washington
frank.moscato@harrang.com

HARRANG LONG GARY RUDNICK P.C.
ATTORNEYS & COUNSELORS AT LAW

PORTLAND OFFICE

January 6, 2011

Lori Lindley, Esq.
DOJ GC Business Activities
1162 Court Street NE
Salem, OR 97301

| | | | |
|---|---|---|---|
| Re: | Chiropractor | : | Thomas Freedland, DC |
| | Patient 1 | : | |
| | Patient 2 | : | |
| | Patient 3 | : | |
| | Patient 4 | : | |
| | Case Nos. | : | 2010-1008; 2010-1009; 2010-1013; 2010-1025 |

Dear Lori:

Enclosed is Dr. Freedland's Request for Hearing. Because the Notice of Proposed Disciplinary Action was quite lengthy, I appreciate you extending the time for our appearance to January 14.

This letter will also serve as our first request for production, pursuant to the instructions provided with the Notice. At this time, we would like the following:

1. The OBCE's complete investigative files for all four patients identified above. This request is comprehensive, and includes, but is not limited to all correspondence, interviews, requests for records, recordings, notes, background checks, records actually received by the OBCE for review, etc.

2. All records related to the identity, selection and qualification of any persons reviewing the complaints referenced above. This request includes any persons providing opinions concerning Dr. Freedland's evaluation, review of underlying and investigative records, and the alleged violation and application of Oregon statutes, administrative laws, and Board policies and procedures.

3. All records concerning all OBCE meetings, private or public, wherein Dr. Freedland or the above cases or handling of the above cases were discussed. All records regarding presentations or comments made by any individuals to the OBCE concerning Dr. Freedland or the above cases.

4. All records representing commentary by the OBCE concerning independent medical examinations during OBCE meetings, statements made to the public, statements made to peer groups, and statements made during conventions and other professional meetings.

5. All communication between the OBCE and Dr. Beebe.

"OBCE" includes the Oregon Board of Chiropractic Examiners, its individual Board members, staff and investigators, attorneys, partners, employees, representatives, agents, and/or any person or corporation acting on OBCE's behalf.

"Document" or "record" as used in this request, refers to any record or communication that would be a "writing," "recording," or "photograph," including the originals and non identical copies, whether different from the original by reason of any notation made upon such copy or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, materials, orders, directives, interviews, telegrams, minutes, reports, studies, statements, transcripts, summaries, pamphlets, books, interoffice and intraoffice communications, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, teletype, telefax, email, worksheets, contracts, checks, questionnaires, receipts, returns, pamphlets, invoices, worksheets, x rays, charts, test results, microfilm, and all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral recordings or representations of any kind, including without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, records, motion pictures, and electronic, mechanical, or electrical recordings or representations of any kind, including without limitation, tapes, cassettes, cartridges, disks, chips and records.

Please review the drafted Notice of Proposed Disciplinary Action. Regardless of your opinion of Dr. Freedland, I am very concerned with how this matter was handled. The language within the Notice is inflammatory, the "facts" identified within the patient complaints are all one sided and have very little bearing on any of the actual alleged violations, and there is clearly misapplications of the cited laws. For example, despite no supporting commentary, OAR 811-035-0005(2) (informed consent) is simply thrown into the alleged violations, when there is no basis for the charge. Further, although there are repeated statements that Dr. Freedland "fell below the standard of care," and failed to perform an "acceptable examination," I do not see how he has violated either clinical justification or the PARTS exam, which are the guidelines provided by the OBCE.

I am disturbed the members of the OBCE have engaged into a dispute of opinions between two professionals. Here, there is at least one treating physician who is very vocally opposed to Dr. Freedland. And yet, his patient records and opinion for the very same patients are not in question. Furthermore, there appears to be no consideration made by the OBCE regarding the actual facts surrounding the alleged injuries that Dr. Freedland was evaluating.

It is clear to me from my many years of litigation experience that treating PIP physicians are seldom, if ever, in agreement with IME physicians. What is also clear, having reviewed thousands of patient treatment charts, is that it is absurd to suggest that IME reports fall below the standard of care, particularly when compared to the often poor treatment records they are forced to rely upon to form their opinions. Dr. Freedland's reports far exceed the standard seen in most chiropractic records.

After you receive my letter and review the Request for Hearing, please call me to discuss this matter further. I understand from Dave McTeague that the Board has held Case #2010-1027 instead of disposing of it during the two separate Board meetings where Dr. Freedland's complaints were apparently discussed. I reviewed this complaint and find it to be similarly concerning, as are Dr. Beebe's public forum remarks that suggest that he is encouraging others to complain about Dr. Freedland in order to essentially dispose of a foe. These are not appropriate uses of the Board's complaint procedure. Eliminating IME evaluations should not be a goal of the Board. I can assure you that if I were defending any of them in a malpractice action, they would feel quite differently about IMEs and their necessity. Rather than simply dispute an IME physician's opinion with their own, the common practice now appears to encourage disgruntled patients to file Board complaints against the "offending" IME doctor. This should be discouraged. Instead of providing an objective perspective concerning different professional opinions, I am concerned the Board is acting as a patient advocate, much as they would if they were the treating physician.

I respect the responsibility the Board has with regard to the chiropractic community and value our working relationship. Nevertheless, the findings and language in the Notice simply do not conform with Oregon chiropractic practice and accepted general polices and discipline guidelines.

Sincerely,

HARRANG LONG GARY RUDNICK P.C.

Frank A. Moscato

FAM:rat

Enclosure
cc: Thomas Freedland, DC - Personal & Confidential

17789-0001

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

| | |
|---|---|
| In the Matter of:<br><br>THOMAS FREEDLAND, DC,<br><br>Licensee. | Case Nos. 2010-1008, 2010-1009, 2010-1013, 2010-1025<br><br>**REQUEST FOR HEARING, ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF PROPOSED DISCIPLINARY ACTION** |

1.

**REQUEST FOR HEARING**

Thomas Freedland, DC (Licensee) hereby requests a hearing challenging the Board of Chiropractic Examiners' Notice of Proposed Disciplinary Action issued on December 2, 2010.

2.

**ANSWER TO NOTICE OF PROPOSED DISCIPLINARY ACTION**

As to paragraph 1, Licensee admits the Oregon Board of Chiropractic Examiners (hereinafter "OBCE") received complaints regarding independent medical examinations (hereinafter "IMEs") he performed. Licensee denies the characterization and allegations in said complaints. Licensee does not have sufficient information at this time to know how many complaints were submitted to the Board, but understands the Board received five patient files, not four as stated in the Notice of Proposed Disciplinary Action. Licensee will provide some specific defenses within each "patient complaint" below for the benefit of the OBCE, but does not waive any of his affirmatively stated defenses

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within the entire body of this response by not stating these defenses specifically within each section.

**Patient 1**

3.

As to paragraph(s) 2, Licensee admits Patient 1 was a 68 year old man who had been involved in a minor motor vehicle accident. Patient 1 complained he had a dull ache on the right side of his neck that was aggravated by driving over an hour and by stress. Patient 1 rated his pain as a 2/10 on a 0-10 visual analog scale. Licensee examined Patient 1 on August 26, 2009. Licensee denies that Patient 1 had "objective" findings demonstrating hypomobility of the spine as a result of the motor vehicle accident during Licensee's examination. Licensee admits Patient 1 had subjective findings of tenderness on palpation of the right trapezius and parathoracic musculature. Licensee denies that notation of muscle tone was required. Patient 1 exhibited no muscle guarding or spasm upon examination. Licensee denies the OBCE's characterization of subjective findings as "objective" findings. Licensee admits that on page 6, not page 5, of his IME report that he found in his reasonable chiropractic opinion there were no overt objective findings. Licensee admits that in response to Question 5 on his IME report he reiterated there were minimal subjective complaints and no overt objective findings. Licensee again denies that his examination and report indicate "pertinent positive objective findings."

Licensee denies that he "failed" to follow up on Patient 1's treating chiropractor's indication of a space occupying lesion or thoracic spinous fracture. Dr. Beebe's "diagnosis" of a space occupying lesion was based solely on local thoracic pain with "Valsalva", a non-specific test. There was no diagnosis of a thoracic spinous fracture. Dr. Beebe made reference to pain on palpation and suggested there was a fracture of a thoracic spinous process. Dr. Beebe felt x-rays were indicated but deferred those x-rays awaiting a clinical response. There were no clinical indications within Dr. Beebe's documentation to suggest that these conditions were present and there were no

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indications during Licensee's evaluation to suggest any of these conditions existed at any time. Licensee denies that he failed to consider or address this clinical possibility within his report (See page three of IME report and response to Question #6 in IME report). Licensee denies that he was required to provide this information in response to Question #3, when it is further addressed within Question #6 of his report. Licensee's opinion was that Patient 1 did not have any clinical indications of a space occupying lesion or thoracic spinous fracture and Licensee was not required to include it as a pre-existing condition in response to Question #3. Licensee denies his exam findings and conclusions that Patient 1 had no change from baseline are not supported, and the OBCE offers no contradictory objective evidence to invalidate his opinion. The OBCE similarly fails to note the treating physician "failed" to follow up on his own diagnoses.

Licensee denies he has minimized his diagnostic assessments and conclusions and alleges his diagnostic assessments and conclusions *support* his exam findings. Licensee denies the OBCE's characterization of objective and subjective findings in his examination. Licensee denies there was clinically significant reduced cervical range of motion in this 68 year old patient. Licensee denies that he failed to address Patient 1's x-ray review or consider same (see page 5, Section "Diagnostic Studies"). Licensee notes the OBCE's failure to consider the treating chiropractor's failure to obtain radiology studies in support of his various diagnoses. Licensee denies there is any "disconnect" between his conclusions and examination. Licensee denies that his examination fails to meet minimal standards.

Except as expressly admitted herein, Licensee denies the remainder of paragraph(s) 2.

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**Patient 2**

4.

As to paragraph(s) 3, Licensee admits Patient 2 is the wife of Patient 1 and was in the same motor vehicle accident. Licensee admits Patient 2 is also 68 years old and had complaints of an achy sensation across the upper portion of the shoulder blades and tightness in her trapezius muscles. Licensee admits he made note of Patient 2's report of increased symptoms on one day two to three weeks prior to her IME. Licensee admits at *that* time, she reported some tightness and achiness in her trapezius muscles. Licensee admits Patient 2 had been seen by her treating chiropractic physician one month prior to motor vehicle collision for an undisclosed reason and sustained a neck injury in another motor vehicle incident approximately six years prior and that she is on supplemental thyroid medication. Licensee denies that there was anything concerning Patient 2's history or presentation that would have led to the conclusion that she had a pre-existing condition affecting her recovery from her motor vehicle accident. Similarly, Patient 2's treating doctor's record indicates no residual problems from her earlier accident or her singular treatment one month prior to the accident. Licensee admits ranges of motion normal for a 68 year old female were obtained and that subjective reports of pain were made. Licensee denies there were objective conclusions demonstrating loss of range of motion of the cervical spine related to Patient 2's motor vehicle accident. Licensee denies his examination failed to meet the requirements of a PARTS examination. Licensee admits axial compression of Patient 2's shoulder caused no increase in pain, nor did traction. Licensee admits that in response to the question, "Do your objective findings support the claimant's subjective complaints?," he responded there were minimal subjective complaints and no objective findings related to Patient 2's motor vehicle accident. Licensee admits he diagnosed possible cervicothoracic stress as a result of the accident, resulting in mild cervicothoracic strain. Licensee denies the OBCE's characterization of any of his conclusions and findings. Licensee alleges the OBCE

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failed to note much of his review of the records and findings. Licensee denies that he failed to state or ignored his findings in forming his conclusions. Licensee denies there were any pre-existing conditions that effected Patient 2's recovery from the motor vehicle accident and further denies that his clinical opinion in this matter is a violation of any rule. Licensee denies that he failed to perform a complete neuro-musculoskeletal examination and further denies the OBCE's characterization that certain elements of testing are required, when they are not.

Licensee denies that he was required to give an unidentified reference to a rule or formula to justify his opinion as to how many visits were appropriate. Licensee's training and experience allow him to express an opinion on reasonable care. Further, Licensee's opinion falls within the parameters of Category 1 (a mild to moderate strain/mild sprain) of the Oregon Chiropractic Practice and Utilization Guidelines (hereinafter "OCPUG"), which indicates the treatment criteria consistent with Licensee's diagnosis is zero to six weeks. The OBCE reviewer's difference of opinion in this diagnosis does not create a violation of any rule by Licensee.

Licensee denies there is any mention in the treating chiropractor's report of a thoracic compression fracture. Licensee admits that Patient 2's treating physician opined a potential fracture of a spinous process and deferred any studies pending clinical response. Licensee denies he is responsible for the treating chiropractor's failure to take x-rays for an unsubstantiated condition the treating chiropractor identified, but failed to pursue. Licensee denies there was anything in Patient 2's history, records or evaluation indicating the need to clinically pursue these "pathologies." If Patient 2 did have either of these conditions at the time of Licensee's examination, it would be now known. Licensee denies his reporting and narrative were not within the standard of care. Licensee objects to the failure of the OBCE identifying what that "standard" is and how Licensee specifically failed to meet it.

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Except as expressly admitted herein, Licensee denies the remainder of paragraph(s) 3.

**Patient 3**

5.

As to paragraph(s) 4, Licensee admits Patient 3 was a 67 year old female who was involved in a rear end motor vehicle accident in November 2009. Licensee fully denies any inappropriate or substandard examination of Patient 3. Licensee denies he failed to record within his IME report what actually occurred during his examination of Patient 3. Licensee cannot respond to Patient 3's vague statement that his report did not state what she recalled of her experience. Licensee admits the evaluation of Patient 3 spanned 45 minutes. Licensee denies that his testing was not described in his report. Licensee cannot respond to Patient 3's allegation that the testing was not described in "detail" as there is no allegation of what detail was required that was not provided. Licensee alleges the OBCE's failure to report the presence of a second physician during Patient 3's examination, and that physician's statement that the IME examination was conducted properly.

Licensee denies he failed to obtain the required components of a chiropractic examination or that he failed to palpate Patient 3 (see IME report). Licensee also denies the PARTS examination requires the elements stated by the OBCE.

Licensee admits the findings in paragraph four of the physical examination portion of his IME report and the many subjective reports given by Patient 3 which are stated by the OBCE. Licensee denies the OBCE's characterization of Patient 3's reports of pain with testing as objective findings. Licensee alleges the OBCE's failure to note any of the inconsistent findings reported within this same section of the IME report, which led to Licensee's response to Question #1 in the report, which the OBCE fails to recite within the Notice. Licensee denies that his examination was incomplete or that the OBCE has identified the standard of examination that he has allegedly violated. Licensee

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denies that his clinical opinion, because it differs from another chiropractor's, has little merit. Licensee denies he has ignored or minimized his examination finding and rather has relied upon them to reach his opinion and responses to the Insurer's questions. Licensee denies that he failed to complete the required examination elements that the OBCE has failed to identify.

License denies his conclusion in response to Question #1 is without foundation and objects to paragraph(s) 4 as redundant. Further, the OBCE fails to identify which paragraphs 4-8 are not followed up with appropriate supplemental history or examination. Licensee refers the OBCE to his complete report concerning his discussion of his review, interview and examination. Licensee denies that he did not inquire about Patient 3's headaches, and it is clear inquiry was made (see page 9, above Diagnostic Imaging). Licensee denies that he failed to sufficiently identify pain behavior in his report or that he violated any rules in his description of the pain behavior. Licensee objects to the *dicta* and commentary throughout the Notice, including, but not limited to the OBCE reviewer expressing an opinion on what Licensee's opinion should be concerning the presence of pain behavior. Licensee denies that he failed to take into consideration Patient 3's objective and subjective findings, her history and her presentation when rendering his *opinion* regarding her treatment.

Except as expressly admitted herein, Licensee denies the remainder of paragraph(s) 4.

**Patient 4**

6.

As to paragraph(s) 5, Licensee admits Patient 4 is a 42 year old female who was involved in a rear end motor vehicle accident on October 13, 2009 and complained of stiffness and low back and neck pain. Licensee denies that Patient 4 was unable to turn her head during her examination (see cervical range of motion measurements in IME report). Licensee denies that he failed to record any expressions of pain by Patient 4

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during her examination of unidentified areas of her back. Licensee admits that he did record discomfort when mentioned by Patient 4 during her examination (see IME report). Licensee denies that he failed to record any mobility limitation during his examination. Licensee admits he found no pain with motion palpation over Patient 4's SI joints.

Licensee denies Patient 4 was unable to perform the testing identified on page four of his IME report. Licensee denies that his report states she had no pain with all testing (see IME report for notations of when there was pain or no pain). Licensee's range of motion measurements are listed under the physical examination portion of his report.

Licensee denies his examination failed to meet the standards of a chiropractic examination and objects to the OBCE's failure to identify what standard they are applying in their notice. Licensee denies that he failed to palpate Patient 4 during his examination. Licensee objects to the OBCE reviewer's inconsistent allegations and commentary that he failed to palpate the Patient, when in fact he is accused within the same section of finding "there is no pain with motion palpation over the SI joints."

Except as expressly admitted herein, Licensee denies the remainder of paragraph(s) 5.

7.

Licensee denies paragraphs 6, 7 and 8 in their entirety.

8.

Licensee acknowledges the statements made in paragraphs 9, 10 and 11. Licensee reserves his right to take evidence on any issue not identified by the OBCE in their notice, but discovered at the time Licensee is finally permitted to obtain discovery as related to the charges made by the OBCE.

9.

Except as so admitted, Licensee denies all remaining allegations and asserts his constitutional and statutory rights under U.S. Constitution V, VI, XIV amendments;

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## CERTIFICATE OF SERVICE

I certify that on January 6, 2011, I served or caused to be served a true and complete copy of the foregoing **REQUEST FOR HEARING, ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF PROPOSED DISCIPLINARY ACTION** on the party or parties listed below as follows:

__X__ Via First Class Mail, Postage Prepaid

_____ Via Facsimile

_____ Via Personal Delivery - Courier

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners
3218 Pringle Road SE, Suite 150
Salem, OR 97302-6311

Lori Lindley
DOJ GC Business Activities
1162 Court Street NE
Salem, OR 97301

HARRANG LONG GARY RUDNICK P.C.

By: _____

Frank A. Moscato, OSB #721752
frank.moscato@harrang.com
Harrang Long Gary Rudnick P.C.
Telephone: (503) 242-0000
Facsimile: (503) 241-1458
Of Attorneys for Thomas Freedland, DC

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20.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners did not provide Licensee with equal access to justice. The Oregon Board of Chiropractic Examiners, prior to issuing the Notice of Proposed Disciplinary and publicly announcing their finding, did not inquire of or permit Licensee to respond to alleged violations within the Notice. The Oregon Board of Chiropractic Examiners did not conduct a peer review of the allegations consistent with their general policies and discipline guidelines.

21.

**TWELFTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners includes language within the Notice of Proposed Disciplinary Action that is inflammatory and which is not relevant to the ultimate alleged findings of violations.

22.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners failed to provide Licensee with a fair and objective investigation into the patient complaints, failed to identify conflicts of interests by the sitting Board members, and failed to investigate the conflicts of interest of the involved patients' treating physician, etc.

23.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners failed to identify within each Patient complaint the specific law or rule violated by Licensee, or provide facts that support the alleged violation of that rule. The Oregon Board of Chiropractic Examiners raises general violations in paragraph 6 of their Notice which do not have any supporting facts within the Notice.

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24.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners has inappropriately subjected Licensee to a disciplinary proceeding evolving out of a political dispute within the chiropractic community concerning the role of Independent Medical Evaluations.

25.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners has failed to include review of all the facts available, including, but not limited to, apparent inconsistencies within the treating physicians' charts, the actual mechanism of injury for which the patients were being evaluated, and the presence and opinion of a second licensed chiropractor present during some of the examinations.

The Licensee reserves the right to allege affirmative defenses or claims available to him as uncovered during discovery process.

WHEREFORE, having requested a hearing and fully answered the agency's Notice of Proposed Disciplinary Action, Licensee prays for the following relief against the agency:

1. That the Notice of Proposed Disciplinary Action be dismissed with prejudice;

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2. That Licensee be allowed his costs, attorney fees and disbursements incurred herein; and

3. For such other and further relief as the Administrative Law Judge may deem just, proper and equitable.

DATED this 6th day of January, 2011.

HARRANG LONG GARY RUDNICK P.C.

By: _____

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Facsimile: (503) 241-1458
Of Attorneys for Thomas Freedland, DC

Trial Attorney: Frank A. Moscato

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Oregon Constitution Article I § 11, 12 and all applicable Oregon Revised Statutes, including, but not limited to, ORS 136.415 and ORS 136.425.

By way of further answer in defense, Licensee alleges as follows:

10.

**FIRST AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners has erroneously interpreted provisions of the law, statutes and administrative rules applicable to this matter.

11.

**SECOND AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners' findings and actions are outside the range of discretion delegated to the agency by law.

12.

**THIRD AFFIRMATIVE DEFENSE**

The findings and conclusions of the Oregon Board of Chiropractic Examiners are inconsistent with the agency's rules, officially stated agency position or a prior agency practice.

13.

**FOURTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners' findings and conclusions are in violation of constitutional and statutory provisions.

14.

**FIFTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners' findings and conclusions are not supported by substantial evidence in the record when viewed as a whole that would permit a reasonable person to make those findings.

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15.

**SIXTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners has waived its right, through prior actions and proceedings, to make the findings set forth in the Notice of Proposed Disciplinary Action.

16.

**SEVENTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners' actions are barred by the statute of limitations.

17.

**EIGHTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners is estopped from making the findings and conclusions asserted in the Notice of Proposed Disciplinary Action based on its prior findings, administrative rules and actions.

18.

**NINTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners' Notice of Proposed Disciplinary Action fails to state the claims upon which relief may be granted.

19.

**TENTH AFFIRMATIVE DEFENSE**

The Oregon Board of Chiropractic Examiners' proposed discipline and sanctions are unreasonable and disproportionate to the allegations made against Licensee and in light of the Oregon Board of Chiropractic Examiner's general policies and discipline guidelines.

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BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of:

THOMAS FREEDLAND, DC,

Licensee.

**AGREEMENT OF VOLUNTARY COMPLIANCE**

Case Nos. 2010-1008, 2010-1009, 2010-1013, 2010-1025

The Board of Chiropractic Examiners (herein "Board" and "OBCE") is the state agency responsible for licensing, regulating, and disciplining chiropractic physicians in the State of Oregon. Thomas Freedland, D.C. (herein "Licensee") is licensed by the Board to practice as a chiropractic physician in the State of Oregon.

1.

The Board received a series of complaints regarding Independent Medical Examinations performed by Licensee.

2.

The Board reviewed a copy of each patient's file and concluded that Licensee had not fully documented his clinical reasoning for the conclusions reached in the reports in accordance with OAR 811-015-0010 (1) which provides, "Clinical rationale, within acceptable standards and understood by a group of peers, must be shown for all opinions, diagnostic and therapeutic procedures."

3.

The Board issued a Notice of Proposed Disciplinary Action, incorporated herein by this reference, setting out the facts for each patient with the Board's corresponding

allegations regarding the Licensee's performance of the Independent Medical Examinations and reports. Licensee, in his request for hearing, alleged there were multiple errors in the Notice of Proposed Disciplinary Action. The Board recognizes that some of the findings in the Notice of Proposed Disciplinary Action are subject to differences in interpretation or professional judgment.

4.

The Board initially proposed a Letter of Reprimand and Licensee appealed. However, the Board and Licensee agree instead to enter into this Agreement of Voluntary Compliance.

5.

THEREFORE, pursuant to OAR 811-035-0025, the OBCE and Licensee agree:

1. Licensee will ensure the conclusions in his Independent Medical Examination reports are complete and understandable by a group of his peers. All examinations performed to determine the need for chiropractic treatment of neuro-musculoskeletal conditions shall include a functional chiropractic analysis; that is some combination of the following PARTS exam:

P Location, quality, and intensity of pain or tenderness produced by palpation and pressure over specific structures and soft tissues;

A Asymmetry of sectional or segmental components identified by static palpation;

R The decrease or loss of specific movements (active, passive, and accessory);

T Tone, texture, and temperature change in specific soft tissues identified through palpation;

S Use of special tests or procedures

2. To verify compliance, Licensee will submit two (2) examples of recent Independent Medical Examination reports to the Board for their review upon the Board's request. These requests may occur as frequently as three times a year and shall terminate eighteen (18) months from the date this Agreement is executed. The reports will be

reviewed by J. Michael Burke, DC and the Licensee will not incur any cost for the review.

3. Licensee and OBCE agree this Agreement of Voluntary Compliance is not and will not be reported as a disciplinary action.

4. Licensee and OBCE agree this is a public document.

5. Licensee agrees he understands that if he fails to meet this agreement, it could lead to possible disciplinary action by the Board.

6. The OBCE will notify the hearings department that the Request for Hearing is withdrawn.

7. No attorney, hearing or investigation fees or costs will be assessed against Licensee.

I have read and I understand the above Agreement of Voluntary Compliance and fully agree to all of its terms.

This agreement is effective on the last date signed below.

**By:** _____
Thomas Freedland, D.C.

**DATE:** AUG 0 8 2011

**By:** _____
Dave McTeague, Ex. Dir.
Oregon Board of Chiropractic Examiners

**DATE:** Aug. 22, 2011

# 2011
# Annual meeting

# Oregon Board of Chiropractic Examiners (OBCE)

**www.oregon.gov/obce**

**Submitted by:**

**Ann Goldeen DC, Oregon Delegate**
**Daniel Cote DC, Oregon Alternate Delegate**

- 7 Board members (5 DC, 2 public)
- Legislatively Approved Budget for 2011-11 fiscal year: $656,671
- 5 staff, including one investigator, 4.5 FTE
- 1485 Active licensed chiropractic physicians, 337 Inactive chiropractic physicians and 1155 certified Chiropractic Assistants

**WHAT TRAVEL RESTRICTIONS IS YOUR BOARD FACING?**

Budget constraints mean usually one attendee comes from Oregon, but this time we can afford to send two delegates.

**List your Board's three major achievements this past year.**

**1. Dry needling** (DN) is now considered within the Oregon chiropractic scope of practice. (See attached statement). We are now considering adoption on an administrative rule requiring 12 hours of college instruction and a written informed consent. This rule and our DN determination may be challenged in the Oregon Court of Appeals. We may yet experience some push back from the Legislature or others that might delay adoption.

**2. Pre Paid Treatment Rule Adopted** Pre-paid treatment plans must now meet basic criteria for clinical and contract documentation and refunds. The OBCE adopted this new rule at their May 27, 2010 meeting after encountering these issues over the years. (See attached rule language.)

**3. Public Protection Report.** We were successful in concluding 29 board actions in calendar year 2010, setting our new record for board actions (see page 7). These range from Agreements of Voluntary Cooperation to an indefinite suspension for a DC who was convicted of Sex Abuse. One chiropractic assistant was revoked for unprofessional conduct and several were denied licensure. The licensee lookup on our web page also displays these actions by year.

We are projecting to spend upwards of $200,000 on our 2009-2011 legal budget, which

doesn't count the cost of Administrative Law Judges, expert witnesses or our investigator. We have actually gone to contested hearing five times, which is a lot for us. We expect the our Legislature to approve a policy packet for additional funds for our legal budget, but with the other hand they are taking way all inflation factors so we're left about where we started. While total new complaint numbers are down slightly, the complexity of the investigations has risen dramatically. We are contracting with more chiropractic consultants and contract investigators to fill the gap. We have numerous sexual misconduct complaints as well as excessive treatment-auto PIP mill type complaints.

## WHAT IS THE MOST PRESSING CONCERN YOU HAVE?

The OBCE has a growing concern that the current system of IME reviews is biased against the patients in that the insurance companies and the review entities they contract with seem gravitate to those reviewers who consistently cut off payment for care. The OBCE adopted a rule on clinical justification several years ago to ensure that examining doctors were held to the same standards as treating doctors. The OBCE has a current case alleging an examining doctor's exam findings do not support his final conclusions. This may illuminate the Board's concerns in this area.

Currently, the OBCE has increasing investigations which are complicated and produce a higher than normal number of potentially costly contested case hearings on disciplinary actions. We are projected to spend $40,000 to $50,000 in legal costs above our $160,000 biennial legal budget for 2009-2011 (we budget on a two year basis). Additionally, the State is levying a 51% increase in Administrative Law Judge (ALJ) fees, effective July 1, 2010. The result is increasing expenditures for legal services, ALJ services, investigations and expert witnesses. On top of this the state is not giving state agencies any inflation increases for supplies and is continue the freeze on cost of living and merit step increases for employees. This means our budget for 2011-13 will be very tight.

Currently three health professional licensing boards have semi-independent status. Other Oregon health boards are considering this if the Legislature will allow it. Semi-independence means operating independently of legislative budget process and other state administrative structures. The OBCE may consider this in the future.

The OBCE is beginning a **policy discussion** in two areas, **informed consent** and **doctor-patient boundaries**. While informed consent is currently required, it isn't required to be in the form of a written document signed by the patient-some believe it should be. With boundaries, some believe there needs to be more clarity as to how long a waiting period there needs to be following termination of the patient-doctor relationship Before a doctor could have a personal relationship with the former patient. Our current rule spells out criteria to consider in making this determination-some believe it should be a more clear time period.

## HIGHLIGHTS OF CHANGES IN RULES, REGULATIONS, ADMINISTRATIVE CODES, ETC.

See number 2 re pre paid plans above and rule language on page 5.

**WHAT FCLB SERVICES DOES YOUR BOARD USE MOST?**

- CIN-BAD for NPDB reporting and for vetting DC applicants.
- FCLB regional and annual meetings to share information about issues and trends.

**WHAT SERVICES WOULD YOU LIKE TO SEE THE FCLB OFFER?**

We need the FCLB to advocate for a comprehensive resolution to the issues regarding foreign graduates so that licensing boards can have some assurance that those applicants have the required education. The current situation places us in the difficult position of rejecting what may be perfectly qualified DC applicants or creating our own system to review/accept foreign chiropractic college graduates (not a good idea). We don't understand all the reasons why CCE and CCEI have not found a way to address these reciprocity issues. FCLB needs to push hard to get these groups to find a solution.

The FCLB could help highlight some of the public protection challenges that cross state lines. For example, our Board challenged two AtlasProfilax practitioners in Oregon, but we know there are others in four or five other states. And more recently we have taken action against an unlicensed practitioner of Alphabiotics, which features the (aggressive) Crane Condyle Lift maneuver. They don't call their techniques "chiropractic" but both are forms of spinal manipulation by unlicensed practitioners.

OBCE.STATE.OR.US/OBCE/pdfs/pub4.pdf : q=t

**FCLB (Federation of Chiropractic Licensing Boards) Regional Meeting**

**October 8-10, 2010, Sedona, Arizona**

**Ann Goldeen DC**

There were representatives from the following states: Alaska, California, Nevada, New Mexico, North and South Dakota, Texas, Montana, Oregon and Oklahoma (The entire board and executive director). Representatives from CCE and NBCE were also in attendance.

FCLB has a website with lots of information that can help us. We use some of their services regularly, like the Cin-Bad which is being updated so that many of the forms will be available electronically.

Due to budget problems several states, California and Florida have prevented board travel, even at the board member's own expense. This is because there is a moratorium on travel. North Dakota and Oklahoma boards are flush and brought many board members and staff. We have one of the highest licensing fees in the group. Nevada and California are experiencing attrition in the number of licensing and renewing chiropractors. Is this coming for us?

Georgia and Arizona had their budgets swept by the state governments. Arizona went to court and got their money back, but not enough for an attorney. Georgia is operating with one employee, a director, who oversees several boards.

There was lots of discussion about prepayment plans. Ours is modeled after New Mexico's plan. Utah applied the unethical standards rule for prepayments. Oklahoma went after doctors promising 100% refund if the patients weren't better. Fees paid by the doctors involved was divided between 13 complainants. Most had paid with credit cards and many were on Medicare. California has determined that prepayment plans are a form of insurance and hence not allowed. Alaska thinks prepayment plans constitute a double fee schedule. Nobody likes prepayment plans.

Another hot topic was continuing education. There was an investigation of a seminar in Florida at The Breakers with 1000 registered. A PowerPoint was running at the seminar with no one in the room. No credit was given for that seminar. Nevada offers continuing education for doctors attending board meetings. There is an annual meeting to get a board overview. Complaints have gone done since that was instituted. Oklahoma requires 8 hours of in state CE. On line courses are allowed by all states for at least a portion of continuing education. They are hard to verify. Arizona allows on line courses only through colleges. Arizona also has a preceptorship program for students and new doctors that has been effect for 25 years. Several states audit 10% of licentiates per year.

What to do with doctors on probation was discussed. Several states require those on probation to appear before their board before the probation can end. Nevada has quarterly probation reports. Arizona has monitoring paid by the doctor. They hire an agency, "Affiliated Monitors" at $400

per hour to watch those who need it. A set of guidelines for those on probation would be good for Oregon.

New doctors to practice are interviewed for 30 minutes prior to licensure in Alaska. Complaints have gone down.

There was concern about ethical problems coming from social networks. We might want to write an article in the Backtalk about how to ethically use social networking.

There was a report from CCE (Council on Chiropractic Education). They have been updating standards. One goal is to leave things broad enough to accommodate different philosophies and teaching foci throughout the United States' Chiropractic institutions. There is no change in what DC's can do. The rep said that when the final standards are passed, don't be offended. Many things won't be in. It has to be educational to be included.

Different parts of the world call professionals different names with the same training. Each state is free to designate what their profession is called. A person who graduates from National with a DCM is a chiropractor. The name isn't about scope of practice.

CCE hasn't accredited schools outside the United States.

NBCE is looking for new board people to help with exams. There is training.

The problem of Chiropractors calling themselves specialists came up. Oklahoma is attempting to handle this by setting up minimal educational standards for such designations. They keep a registry of those who the board has deemed to have met their rules. The list is on their web site. In Alaska doctors submit a $25 application fee for certification. They must have completed the hours recommended by the appropriate council. The fees are paid every two years. Utah allows DC's to inject homeopathics and do whatever they are taught in school. Arizona has additional certifications to do physical therapy and acupuncture because they aren't taught at every school.

Texas, Oklahoma South Dakota negotiated with Blue Cross on massage and CAs, LMTs.

Tennessee has a CA training book that Nevada is using which they recommend. FCLB has a CA program. It might be the same one. Several states are working on CA certification and training.

Montana has adopted the American Chiropractic Vet Association training standards for DC's who want to adjust animals.

North Dakota considers laser fat removal to be within the scope of practice.

Texas is in court appealing a ruling that needle EMG and MUA are not in the scope of practice, after the board ruled that it was.

New Mexico allows compounding of some prescription items, some injections with advanced training and an advanced practice certification. 51 of their 400 DCs have the advanced certification. Dry needling is covered in meridian therapy and is part of regular scope. Their emphasis is on safety and training.

We talked about who can provide physical examinations for students. It appears to vary from district to district. Someone suggested getting language inserted into school districts' rules. DOT exams: MD's are mounting an effort to block us because of our supposed lack of knowledge about pharmaceuticals.

Informed consent- do we have it in our laws? It is coming up in court cases involving DC's. Life West has a good informed consent document.

Treating out of state: New Mexico gives an emergency license as long as the person is a graduate from an accredited college. That might be something for Oregon to adopt. We talked about what happens in an emergency (like 9-11 or other disasters) for files.

Who regulates practice consultants? What happens when they give bad advice?

Board immunity- how are we doing there? Ohio has good immunity language.

# 2010
# Fall Regional meeting

# Oregon Board of Chiropractic Examiners (OBCE)

**www.oregon.gov/obce**

**Submitted by:**

**Ann Goldeen DC, Oregon FCLB Alternate Delegate**

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- 5 staff, including one investigator, 4.5 FTE
- 1430 Active licensed chiropractic physicians, 324 Inactive chiropractic physicians and 1166 certified Chiropractic Assistants

**WHAT TRAVEL RESTRICTIONS IS YOUR BOARD FACING?**

A tight budget limits our participation to one delegate.

**List your Board's three major achievements this past year.**

**1. Pre Paid Treatment Rule Adopted** Pre-paid treatment plans must now meet basic criteria for clinical and contract documentation and refunds. The OBCE adopted this new rule at their May 27, 2010 meeting after encountering these issues over the years. (See attached rule language.)

**2. Two Landmark Unlicensed Practice Cases.** In June we issued a $10,000 civil penalty against Chris McCutcheon, a Southern Oregon practitioner of Alphabiotics. McCutcheon had referred to himself as a "doctor" in his advertising, had opened an office seeing patients and had performed a kind of chiropractic known as "Alphabiotics." The OBCE's investigation found he had little knowledge or training and had caused patient harm as a result. The primary feature of "Alphabiotics" is the so-called Crane Condyle Lift, a maneuver or adjustment which features a very aggressive pull on the neck. This kind of adjustment performed by an unqualified person has the potential to cause significant harm. The OBCE suggests other chiropractic boards should be on the lookout for "Alphabiotics" practitioners in their states. Our investigator will gladly share information about this if you contact him (tom.rozinski@state.or.us).

We are currently issuing a Final Order for a $201,250 civil penalty in Tuan Tran case. Tran was an unlicensed naturopathic college graduate who passed himself off as a chiropractor for over three years and fraudulently billed insurance companies untold thousands for MVA patients. It is possible that Tran may appeal this to the Oregon Court of Appeals in a challenge to our civil penalty authority.

**3. ETSDP review process.** Our last report discussed adoption of breast thermography standards. New issues are dry needling, Zerona laser for fat reduction, Zyto (& other EPFX-SCIO type devices) and chiropractic treatment of Lyme disease. I chair this committee which now meets several times a year to address an increasing number of issues.

(**ETSDP** stands for Examinations, Treatments, Substances, Devices and Procedures, see Oregon Administrative Rule 811-015-0070. The OBCE evaluates ETSDPs to determine if they are standard, investigational or may not be used. The ETSDP application is found on the OBCE web page as Appendix A of the Policy & Practice Question Guide.)

**Dry needling** (DN) has been accepted as a chiropractic physical therapy technique in a few states, but in Oregon has until recently been considered a form of acupuncture. (In Oregon acupuncturists are regulated by the medical board with their own laws and licensure.) The Oregon acupuncturists are mightily opposed to either chiropractors or physical therapists performing DN. Articulate advocates for DN by DCs say this could be an important adjunct to chiropractic care. There appears to be only a couple of chiropractic colleges which teach this with some very cursory mentions in the core curriculum. There are CE courses in this which teach DN into greater depth. The OBCE is proceeding cautiously in this matter as basic training and education requirements are yet to be established and there is potential for this to become a legislative scope of practice issue. That said it is possible that DN could eventually become part of the chiropractic scope of practice in Oregon.

**Zerona Laser for fat reduction.** Is this a cosmetic or therapeutic procedure? Our legal advice says that purely cosmetic procedures are outside the Oregon chiropractic scope of practice. The advertising for Zerona laser has focused on the potential cosmetic benefit of slimming down the patients. The advocates argue there are definite health benefits from any weight loss. The OBCE's review of the evidence is that the studies were all short term and the longer term benefits of Zerona are not yet documented. The OBCE has ruled the four Oregon DCs with these (expensive) devices may continue to treat existing or new patients provided they are part of an ongoing study of the longer term benefits. So far the advocates have not proposed a study and the issue appears to be on hold for the time being.

**Lyme disease treatment.** The chiropractic diagnosis and treatment of Lyme disease will be the subject of an ETSDP committee meeting this November. This is a result of a disagreement between two DCs resulting in competing applications to the OBCE. This reflects a debate at the national between competing approaches for recognition and treatment of this often difficult to diagnose malady. Our survey of chiropractic colleges has so for indicated they don't get into this controversy and mostly teach to the need to recognize and make the appropriate referral.

**Zyto (& other EPFX-SCIO type devices)**
The OBCE receives periodic inquiries regarding so-called "energy" medicine devices which purport to use: "quantum mechanics" or "quantum biofeedback" or "nano-technology" or claims in any way to have thousands of "preprogrammed scenarios and library references organized into defined groups, which create quick and manageable patient assessments."

These are presumed to be outside the Oregon chiropractic scope of practice until such time the specific device is reviewed by the OBCE under the provisions of OAR 811-015-0070 (ETSDP rule) and determined to be either standard or investigational.

## WHAT IS THE MOST PRESSING CONCERN YOU HAVE?

The OBCE has a growing concern that the current system of IME reviews is biased against the patients in that the insurance companies and the review entities they contract with seem gravitate to those reviewers who consistently cut off payment for care. The OBCE adopted a rule on clinical justification several years ago to ensure that examining doctors were held to the same standards as treating doctors. The OBCE has current cases alleging an examining doctor's exam findings do not support his final conclusions. This may illuminate the Board's concerns in this area.

Currently, the OBCE has increasing investigations which are complicated and produce a higher than normal number of potentially costly contested case hearings on disciplinary actions. We are projected to spend $40,000 to $50,000 in legal costs above our $160,000 biennial legal budget for 2009-2011 (we budget on a two year basis). Additionally, the State is levying a 51% increase in Administrative Law Judge (ALJ) fees, effective July 1, 2010. The result is increasing expenditures for legal services, ALJ services, investigations and expert witnesses.

Another concern is that the Legislature may attempt again to "sweep" some of our ending cash balance. This is raid to help fund other parts of the state budget. Thus we are trying to fine tune our fees vs. expenditures by proposing legislation that takes our fees out of statute and allows the OBCE to set them by administrative rule as is the case with most other Oregon health professional licensing boards.

## HIGHLIGHTS OF CHANGES IN RULES, REGULATIONS, ADMINISTRATIVE CODES, ETC.

See number 1 above.

## WHAT FCLB SERVICES DOES YOUR BOARD USE MOST?

- CIN-BAD for NPDB reporting and for vetting DC applicants.
- FCLB regional and annual meetings to share information about issues and trends.

## WHAT SERVICES WOULD YOU LIKE TO SEE THE FCLB OFFER?

We need the FCLB to advocate for a comprehensive resolution to the issues regarding foreign graduates so that licensing boards can have some assurance that those applicants have the required education. The current situation places us in the difficult position of rejecting what may be perfectly qualified DC applicants or creating our own system to review/accept foreign chiropractic college graduates (not a good idea). We don't understand all the reasons why CCE and CCEI have not found a way to address these reciprocity issues. FCLB needs to push hard to get these groups to find a solution.

The FCLB could help highlight some of the public protection challenges that cross state lines. For example, our Board challenged two AtlasProfilax practitioners in Oregon, but we know there are

others in four or five other states. And more recently we have taken action against an unlicensed practitioner of Alphabiotics, which features the (aggressive) Crane Condyle Lift maneuver. They don't call their techniques "chiropractic" but both are forms of spinal manipulation by unlicensed practitioners.

# Pre Paid Treatment Plans

Pre-paid treatment plans in Oregon must now meet basic criteria for clinical and contract documentation and refunds. The OBCE adopted this new rule at their May 27, 2010 meeting after encountering these issues over the years.

All chiropractic clinics are advised to bring existing pre-paid treatment plans into compliance with the new rule. Special review should be given to any plans that cover Medicare or other federally funded health care programs as the Stark laws prohibiting discounts and other inducements may apply. Chiropractic clinics may wish to seek legal advice to ensure all such pre-paid plans are compliant with this rule and other state or federal laws.

**811-015-0002 Pre-Paid Treatment Plans**

1) Chiropractic physicians may accept pre-payment for services planned but not yet delivered only if they do so in such a way that it does not constitute the practice of insurance.
2) The patients file must contain: the proposed treatment plan, the diagnosis or condition being treated, and the duration of the pre-payment plan.

a) If nutritional products or other hard goods including braces, supports or patient aids are to be used during the proposed treatment plan, the patient documents must state whether these items are included in the gross treatment costs or if they constitute a separate and distinct service and fee. Any additional fees must be explained to the patient in advance and noted in the chart notes.

b) The pre-payment plan must include a written explanation on how the unused portion of funds are calculated or prorated should the patient complete care early or discontinue care due to the patient's choice, doctor's choice, moving, or new injury.

3) A contract for services outlining the pre-payment plan and consent for treatment must be maintained in the patient's file.

4) Any discounts provided as part of a pre-paid treatment plan must be compliant with other applicable state or federal laws.
Adopted 5-27-10

**811-015-0005**

**Records**

(1) It will be considered unprofessional conduct not to keep complete and accurate records on all patients, including but not limited to case histories, examinations, diagnostic and therapeutic services, treatment plan, instructions in home treatment and supplements, work status information and referral recommendations.

(a) Each patient shall have exclusive records which shall be sufficiently detailed and legible as to allow any other Chiropractic physician to understand the nature of that patient's case and to be able to follow up with the care of that patient if necessary.

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

(2) Practitioners with dual licenses shall indicate on each patient's records under which license the services were rendered.

(3) A patient's original records shall be kept by the Chiropractic physician a minimum of seven years from the date of last treatment. There is no requirement to keep any patient records older than seven years; except if the patient is a minor, the records shall be kept seven years or until the patient is 18 years of age, whichever is longer. If the treating chiropractic physician is an employee or associate, the duty to maintain original records shall be with the chiropractic business entity or chiropractic physician that employs or contracts with the treating chiropractic physician.

(4) If a chiropractic physician releases original radiographic films to a patient or another party, upon the patient's written request, he/she should create an expectation that the films will be returned, and a notation shall be made in the patient's file or in an office log where the films are located (either permanently or temporarily). If a chiropractic physician has radiographic films stored outside his/her clinic, a notation shall be made in the patient's file or in an office log where the films are located and chiropractic physician must ensure those films are available for release if requested by the patient.

(5) The responsibility for maintaining original patient records may be transferred to another chiropractic business entity or to another chiropractic physician as part of a business ownership transfer transaction.

**811-015-0010**

**Clinical Justification**

(1) Clinical rationale, within accepted standards and understood by a group of peers, must be shown for all opinions, diagnostic and therapeutic procedures.

(2) Accepted standards mean skills and treatment which are recognized as being reasonable, prudent and acceptable under similar conditions and circumstances.

(3) All initial examinations and subsequent re-examinations performed by a chiropractor to determine the need for chiropractic treatment of neuro-musculoskeletal conditions shall include a functional chiropractic analysis. Some combination of the following PARTS exam constitutes a functional chiropractic analysis:

P Location, quality, and intensity of pain or tenderness produced by palpation and pressure over specific structures and soft tissues;

A Asymmetry of sectional or segmental components identified by static palpation;

R The decrease or loss of specific movements (active, passive, and accessory);

T Tone, texture, and temperature change in specific soft tissues identified through palpation;

S Use of special tests or procedures.

(4) Chiropractic physicians shall treat their patients as often as necessary to insure favorable progress. Evidence based outcomes management shall determine whether the frequency and duration of curative chiropractic treatment is, has been, or continues to be necessary. Outcomes management shall include both subjective or patient-driven information as well as objective provider-driven information. In addition, treatment of neuro-musculoskeletal conditions outside of the Oregon Practices and Utilization Guidelines -- NMS Volume I, Chapter 5, may be considered contrary to accepted standards. Chiropractic physicians treating outside of the Practices and Utilization Guidelines -- NMS Volume I, Chapter 5, bear the burden of proof to show that the treatment, or lack thereof, is clinically justified.

(5) Copies of any independent examination report must be made available to the patient, the patient's attorney, the treating doctor and the attending physician at the time the report is made available to the initial requesting party.

Stat. Auth.: ORS 684
Stats Implemented: ORS 684.155
Hist.: 2CE 1-1978, f. 6-16-78, ef. 7-1-78; CE 1-1995, f. & cert. ef. 10-30-95; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 1-2005, f. 1-28-04, cert. ef. 2-1-05; BCE 1-2007, f. & cert. ef. 11-30-07

# CHAPTER V

## TREATMENT PARAMETERS FOR COMMON NMS CONDITIONS

The following treatment parameters are to be used only as guidelines. These are estimates of treatment and/or healing time for commonly encountered categories of neuromusculoskeletal conditions. Disorders outside the NMS system are not addressed by this document. As stated in the preamble, this is an ongoing and dynamic process. These parameters will be amended or modified as new research and expert clinical judgments fill in the inevitable gaps in this process.

The suggested parameters do not reflect the protracted healing time and disability that may result from individual conditions complicated by such factors as previous injuries, congenital or developmental defects, systemic diseases, degenerative disorders, obesity, smoking, psychosocial compromise and others. In such conditions, or if the natural history of an injury is interrupted by aggravations, exacerbations, or flare-ups; applicable treatment guidelines could be modified or extended. However, benefit of care should be supported by subjective and objective documentation.

### CATEGORY I
### 0 - 6 WEEKS TREATMENT

1. Mild-moderate strain
2. Mild sprain
3. Mechanical/joint dysfunction (uncomplicated)
4. Subluxation (uncomplicated)
5. Acute facet syndrome
6. Contusion
7. Mild-moderate tendinitis, capsulitis, bursitis, synovitis
8. Mild sacroiliac syndrome
9. Acute myofascial pain syndrome
10. Mild symptomatic degenerative joint disease
11. Headaches: vertebrogenic, muscle contraction, migraine, vascular
12. Torticollis (acquired)

### CATEGORY II
### 2 - 12 WEEKS TREATMENT

1. Moderate-marked strain
2. Moderate sprain
3. Post traumatic mild-moderate myofibrosis
4. Post traumatic periarticular fibrosis and joint dysfunction with marked tendinitis, bursitis, capsulitis, synovitis
5. Chronic tendinitis, bursitis, capsulitis, synovitis
6. Chronic facet syndrome
7. Moderate sacroiliac syndrome
8. Chronic sacroiliac syndrome with marked myofascial pain syndrome
9. Chronic myofascial pain syndrome
10. Mechanical/joint dysfunction (complicated)
11. Subluxation (complicated)

12. Moderate symptomatic degenerative joint disease
13. Mild inter-vertebral disc syndrome w/o myelopathy
14. Chronic headaches: vertebrogenic, muscle contraction, migraine, vascular
15. Mild temporomandibular joint dysfunction
16. Symptomatic spondylolisthesis
17. Mild clinical joint instability

CATEGORY III

1 - 6 MONTHS TREATMENT

1. Chronic facet syndrome associated with clinical vertebral instability
2. Marked strain associated with post traumatic myofibrosis and/or joint dysfunction
3. Marked sprain with associated instability/dysfunction
4. Thoracic outlet syndromes
5. Moderate inter-vertebral disc syndrome w/o myelopathy
6. Peripheral neurovascular entrapment syndromes
7. Moderate to marked temporomandibular joint dysfunction
8. Adhesive capsulitis (frozen joint)
9. Partial or complete dislocation

CATEGORY IV

2 - 12 MONTHS TREATMENT

1. Marked inter-vertebral disc syndrome w/o myelopathy, with or without radiculopathy
2. Lateral recess syndrome
3. Intermittent neurogenic claudication
4. Acceleration/deceleration injuries of the spine with myofascial complications (whiplash)
5. Cervicobrachial sympathetic syndromes
6. Sympathetic dystrophies
7. Severe strain/sprain of cervical spine with myoligamentous complications

RE-ASSESSMENT

The following circumstances are offered as an indication for reassessment by the treating physician. Clinical evidence or special circumstances may support continued treatment and/or work loss beyond these guidelines.

However, lack of justification for such management would indicate the need for consultation/ second opinion and/or special examination.

1. Daily treatment exceeding two consecutive weeks
2. Treatment 3x/week exceeding six consecutive weeks
3. Authorized full time work loss for longer than four consecutive weeks
4. No objective or subjective improvement noted within the guideline parameters as outlined in this chapter.

## CHIROPRACTIC CARE

# objective findings

1. "Objective findings" in support of medical evidence are verifiable indications of injury or disease that may include, but are not limited to, range of motion, atrophy, muscle strength and palpable muscle spasm. "Objective findings" does not include physical findings or subjective responses to physical examinations that are not reproducible, measurable or observable.

*Oregon Legislature* [1]
*See also* claim, claim

2. "Objective findings" in support of medical evidence are verifiable indications of injury or disease that may include, but are not limited to, range of motion, atrophy, muscle strength and palpable muscle spasm. "Objective findings" does not include physical findings or subjective responses to physical examinations that are not reproducible, measurable or observable.

*Oregon Legislature* [2]
*See also* claim, claim

[1]Or. Rev. Stat. § 656.005 (2007).

[2]Or. Rev. Stat. § 656.005 (2007).

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# objective findings

Observations made during medical evaluations that are not under the patient's control, such as X-ray results, nerve conduction studies, and MRIs.

- Suggest an improvement or addition to the Insurance and Risk Management Glossary
- Buy a print version of the Insurance and Risk Management Glossary
- Link to the Insurance and Risk Management Glossary

Subj: **[OBCE_Publication] Board of Chiropractic Examiners Public Notice Update, May 3, 2010**
Date: 5/3/2011 1:47:39 P.M. Pacific Daylight Time
From: oregon.obce@state.or.us
To: obce_publication@listsmart.osl.state.or.us
Oregon DCs and Interested Persons,

The Oregon Board of Chiropractic Examiners has a number of policy issues under discussion at their Tuesday, May 17, 2011 meeting. You are invited to provide public comment on these issues by email, fax or regular mail. (Oregon.obce@state.or.us or fax 503-362-1260)

The OBCE May 17th Public Meeting agenda has additional information links. (http://www.oregon.gov/OBCE/pdfs/May_2011_PUB.pdf )

Discussion items at the next OBCE meeting include:
Public Hearing on Proposed Dry Needling rule at 1:30 p.m.
1. Work Session: Proposed Dry needling rule
2. Policy issue: Informed Consent (should written consents be required?)
3. Policy issue: Boundaries rule (should there be specific waiting periods?)
4. Policy issue: Groupon, Pay for Performance and Internet Marketing
5. Federation of Chiropractic Licensing Boards Report (Drs. Goldeen & Cote)
6. Legislative Report
7. Staff Report

Please note the following public notice updates:

Increased Sanctions for Sexual Misconduct violations:
(http://www.oregon.gov/OBCE/pdfs/Boundaries_Stmt_May_2011.pdf)

Updated Public Protection Report: (http://www.oregon.gov/OBCE/pdfs/Public_Protection_May_2_2011.pdf)

OBCE Public Member opening:
(http://www.oregon.gov/OBCE/public_notices/Mar_2011_OBCE_Board_Mbr_Openings.pdf)

OBCE Peer Review Committee openings:
(http://www.oregon.gov/OBCE/public_notices/PeerReview_Recruit_2011.pdf)

More information is available on our website at http://www.oregon.gov/OBCE/

Oregon Board of Chiropractic Examiners
3218 Pringle Road SE # 150
Salem, Oregon 97302

http://www.oregon.gov/OBCE
Data Classification: Level 1 - Published

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# Oregon Board of Chiropractic Examiners
# Public Protection Update
### Current Proposed and Recent Final Actions
### (5/2/11)

Below are the current proposed board disciplinary actions. These are public documents. Following those are the most current Final Actions. Previous Public Protection Reports may be found in our Public Protection section. All final public board orders (disciplinary or otherwise) may be found in our Licensee Lookup and accessed either by search for a specific chiropractic physician, or search by year. Orders for chiropractic assistants or unlicensed practice are found in the search by year only. Board actions that do not result in discipline or other board orders are not public documents (ORS 676.175).

## Current Proposed Actions

**Gustav Schefstrom DC, Case # 2010-1031**. Proposed 48 hours in remedial x-ray instruction and one-year mentoring program. Alleged violations ORS 684.100(1)(f)(A) and OAR 811-030-0030(2)(m) for x-rays not properly identified, reports which do not include the required conclusions or interpretations and if the lumbar films were taken at Licensee's office, there is no clinical justification for these exposures in the patient's history and examination. The quality of the cervical x-rays exposed by Licensee was not within the standard of care. The technique (KVP, MAs) was poor and there was insufficient collimation in all views. Alleged violation of ORS 684.100(1)(f)(A) and OAR 811-030-0030. There was no shielding in the views exposed by Licensee. Alleged violations of ORS 684.100(1)(f)(A), (B), 811-030-0030(2)(b) and OAR 811-030-0020. In the patient encounter, the procedure was not explained to the patient, there was no confirmation that the patient had given informed consent for the procedure and no PARQ was performed. Review of this patient's history indicates informed consent was particularly important due to his prior history. Alleged violations of ORS 684.100(1)(f)(A), and OAR 811-035-0005(1) and (2). Licensee's diagnosis of "Chronic cervical instability below C1" is not supported by the findings. Alleged violation of ORS 684.100(1)(f)(A). Licensee's 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. Alleged violation of ORS 684.100(1)(f)(A) and OAR 811-015-0005(1). (2/16/2011)

**Christopher Beardall DC, 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).

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). (2/16/2011) *A hearing has been requested.*

**Dorian Quinn DC, Case # 2010-1020, 2010-1021.** Proposed letter of reprimand, three years probation with file reviews, $5,000 Civil Penalty and 18 hours of continuing education on record keeping and clinical justification. Licensee provided supplements but there was no documentation as to what type of supplements were prescribed. Alleged violation of ORS 684.100(1)(f)(A) and OAR 811-015-0005(1)(b). Licensee never provided the treatment but had another chiropractor provide the care or Licensee's chiropractic assistant would set him up on the DRX 9000 decompression unit. There is poor differentiation of who did the treatment in the chart notes of Patient 1. Alleged violations of ORS 684.100(1)(f)(A) and OAR 811-015-0005(1)(b). Chart notes do not indicate if Licensee is treating these patients as a chiropractor or an acupuncturist, as Licensee has dual licensure. Alleged violations of ORS 684.100(1)(f)(A) and OAR 811-015-0005(2). Licensee's website does not clearly identify Licensee as a Chiropractor or Chiropractic Physician on the first two pages of his website. 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. Alleged violations of ORS 676.110(2), ORS 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). Specifically, Licensee has violated sections 1, 4, 5, 6 and 9 of the Agreement of Voluntary Compliance signed and entered on July 6, 2007. (2/3/2011)

**Daniel Beeson DC, 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).

**Daniel Cook DC, Case # 2010-1034.** Proposed 90 day suspension, followed by 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. Alleged violations (boundary issues) of ORS 684.100(1)(f)(A); OAR 811-035-0015(1)(a)-(e) and OAR 811-010-0005(4). (1/27/2011)

**Thomas Freedland DC, 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)

**David Avolio DC, 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.*

## Recent Final Actions *(orders may be viewed through OBCE's Licensee Lookup)*

**Karen Cendejas CA, Case # 2010-5021.** Final Order of Default. – Revocation of Chiropractic Assistant license. Alleged violations of OAR 811-010-0110 and (15) and (15) (i) for soliciting a prescription pain killer from a patient and altering a receipt in the office thereby having monies unaccounted for. (5/2/11)

**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 8 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). (4/1/2010)

**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 certificate 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 certificate 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)

**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)

E-mail soliciting doctors to file complaints on IMEs, specifically on Dr. Freedland

Re: List-serv violation Message List

Reply **Message #33405** of 37122 < Prev | Next >

This is a response to Dan and all list-serv members regarding the rules of our list-serv. As moderator, I have determined that the previous post was a "personal attack" on one of our list-serv members. Therefore, please do not respond to it on this list. Rule number 2 of our list states basically that it is inappropriate to single out a particular list-serv member in a context which could generally be perceived as attacking their character and/or professionalism etc. There is one (maybe two posts) recently that have done this.

Let us keep our criticisms constructive, and focused on the relevant/germane issues etc. rather than making it about specific list-serv members.

Cheers.

John J. Collins, DC
Moderator

--- In oregonbcs@yahoogroups.com, "Daniel D Beebe, D.C." <daniel.beebe@...> wrote:
>
> HI all
>
> Please contact me privately off list or by phone if you have a case that was reviewed by Dr. Freedlund. You may have your patient's contact me directly if they so choose.
>
> Many thanks to the doctors that have already contacted me about this. It is a bigger problem than I imagined. Also please forward this to other Dc's not on this list.
>
> Regards
>
> Danno
>