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

7 In the Matter of)
8)
9 Cascade Success Systems) FINAL ORDER BY DEFAULT
10 Aka James Warner DC) DENIAL OF CE HOURS
11)
12 CE Vendor.) Case # 2009-6001
13)
14)

15 The Board of Chiropractic Examiners (Board or OBCE) is the state agency responsible
16 for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. The
17 OBCE is responsible to oversee chiropractic continuing education as per OAR 811-015-0025.
18 James Warner DC (Vendor) is licensed by the Board to practice as a chiropractic physician in the
19 State of Oregon. He provides chiropractic continuing education under the assumed business
20 name of Cascade Success Systems (Vendor).
21

22 Findings of Fact
23

24 1.

25 In 2008 the OBCE received several complaints regarding Vendor's CE courses alleging
26 the DVD video quality to be poor and alleging that Vendor spends much time touting himself, his
27 philosophy and his accomplishments. In response to complaints from chiropractic physicians
28 regarding the quality of Vendor's course offerings the Board requested for its review, "material
29 that Cascade Success has offered or offers for 1. Evidence-Based Outcomes Management, 2. Pain
30 Management..." Vendor responded by providing DVD of these course offerings and related
31 paperwork.
32

33 2.

34 On January 20, 2005 the OBCE amended the Clinical Justification Rule 811-015-0100 to
35 require Oregon chiropractic physicians to say, "Evidence based outcomes management shall
36 determine whether the frequency and duration of curative chiropractic treatment has been
37 necessary. Outcomes management shall include both subjective or patient-driven information as
38 well as objective provider-driven information..." At the same time the Board instituted a
39 requirement for two hours continuing education for Evidence based outcomes management
40 (EBOM) to be completed by all current active chiropractic physicians by January 1, 2008 (and
41 within two years for all newly licensed DCs). The OBCE may require specific CE hours under
42 the provisions of OAR 811-025-0015.

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3 3.

4 Also, in 2005 the OBCE established criteria for the Evidence-Based Outcomes
5 Management (EBOM) specific and communicated that by letter to CE vendors, notice placed on
6 the OBCE's web page, and with articles in the OBCE's BackTalk Newsletter. The notice
7 provided the criteria as follows:

8 Continuing Education courses that meet the general criteria for "Evidence-Based
9 Outcomes Management" for the 2 hour requirement should:

- 10 • Identify "outcomes management" tools appropriate for curative chiropractic treatment.
11 This should include subjective or patient-driven information as well as objective or
12 provider-driven information.
- 13 • Identify and present the evidence that supports use of these tools, and comment on the
14 strength of this evidence.
- 15 • Present methods or protocols for use of these outcomes management tools, including
16 documentation that carries substance, offers specific treatment approaches, and proves or
17 not the need for ongoing care.

18 This should not be an advanced course on record keeping & chart noting.

19 Examples of patient driven outcome management tools include *"Self Reporting*
20 *Psychometric Questionnaires*; such as the Revised Oswestry Low Back Questionnaire,
21 Rolland-Morris, and Neck Disability Index, etc. These patient-driven tools provide a
22 quantitative assessment of the patient's activity intolerance or disabilities. The Pain
23 Drawing provides a qualitative assessment, the Visual Analog Scale, and the Numerical
24 Pain Rating Box examples of patient driven tools that provide a quantitative assessment
25 of the patient's current level of pain.

26
27 Examples of objective provider driven outcome management tools include physical
28 examination procedures and physical performance testing. Physical examination
29 procedures may include static and/or dynamic palpatory findings, ranges of motion via
30 inclinometers and/or goniometers, functional radiology, various functional chiropractic
31 signs tests and maneuvers, and instrumentation such as the tissue compliance meter or
32 algometer. Physical performance testing may include measuring of specific muscle
33 groups for strength and flexibility and comparing the results with normative data tables.
34

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36 3.

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38 The Board's analysis of Vendor's two hour EBOM course demonstrates deficiencies in
39 the following manner:

40
41 Vendor uses the majority of the two hours to present his various views on chiropractic,
42 basic patient management including initial assessment, importance of initial and re evaluations,
43 chart notes, documentation, chiropractic science, art, and philosophy. He opines on numerous
44 topics including thermal scans, variety of chiropractic techniques and causes of subluxations and

1 health problems. He quote B.J. Palmer and Dr. Mayo, addresses reasons why the profession,
2 payers, patients and others want positive outcomes, and tells various historical and personal
3 stories. Although Vendor attempts to tie some of this into the topic at hand, it is at best
4 tangential to the OBCE's criteria and expectations that chiropractors will be presented with
5 various outcomes management tools that could become useful in practice and assist practitioners
6 in meeting the new requirements of the Clinical Justification Rule (OAR 811-015-0100). It's
7 clear the thrust of this presentation is to persuade practitioners that outcomes measurement is a
8 good thing as opposed to providing them with the specific tools and supporting evidence that
9 would be actually useful.

10
11 *Criteria # 1: Identify "outcomes management" tools appropriate for curative chiropractic*
12 *treatment. This should include both subjective or patient-driven information as well as objective*
13 *or provider-driven information.*

14
15 Vendor does identify specific "outcomes management" tools, but does not do so until
16 1:33 (one hour 33 minutes) into the two hour program. At that time he discussed General Health
17 Questionnaires and their usefulness. From there he does list specific outcomes management
18 tools by name and category, however, he does so rapidly, and while his PowerPoint slides
19 provide interesting information they are available only briefly. He does not engage in any kind of
20 in-depth discussion about most, if any, of the specific tools mentioned. He shows a stack of
21 papers which he says is about 40 pages of supporting documentation. He says on the video (taped
22 June 2007) this will be available on his Web page, but there is no evidence any were ever
23 available on either of his web pages. There is no evidence he ever made this documentation or
24 his PowerPoint presentation available to the doctors who watched this two-hour CE video.

25
26 *Criteria # 2: Identify and present the evidence that supports use of these tools, and*
27 *comment on the strength of this evidence.*

28
29 Vendor does at times identify several studies in his PowerPoint slides and the references
30 are found there only. Although Vendor references a few studies in support of some of the
31 Questionnaires he mentions, he fails to address the relevance of these studies to the
32 measurement/management tools proffered, to wit:. He does not speak about or comment on the
33 strength of any evidence. The literature references are not used to address or support or refute
34 the use of any specific outcomes measurement/management tool. He draws a few quotes from
35 several literature references to support the concept of outcomes management generally.

36
37 *Criteria # 3: Present methods or protocols for use of these outcomes management tools,*
38 *including documentation that carries substance, offers specific treatment approaches, and*
39 *proves or not the need for ongoing care.*

40
41 While he identifies a number of well known outcomes management tools, he only briefly
42 addresses methods for how these are used. Vendor's limited presentation of these tools is not
43 substantive. His video presentation includes little if anything that could be described as a

1 protocol. Although he asserts that evaluation is appropriate at the onset of care, there is no clear
2 discussion of appropriate time intervals or other checkpoints for re-evaluation of a treatment
3 plan. He does address several times the importance of diagnostic imaging at the initial
4 examination and follow up imaging to track progress utilizing "medical mensuration".
5

6 Another of the OBCE's criteria is, "This should not be an advanced course on record
7 keeping and chart noting." There is considerable generalized discussion about record keeping and
8 chart noting (documentation) throughout this video, but even that doesn't rise above obvious
9 statements, such as this is important, should be done regularly at initial visits and reevaluations,
10 and doctors should be consistent in using the measurement tools.
11

12 4.

13 The OBCE has also received complaints regarding Vendor's 6 hour Pain Management
14 CE video course. An analysis of this video demonstrates the recording quality and sound is below
15 acceptable standard, making it difficult for the viewer to hear and follow.
16

17 As with the EBOM course, Vendor veers off topic into a wide array of disconnected
18 stories and personal opinions that do not directly address the topic of chiropractic pain
19 management.
20

21 Much of Vendor's presentation has little, or nothing to do with the subject of pain
22 management education as mandated by the State of Oregon. Vendor's presentation style is to tell
23 stories that lead into lengthy, off- topic tangents. While the stories do, at times, deal with some
24 aspect of pain Vendor will then take a significant amount of time, sometimes over a full hour, to
25 express a simple point that may need only a few minutes to explain, at the most. As a result, this
26 program contains very little content on the topic of pain management in regards to the curriculum
27 suggested by the State of Oregon Pain Management Commission.
28

29 The Board's analysis of this course show:

30 Disc 1 (3 hours) - contains approximately 15 minutes of information that is on-topic.

31 Disc 2 (3 hours) - contains approximately 25 minutes of information that is on-topic

32 Total time on-topic - approximately 40 minutes
33

34 It is not expected that a speaker should deliver only the cold, hard facts. A quality
35 seminar can be expected to include a moderate amount of filler, i.e. anecdotes, case histories,
36 personal stories, etc., to give the subject matter some context and to keep the audience's
37 attention. Considering this, the OBCE believes one could liberally extrapolate a total of two
38 hours of CE credits for pain management education contained in this entire six hour presentation.
39

40 5.
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42 The OBCE is responsible to oversee chiropractic continuing education as per OAR 811-
43 015-0025. The requirements for the EBOM course were clearly articulated by the Board. The

1 requirement for the Pain Management CE was required by legislation passed in 2003. A
2 suggested curriculum is available from the Oregon Pain Management Commission on their
3 website. OAR 811-015-0025 states as follows in Section 8)(d):

4 (e) Continuing education hours for Board activities must assist in assuring the
5 competence and skills of the chiropractic physician, and

6 (f) Shall be quality courses or activities adequately supported by evidence or rationale as
7 determined by the Board. Section 15) states, "The Board shall maintain and make
8 available through its WEB page and mailings to licensees a list of disapproved courses, if
9 any. The Board may disapprove a course or CE activity after giving the sponsor and/or
10 licensees the opportunity to provide additional information of compliance with the
11 criteria contained in this rule, and opportunity for contested case hearing under the
12 provisions of ORS 183.341 if requested. Any CE sponsor or licensee may request the
13 Board to review any previously disapproved course at any time.
14

15 6.

16 Whereas the requirement for the EBOM two hour course and the six hour Pain
17 Management course is still in effect for all newly licensed chiropractic physicians, the OBCE
18 proposed in the Notice of Proposed Denial dated February 25, 2009, that from this point
19 forward:

- 20 A. Vendor's two-hour EBOM video course is approved for one hour only and the
21 remaining hour is disapproved.
22 B. Vendor's six-hour Pain Management video course is approved for two hours only and
23 the remaining four hours are disapproved.
24

25 In the Notice of Proposed Denial the Vendor was warned that if he failed to request a
26 hearing or withdrew that, that the records herein would be considered for purposes of issuing a
27 default order. Vendor subsequently responded and requested a hearing. On September 14, 2009,
28 a pre-hearing conference was held setting the hearing date for January 13, 2010 and specified
29 dates for exhibits to be shared with all parties. The Board's exhibits were sent to Vendor on
30 December 21, 2009 and informed same that six witnesses would be called for testimony. On
31 January 12, 2010, Vendor withdrew his request for hearing by communicating with the Office of
32 Administrative Hearings.
33

34 Conclusions of Law and Order

35 7.

36 The Board finds that Vendor's EBOM video course and Pain Management Video Course
37 do not meet the continuing education requirements of OAR 811-015-0025 and orders that the
38 two hour EBOM video course is approved for one hour only and the remaining hour is
39 disapproved. (The two hours must be taken to qualify for the one hour CE credit.) Vendor's six
40 hour Pain Management Video course is approved for two hours only and the remaining four
41 hours are disapproved. (All six hours must be taken to qualify for the two hours.)
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Dated: January 13, 2010

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

By:

Original signature on file at OBCE.

Dave McTeague
Executive Director

A party is entitled to judicial review of the Final Order. Judicial review is by the Oregon Court of Appeals pursuant to the provisions of ORS 183.482. Judicial review may be obtained by filing a petition for review with the Office of State Court Administrator, Supreme Court Building, Salem, Oregon 97310. ORS 183.482 requires that an appeal is requested by filing a petition in the Court of Appeals within 60 days following the date the order upon which the petition is based is served.

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State of Oregon) Case # 2009-6001
County of Marion) Cascade Success Systems

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 Final Order by Default is true to the best of my knowledge as I verily believe.

Original signature on file at OBCE

Dave McTeague, Executive Director
Oregon Board of Chiropractic Examiners

SUBSCRIBED AND SWORN to before me
this 13th day of January, 2010

Original signature on file at OBCE

NOTARY PUBLIC FOR OREGON
My Commission Expires: 10/7/2011



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Certificate of Service

I, Dave McTeague, certify that on February 25, 2009, I served the foregoing Notice of Proposed Denial of CE Hours upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

James Warner DC
Cascade Success Systems
4163 Cherry Avenue NE
Keizer, Oregon 97303

Original signature on file at OBCE.

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners