

**TEXAS BOARD OF CHIROPRACTIC EXAMINERS  
BOARD MEETING  
June 2, 2005**

Notice having been duly posted with the Secretary of State, the Texas Board of Chiropractic Examiners met in open session on June 2, 2005 at the William P. Hobby Bldg., 333 Guadalupe, Room 100, Lobby area, Austin, Texas.

**ROLL CALL**

Present: Sandra Jensen, D.C., President  
Scott E. Isdale, D.C.  
Robert L. Coburn, D.C.  
Serge P. Francois, D.C.  
Steve Minors, D.C.  
Narciso Escareno  
Marcia Daughtrey  
David A. Sime, D.C. (not present)  
Paul H. Dickerson (not present)

Guests: Patte Kent  
Jeb Boyt  
Sylvia Bratcher  
Stephanie Magers  
Bob Hollander, D.C.  
Franz Klein, D.C.  
Robert Fritz, D.C.

**Call to Order**

Dr. Jensen called the meeting to order at 12:34 P.M. and declared the presence of a quorum.

**Introduction of Guests**

Dr. Sandra Jensen welcomed all visitors and recommended that they all sign in for a record of attendance. Dr. Sandra Jensen also stated that if anyone wanted to address the board there will be an opportunity after the committee reports are completed.

## **Approval of Minutes of the February 10, 2005 TBCE Board Meeting**

Dr. Scott Isdale reported a correction in the February 10, 2005 Board minutes. On page 16 of the Board minutes an Enforcement Committee item reported Dr. Scott Isdale made the motion, but also seconded the motion. Dr. Sandra Jensen asked Mr. Jeb Boyt how to handle the issue. Mr. Jeb Boyt asked if the Board remembered who originally made the motion. Dr. Scott Isdale reported that Mrs. Marcia Daughtrey had seconded the motion.

Motion: Dr. Sandra Jensen made a motion to approve the minutes of the February 10, 2005 Board meeting. Mrs. Marcia Daughtrey seconded the motion.

Yeas: All voted "yes."

Nays: None

### **A. Executive Committee Report**

#### **1. President's Report**

##### **a. News and activities relating to the chiropractic profession since the last Board meeting:**

Dr. Sandra Jensen reported that Ms. Gabby Fuentes is the Board's new Appointments Manager at the Governor's Appointment Office, replacing Ashley Morgan. Ms. Gabby Fuentes has informed Dr. Jensen that she will be conducting interviews for the three open positions on the Board and the new members will probably be at the next Board meeting in August. Dr. Sandra Jensen reported that if you would like to contact Ms. Fuentes either by E-mail or phone, please see Dr. Sandra Jensen or Ms. Sandra Smith after the meeting.

Dr. Sandra Jensen reported that in May of 2005, she attended the NBCE Part IV Exams at Western States Chiropractic College in Portland, Oregon. There were a total of 39 candidates who took the exam. Since the enrollment is up at the college, they are hoping for a larger group of candidates in November 2005 or May 2006.

Dr. Sandra Jensen reported that later in the month of June, she will be traveling to Greeley, Colorado to participate on a test committee for the Part IV Examination. This is a NBCE sponsored trip and this will be her second opportunity to serve in this capacity.

Dr. Sandra Jensen also reported that the Legislative Session has come to an end and she would like to thank all board members and all individuals who supported this board during the Sunset Review process. Dr. Sandra Jensen stated that it has been a challenging couple of years and is glad that the Board will remain independent. The next review is scheduled in 12 years.

Dr. Sandra Jensen gave a second goodbye and her appreciation to the three outgoing Board members: Dr. Robert Coburn, Dr. Serge P. Francois, and Mr. Paul Dickerson (not present). She said she was honored to have these members here today to help out the Board.

b. 10,000<sup>th</sup> Licensee Award: Dr. Robert C. Fritz, D.C.

Dr. Sandra Jensen and the Board recognized the 10,000<sup>th</sup> Licensee, Dr. Robert C. Fritz, D.C., with a plaque and a picture with Dr. Jensen (President of the Board). Dr. Sandra Jensen stated that there will be cake and refreshments to share after the meeting is completed.

c. Federation of Chiropractic Licensing Boards Report-May 2005

Dr. Sandra Jensen reported that Dr. Robert Coburn and Ms. Sandra Smith attended the FCLB Conference in Montreal. A copy of the board report that was submitted to the FCLB has been included in the board packets. Dr. Robert Coburn also sent a summary via E-mail to all Board members.

d. National Board of Chiropractic Examiners Update

Dr. Sandra Jensen reported that in the board packets, there are newsletters summarizing the meetings of the NBCE during the annual conference in Montreal. Dr. Ted Scott from Utah is now the new District IV Director and Dr. Peter Ferguson has been named the new President of the NBCE.

**2. Executive Director's Report**

a. Budget and Performance Measures

Mr. James Moss reported the budget report format has been changed to make it easier to read. Page one of the report is a budget summary as of April 30, 2005. The Annual Budget column is the budget from the agency's legislative appropriation bill (HB1). The total shown in this column is \$340,220 for fiscal year 2005. The Board is also allowed to keep all open records receipts in excess of \$13,007.00. As of April 30, 2005, we have already exceeded this amount by some \$8,000.00. In addition, the agency has begun to collect fees for the online continuing education it now offers. These monies, too, can be used by the agency. Not counting the excess receipts and the online fees collected for the agency's use, the agency has a positive year-to-date variance of slightly over \$31,000.00, plus a remaining budget for the fiscal year of nearly \$145,000.

Page two consists of ABEST records and a corresponding budget analysis. The columns headings are the annual licensing budget, year to date licensing expenditures, and the annual enforcement budget. No agency budget numbers are available for enforcement; however, the new budget taking effect in September of 2005 will be split internally

between licensing and enforcement in order to track expenditures by strategy. Dr. Scott Isdale commended Mr. James Moss for all of his hard work on the budget.

Page five is the ABEST Reconciliation by Distribution Strategy. This report shows the money spent for the various budget line item categories. Page eight begins the Distribution of ABEST entries by Object of Expense Codes. Pages 16-17 illustrate the breakdown by strategy, page 18 reflects the breakdown by method of financing, and page 19 shows the agency's efficiency measures.

b. Texas Building and Procurement Audit Results

Mr. James Moss reported the Board has received a 78% compliance on the past two TBPC audits, with 90% being defined as acceptable. The Board is now at an 87% compliance rate with TBPC. Out-of-compliance items consist mainly of PCC coding errors and incorrect or missing contract documentation. Mr. Moss is currently working on templates to correct these problems.

c. Pending Comptroller's Audit

Mr. James Moss reported that the Comptroller's office will be sending a team to perform the post payment audit of vouchers next month.

d. Accounting Procedures

Information item.

e. State Office of Risk Management Award

Ms. Sandra Smith reported the Texas Board of Chiropractic Examiners was awarded the SORM risk management award. Mrs. Karen Sands is the Risk Manager.

f. Report on Association of Chiropractic Board Administrators Meeting

Ms. Sandra Smith reported that the yellow pamphlet and information located in the board packets illustrate the highlights of the boards and the 17 different states represented.

g. Sunset/Legislative Update

Ms. Sandra Smith reported HB 972 will take affect September 1, 2005. The LAR (Legislative Appropriations Request) illustrates changes to rules. The Board was granted its 5% budget cut back, 2 new FTEs, peer review funding, and the Executive Director's salary increase. Ms. Sandra Smith reported that the State Auditor's Office will come in to see if the Board complies with management directives as outlined in the Sunset report. There were a number of bills introduced dealing with chiropractic; however, there were very few that were passed through committee. One bill that may affect the agency was massage therapy. The license requirement was changed to registration. SB 563,

prevention of Medicaid fraud and HB 867, relating to registration and supervision of sex offenders, Ms. Sandra Smith stated that she was unsure of the affect these bills would have on the Board. For information purposes, while in Montreal, Ms. Sandra Smith came across a vendor that provided supervision of licensees as a possible Enforcement tool. This entity would come in and oversee the supervision. SB 213 was passed requiring more Spanish content required for state agencies. State agencies are to get translation services for the website. Dr. Sandra Jensen complimented Ms. Sandra Smith on all of her hard work and dedication over the past few years.

Ms. Sandra Smith stated that a rule amendment was required to increase the facility registration fee so that the Board would be able to generate the revenue required under the Appropriations Act. She said that she would publish the fee increase as a proposed rule and bring it back to the Board for approval at its next meeting.

**B. Licensure and Education Standards Committee**

A quorum of the Licensure and Education Standards Committee met to discuss or recommend the following agenda items:

1. New licenses issued since the February 10, 2005 Board meeting

Information only.

2. Jurisprudence Exam Statistics since the February 10, 2005 Board meeting

Information only.

3. a. Consideration Request for approval to sit for the Jurisprudence Exam:  
Luke Alan Arnett

Mr. Narciso Escareno reported Mr. Luke Arnett was arrested on October 12, 1984 for a Class A Misdemeanor charge of Assault, was convicted, fined \$500, and sentenced to one year probation. He has met all requirements with no criminal convictions before or after this charge. Mr. Luke Arnett was 29 years old at the time of the arrest and is now 50 years old. 21 years have elapsed since the first arrest. He attended Parker College of Chiropractic from 1998-2003, has paid a \$500 fine, and has completed a one year probation sentence for this conviction. Mr. Luke Arnett has provided the Board with letters of recommendations and court documentations.

Motion: Mr. Narciso Escareno stated the L & E committee recommends approval of the request for Mr. Luke Arnett to be granted the opportunity to sit for the Jurisprudence exam. Dr. Robert Coburn seconded the motion.

Yeas: All voted "yes."

Nays: None

b. Consideration Request for approval to sit for the Jurisprudence Exam:  
Sheri Ekupke

Mr. Narciso Escareno reported Ms. Sheri Ekupke was arrested on August 19, 1994 for a Misdemeanor Class A charge of Driving While Intoxicated (DWI), was convicted, fined \$200, and sentenced to one year probation. She has met all requirements with no criminal activity before or after this charge. Ms. Sheri Ekupke was 22 years old at the time of the arrest and is now 32 years old. 10 years have elapsed since the arrest. She attended Parker College of Chiropractic from 2001-2004, has paid a \$200 fine, and has completed a one year probation sentence. Ms. Sheri Ekupke has provided the Board with letters of recommendations and court documentations.

Motion: Mr. Narciso Escareno stated the L & E committee recommends approval of the request for Ms. Sheri Ekupke to be granted the opportunity to sit for the Jurisprudence exam. Dr. Robert Coburn seconded the motion.

Yeas: All voted "yes."

Nays: None

c. Consideration Request for approval to sit for the Jurisprudence Exam:  
Linh Vien Huynh-Le

Mr. Narciso Escareno reported Mr. Linh Vien Huynh-Le came to the L & E Committee meeting held this morning to hear his case discussed. The committee was apprehensive at issuing and giving him the opportunity to take the exam. Mr. Linh Vien Huynh-Le indicated that he had no criminal convictions on his application; however, there were two arrests that appeared on his FBI and DPS criminal activity reports.

Mr. Narciso Escareno reported:

*When asked by Pam Harris, Director of Licensure, why he failed to list the Misdemeanor Assault conviction on his application, he responded that he misread the application and did not realize that it asked for both misdemeanor and felony charges. He thought it asked for felony convictions only.*

Mr. Huynh-Le was arrested on March 11, 1994 for Forgery Financial Institute. He was given deferred adjudication. Mr. Huynh-Le was also arrested on November 22, 1995 for Robbery. He was convicted of a lesser charge (Assault), paid a \$300 fine, paid full restitution, and served a one year probation sentence. He was told that he could continue his deferred adjudication for the 1994 charge. He has met all requirements with no criminal activity before or after these charges. Mr. Huynh-Le was 19 years old at the time of the first arrest and is now 31 years old. 11 years have elapsed since the first arrest. He attended Parker College of Chiropractic from 1995-1999, has paid a \$300 fine, served

community service, and has completed a one year probation sentence for the 1995 conviction. Mr. Huynh-Le has provided the Board with letters of recommendations and court documentations. Mr. Narciso Escareno stated that he feels that Mr. Huynh-Le deserves a second chance.

Motion: Mr. Narciso Escareno stated the L & E committee recommends approval of the request for Mr. Linh Vien Huynh-Le to be granted the opportunity to sit for the Jurisprudence exam.

Discussion: Dr. Steve Minors questioned when Mr. Linh Vien Huynh-Le was in Chiropractic College and when was the second offense committed? Mr. Narciso Escareno stated that Mr. Linh Vien Huynh-Le was in school the first time and the second time around the second offense occurred. He was at the wrong place at the wrong time. He was not aware that it was a conviction and for this reason, did not list the conviction on the application. He did not consider the deferred adjudication a conviction and should have not listed.

Pam Harris reported that he spent two years waiting tables and was in school from 1995-1999. He has also worked for a quality assurance health/rehab clinic for three years and received a letter of recommendation from his current employer, who owns the clinic. Dr. Steve Minors stated that when he applied to Parker didn't he have to inform the school of the offense in 1994? Pam Harris stated that he would not have had to due to deferred adjudication.

Mr. Narciso Escareno stated the original motion, to be given the opportunity to be granted the opportunity to sit for the Jurisprudence Exam upon explaining to the Board why he omitted his misdemeanor conviction on application. Dr. Serge P. Francois stated that he still lied on application and although not convicted of first offense, it still happened. The letters of recommendation were not signed. Suspicion of pattern of forgery?

Motion failed. No second to the motion.

d. Consideration Request for approval to sit for the Jurisprudence Exam:

Patrick John Kelly

Mr. Narciso Escareno reported Mr. Patrick Kelly was arrested on February 21, 2000 for a Class B Misdemeanor charge of Driving While Intoxicated (DWI), was convicted, fined \$300, and spent 15 hours in county jail. He was also sentenced to one year probation and to complete 40 hours of community service at Texas Adaptive Aquatics teaching handicapped children to water ski. He has met all requirements with no criminal activity before or after this charge. Mr. Patrick Kelly has met all requirements. He was 47 years old at the time of the arrest and is now 52 years old. Five years have elapsed since the first arrest. He attended Life University from 2000-2001 and Parker College of Chiropractic from 2002-2004. He has paid a \$300 fine, served 40 hours of community service, and has completed a one year probation sentence.

Mr. Patrick Kelly has provided the Board with letters of recommendations and court documentations.

Motion: Mr. Narciso Escareno stated the L & E committee recommends approval of the request for Mr. Patrick Kelly to be granted the opportunity to sit for the Jurisprudence exam. Dr. Steve Minors seconded the motion.

Yeas: All voted “yes.”

Nays: None

e. Consideration Request for approval to sit for the Jurisprudence Exam:  
Michael Mellgren

Mr. Narciso Escareno reported Mr. Michael Mellgren came to the L & E Committee meeting held this morning to hear his case discussed. Mr. Michael Mellgren was arrested on December 27, 1997 for a Class A Misdemeanor charge of Evading Arrest. He was originally sentenced to pay a fine of \$4000 and to serve one year probation, but an Order Granting Defendant’s Motion to Reduce Sentence was granted on February 11, 1999. He ultimately paid a fine of \$500 and served only six months probation. He has met all requirements with no criminal activity before or after this charge. Mr. Michael Mellgren was 18 years old at the time of the arrest and is now 27 years old. Seven years have elapsed since the arrest. He attended Parker College of Chiropractic from 2000-2005 and will be graduating in the top 10% of his class. He has paid a \$500 fine and served six months probation. Mr. Michael Mellgren has provided the Board with letters of recommendations and court documentation.

Motion: Mr. Narciso Escareno stated the L & E committee recommends approval of the request for Mr. Michael Mellgren to be granted the opportunity to sit for the Jurisprudence exam. Mrs. Marcia Daughtrey seconded the motion.

Yeas: All voted “yes.”

Nays: None

f. Consideration Request for approval to sit for the Jurisprudence Exam:  
Stacy Roberts

Mr. Narciso Escareno reported Ms. Stacy Roberts was arrested on January 4, 1998 for a Class C Misdemeanor charge of Theft of Property. Ms. Stacy Roberts’ fine was paid via community service and no probation was required as part of the sentence. Ms. Roberts did pay a \$75 administrative fee. She has complied with state requirements with no criminal activity before or after this charge. Ms. Roberts was 21 years old at the time of the arrest and is now 29 years old. Eight years have elapsed since the arrest. She attended Logan College of Chiropractic from 2000-2005. She paid a \$75 court administrative fee and served community service at a new police sub-station in lieu of

any fines. Ms. Stacy Roberts has provided the Board with letters of recommendations and court documentations.

Motion: Mr. Narciso Escareno stated the L & E committee recommends approval of the request for Ms. Stacy Roberts to be granted the opportunity to sit for the Jurisprudence exam. Dr. Serge P. Francois seconded the motion.

Yeas: All voted “yes.”

Nays: None (1 nay: Dr. Scott Isdale)

The motion was approved by the majority.

Further Discussion: Dr. Scott Isdale questioned what Ms. Roberts was arrested for stealing? Mr. Jeb Boyt reported the letter says that she was a Wal-Mart employee and she was involved with a group of employees that were checking each other out not charging employees for merchandise. She cooperated with the store and paid the store back for the merchandise. Dr. Steve Minors questioned why Ms. Stacy Roberts was in Chiropractic College for five years? Mrs. Pam Harris reported that she was also practicing in Georgia.

4. Recommendation for rule change to the Texas Administrative Code, License & Renewals, Chapter 73, Rule § 73.7 Approved Continuing Education Courses

Mr. Narciso Escareno reported that the Licensure and Education Committee will send this agenda item to the Rules Committee for further examination. Please refer to Mrs. Pam Harris for further questions.

5. Discussion of case of the Nancy MacDonald v. TBCE and Sandra Smith

Mr. Jeb Boyt reported that this agenda item will be deferred to the end of the meeting.

Mr. Narciso Escareno stated that he enjoyed working with the Board members that will no longer be a part of the Board. He appreciates all of the knowledge and patience that each one has given and wishes each departing board member well.

**C. Rules Committee**

A quorum of the Rules Committee met to discuss or recommend the following agenda items:

For Action:

1. Whether the following procedures/tests be deemed within the scope of chiropractic?
  - a) bone mineral density tests

- b) videoflourosopy
- c) MRI
- d) surface EMG
- e) nasal lavage
- f) neurometer
- g) interpretation of barium studies
- h) hypertension
- i) natus patch
- j) vivatek
- k) MUA
- l) obesity
- m) auriculotherapy
- n) acupuncture
- o) cold laser treatments

Tabled.

2. Discussion of and Possible Action of Proposed Amendment to Rule §75.9(g), relating to  
Temporary Suspension Upon Threat to the Public

Tabled.

3. Discussion and recommendation to the Executive Director on a process for developing scope of practice rules as required under new §201.1525 and new §201.1526 as provided in HB 972

Tabled.

4. Discussion and possible approval to publish proposed rules required under HB 972:
  - a) Rules to prevent fraud, §201.1555
  - b) Rules concerning investigation of a complaint, §201.205, amending Rule §75.9,  
Relating to Complaint Procedures
  - c) Eligibility requirements for peer review committees, §201.252
  - d) Rules for complaint investigations by peer review committees, §201.2545

Tabled.

5. Preceptorship/Postceptorship Progam Update

Tabled.

For Discussion:

1. Percutaneous Neuromodulation Therapy (Dr. Jay Triano)

Tabled.

2. Cash discount at time of service (Richard Gillespie, D.C.)

Tabled.

3. Use of public records to solicit patient that have been injured in accidents (Omid Soltani, D.C.)

Tabled.

4. Quality Assurance

Tabled.

#### **D. Enforcement Committee**

(taken out of order)

3. Mass Docket Orders for Practicing with an Expired License (case #s available in TBCE Office.)

Motion: Dr. Robert Coburn made a motion that the committee recommends the Board to approve the Final Order of the mass docket order for practicing with an Expired license. Mr. Narciso Escareno seconded the motion.

Yeas: All voted, "yes."

Nays: None.

2. Agreed Orders: Case #s 102-46, 102-926, 104-105, 105-12, 105-59, 105-60

Motion: Dr. Robert Coburn made a motion that the committee recommended the Board to approve the final agreed order 105-12. Dr. Scott Isdale seconded the motion.

Dr. Robert Coburn stated this order referred to the sexual misconduct of a patient within a chiropractic/patient relationship. Dr Serge P. Francois requested for more information.

Discussion: The licensee's license will be to practice chiropractic, suspended and probated in its entirety effective as of April 28, 2005 pending resolution of criminal indictment and further action by the Board. Ten patients under the age of 18 years only when a parent or legal guardian is present can comply with all provisions and Board Rules of the Chiropractic Act/Rules in future. Upon conviction and imprisonment of this doctor, as a result, his license to practice or rather of the criminal convictions criminal indictment in Tarrant County will be revoked without further action by the Board. Upon the acquivel or entry of a plea to any lesser criminal conduct other then stated, the probated suspension of license will manifact pending review and further action by the

Board or the Enforcement Committee. At that time at its discretion, the Board may propose, amend, revise, or supplement this order accordingly to the doctors all remedies available under the law and responsive to the Board.

Yeas: All voted, "yes."

Nays: None.

Dr. Robert Coburn stated that the Agreed Final Order 104-105 was an amended Agreed Order. Mr. Jeb Boyt stated that the Agreed Order was drafted and submitted to the D.C. and attorney. Mr. Jeb Boyt stated there was a drafting error, the order does not require the doctor to sit for the National Board Ethics and Boundaries Exam, rather the order only is drafted to apply to continuing education.

Motion: Dr. Robert Coburn made a motion that the committee ask that Mr. Jeb Boyt to resubmit the order to the D.C. and attorney with the revision that he take the NBCE Ethics and Boundaries Exam and approve the Final Agreed Order 104-105 upon signature. Mrs. Marcia Daughtrey seconded the motion.

Dr. Scott Isdale clarified that the Board does not have to wait until the next meeting, rather the committee can take care of it when the order is officially signed and approved.

1. Pending Complaints (including cases recommended for closure): #s 100-116, 102-46, 102-926, 103-04, 103-288, 104-17, 104-78, 104-105, 105-02, 105-04, 105-12, 105-17, 105-18, 105-21, 105-22, 105-23, 105-24, 105-25, 105-26, 105-27, 105-28, 105-29, 105-30, 105-31, 105-32, 105-33, 105-34, 105-35, 105-36, 105-37, 105-38, 105-39, 105-40, 105-41, 105-42, 105-43, 105-44, 105-45, 105-46, 105-47, 105-50, 105-58, 105-59

Information only.

4. Enforcement Procedures and status of caseload

No action.

### **Closed Session**

Dr. Sandra Jensen announced that the Texas Board of Chiropractic Examiners will go into closed session pursuant to the Texas Open Meetings Act, on agenda item B5 to receive legal advice from its attorneys under Section 551.071 of the Act; and to consider personnel matters under section 551.074.

All members of the public and staff, except for Ms. Sandra Smith and Ms. Jessica Harwell, are requested to leave the meeting room at this time. The time is 1:30 P.M.

Dr. Jensen stated that the Closed Session had come to an end. The date is June 2, 2005. The time is 1:54 P.M. and the board will now reconvene in open session.

There was no action taken on items discussed in the Closed Session.

**Forum for licensees or the general public to address the Board**

Dr. Sandra Jensen invited anyone (visitors) to address the Board about any issues. None requested at this time.

**Items for future agenda and meeting dates**

Dr. Sandra Jensen stated that all tabled items be forwarded to the next board meeting agenda. The next Board meeting is scheduled for Thursday, August 25, 2005.

**Adjournment**

Motion: Dr. Sandra Jensen moved to adjourn the meeting. Mrs. Marcia Daughtrey seconded the motion.

Yeas: All voted "yes."

Nays: None

The meeting adjourned at 2:00 P.M.

Respectfully submitted,

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Sandra Jensen, D.C. President  
Texas Board of Chiropractic Examiners