

TEXAS BOARD OF CHIROPRACTIC EXAMINERS
William P. Hobby Building
333 Guadalupe, Suite 3-825
Austin, Texas 78701

Committee Meetings: 8:00 a.m. – Noon
(See Committee Agendas for Times and Room Numbers)
Board Meeting: 1:00 p.m. – Adjournment
Hobby Building, Tower 2, Room 225

MINUTES FROM THE
Aug 16, 2012
BOARD MEETING

BOARD MEETING AGENDA

The Texas Board of Chiropractic Examiners will consider and act, if necessary, on matters within the jurisdiction of the Board which are listed on this agenda. The Board may meet from time-to-time in executive session with respect to the agenda items as authorized by the Texas Open Meetings Act, Chapter 551 of the Government Code.

1. CALL TO ORDER, ROLL CALL & ESTABLISHMENT OF A QUORUM

Cynthia Tays, D.C., President

Call to Order, Roll Call and Establishment of a Quorum. Vote as necessary on excusing any absent board members.

Action Taken: Board President Dr. Cynthia Tays called the meeting to order at 1:00 PM. All members were present with the exception of Ms. Anne Boatright and Dr. Janette Kurban. Both Ms. Boatright's and Dr. Kurban's absences were approved as excused.

Others present were:

1. Joe Thrash, Assistant Attorney General
2. Yvette Yarbrough, Executive Director
3. Hal ten Brink, General Counsel
4. Jennifer Hertsenberg, Director of Licensure
5. Scott Parker, Director of Enforcement
6. Mary Feys, Admin Assistant for Enforcement
7. Sarah Matthews, Licensing Assistant
8. Barbara Perez, Legal Assistant
9. Arlethia Middleton, Chief Financial Officer

2. APPROVAL OF MINUTES

Cynthia Tays, D.C.

Approval of Minutes from May 24, 2012 Board Meeting

Action Taken: Ms. Woodruff **MOVED** and Dr. Campion **SECONDED** the motion to approve the minutes from the May 24, 2012, Board Meeting. After consideration, the Board **APPROVED** without changes the minutes from the May 24, 2012 meeting.

3. PUBLIC COMMENTS

Cynthia Tays, D.C.

Forum for licensees, the general public or other interested stakeholders to address the Board

Action Taken: Dr. Tays opened the floor to public comments. There were multiple comments made by members of the public:

- *Jessica Coffee, RD, LD (TX Academy of Nutrition & Dietetics) – regarding opposition to proposed specialty in chiropractic nutrition*
- *Deborah King (TX Academy of Nutrition & Dietetics – regarding opposition to proposed specialty in chiropractic nutrition*
- *Karen Betherd (TX Academy of Nutrition & Dietetics) – regarding opposition to proposed specialty in chiropractic nutrition*
- *Kevin Haubrick (TX Academy of Nutrition & Dietetics) – regarding opposition to proposed specialty in chiropractic nutrition*
- *Caroline Homer – regarding opposition to proposed specialty in chiropractic nutrition*
- *Thomas Hollingsworth, DC (TCA) – regarding proposed specialties in chiropractic nutrition and chiropractic neurology*
- *Jorge Garcia, DC (TCA) – regarding proposed specialties in chiropractic nutrition and chiropractic neurology*
- *Devin Pettiet, DC (TCA) – regarding proposed specialties in chiropractic nutrition and chiropractic neurology*
- *Michelle Martz, DC – regarding proposed specialty in chiropractic nutrition; proposed definition of subluxation does not include anything on biochemistry*
- *Juane Surprise, DC – regarding proposed specialties; asked Board to take her letter dated July 11, 2012 into consideration*
- *Mo Jahadi, DC – regarding proposed specialty in chiropractic nutrition*

4. EXECUTIVE COMMITTEE BUSINESS

Cynthia Tays, D.C.

4.1 President's Report (*Cynthia Tays, D.C.*)

Dr. Cynthia Tays may make a brief oral report to the Board on matters of current interest.

Action Taken: None. This item was for informational purposes only.

4.2 Executive Director's Report (*Yvette Yarbrough*)

Executive Director Yvette Yarbrough will present written and oral reports to the Board concerning recent agency activities, statistical reports, audit outcomes, revenues and expenditures, licensing information, enforcement information and issues from the past legislative session. Mrs. Yarbrough will answer questions from the board members concerning any agency operations, legislative issues and other matters of concern to the Board.

Action Taken: None. This item was for informational purposes only.

4.3 Strategic Plan Discussion (*Yvette Yarbrough*)

Ms. Yarbrough will present the agency's Strategic Plan, which is due in June 2012, to the Board for comment.

Action Taken: None. This item was for informational purposes only.

4.4 TBCE Administrative Procedures Approval (*Yvette Yarbrough*)

Ms. Yarbrough will present the proposed TBCE Administrative Procedures to the Board for approval. This document details (1) general policies, (2) board member vs. staff duties, and (3) committees, committee procedures, committee structure/composition, and committee function and purpose.

Action Taken: Dr. Campion **MOVED** and Dr. Thomas **SECONDED** the motion to approve the TBCE Administrative Procedures. After consideration, the Board **APPROVED** without changes the TBCE Administrative Procedures.

4.5 Performance Evaluation of Executive Director (*Cynthia Tays, D.C.*)

Dr. Cynthia Tays will lead the Committee in making a recommendation to the Board an evaluation of the performance of Executive Director Yvette Yarbrough for the time period of September 1, 2011 through present (August 16, 2012).

Action Taken: After recommendation from the Executive Committee, the Board gave Ms. Yarbrough a favorable performance evaluation. The Board did request a monthly regular communication by Ms. Yarbrough regarding agency activities.

5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

Patrick Thomas, D.C.

5.1 Discussion of Chiropractic Specialties (and Rule 71.13 and Rule 71.15). The Committee/Board will discuss whether it is desirable to continue recognizing chiropractic specialties and whether other alternatives exist for regulating specialties within chiropractic in Texas.

Action Taken: Dr. Thomas **MOVED** and Ms. Woodruff **SECONDED** that Rule 71.13 be repealed in entirety. After consideration, the Board **APPROVED** the motion to repeal Rule 71.13.

5.2 Consideration of changes to Continuing Education course approval criteria

Action Taken: None at this time.

5.3 Comments from Committee Chair concerning Committee business, activities or issues.

5.3.1 Discussion of CE hour tracking for licensees

Action Taken: None.

5.3.2 Medicare Continuing Education Evaluation Summary

Action Taken: None.

6. RULES COMMITTEE BUSINESS

Janette Kurban, D.C.

6.1 Consideration of Previously Proposed New Rules or Rule Amendments Eligible for Adoption

6.1.1 Consideration to adopt with or without changes, withdraw, re-propose with changes, or table proposed amendments to Rule 71.15 regarding Recognition of Specialties to outline the requirements for approved chiropractic specialties of Neurology and Nutrition. The proposed amendment was published in the June 15, 2012, edition of the Texas Register. Multiple comments expressing concern over the proposed amendments were received during the comment period.

Action Taken: Dr. Thomas **MOVED** and Ms. Woodruff **SECONDED** that the proposed amendments to Rule 71.15 be withdrawn. After consideration, the Board **APPROVED** the motion to withdraw the proposed amendments to Rule 71.15.

6.1.2 Consideration to adopt with or without changes, withdraw, re-propose with changes, or table proposed amendments to Rule 75.7, regarding fees. The proposed amendment was published in the April 27, 2012 edition of the Texas Register. No comments have been received to date.

Action Taken: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** that the proposed amendments to Rule 75.7 be

adopted without changes. After consideration, the Board **APPROVED** the motion.

- 6.1.3 Consideration to adopt with or without changes, withdraw, re-propose with changes, or table proposed amendments to Rule 75.17, regarding scope of practice. The proposed amendment was published in the June 15, 2012 edition of the Texas Register. Multiple comments have been received to date.

Action Taken: Ms. Woodruff **MOVED** and Dr. Montgomery **SECONDED** that the proposed amendments to Rule 75.17 be withdrawn and repropose with changes. Specifically, the phrase “and joint capsules” will be inserted into the definition of biomechanics in the rule. After consideration, the Board **APPROVED** the motion with two dissenting votes (Mr. Elizarde and Dr. McCullough).

- 6.1.4 Consideration to adopt with or without changes, withdraw, re-propose with changes, or table proposed amendments to Rule 80.7, regarding out-of-facility practice. The proposed amendment was published in the June 15, 2012 edition of the Texas Register. Two comments have been received to date.

Action Taken: Ms. Woodruff recused herself from this agenda item. Dr. Champion **MOVED** and Mr. Elizarde **SECONDED** that the proposed Rule 80.7 be adopted without changes. After consideration, the Board **APPROVED** the motion.

6.2 Consideration of Proposals for New Rules or Amendments to Existing Rules

- 6.2.1 Consideration to propose amendments to Rule 75.17. The 3rd Circuit Court of Appeals decision regarding needle EMG and MUA will become final on August 20, 2012, if no further appeals are pursued. The Board should consider amendments to the scope of practice rule reflecting the Court’s rulings on needle EMG and MUA.

Action Taken: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** that the proposed amendment to Rule 75.17 be published for comment. After consideration, the Board **APPROVED** the motion.

6.3 Discussion Items

- 6.3.1 Discussion of how chiropractic acupuncture relates to chiropractic scope of practice.

Action Taken: The Board discussed that chiropractic acupuncture provided by a licensed chiropractor must fit within the

chiropractic scope of practice, as defined by the Occupations Code and Board rules. The Board directed staff to prepare a rule amendment for proposal stating that “All therapeutic modalities provided by doctors of chiropractic must comply with the chiropractic scope of practice.”

- 6.3.2 Discussion of advertisement of “deals” using Group-on/Living Social/Amazon Deals and the different types of contractual agreements entered into by licensees. The Board should decide whether these types of “deals” involve kickbacks in violation of the Patient Solicitation Act.

Action Taken: The Board directed the Executive Director to pursue an Attorney General opinion on this topic.

- 6.3.3 Discussion of use of Osteopathic Manipulative Treatment (OMT) coding by Chiropractors.

Action Taken: None.

6.4 Update on other issues under consideration by the Committee

Comments from Committee chair Dr. Janette Kurban concerning Committee business, activities or issues.

Action Taken: None.

7. ENFORCEMENT COMMITTEE BUSINESS

Larry Montgomery, D.C.

- 7.1 Consideration of SOAH Dismissals - Board Orders

- 7.1.1 Case #109-127; SOAH Docket No. 508-12-6236

Action Taken: Dr. Campion **MOVED** and Ms. Woodruff **SECONDED** that the above Board Order be approved. After consideration, the Board **APPROVED** the motion.

- 7.1.2 Case #109-178/109-180; SOAH Docket No. 508-12-6234

Action Taken: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** that the above Board Orders be approved. After consideration, the Board **APPROVED** the motion.

- 7.2 Consideration of Accepted Agreed Orders: The Board will consider approval of the following Agreed Orders that have been recommended by the Enforcement Committee and accepted by the Respondents.

- 7.2.1 Case #109-026
- 7.2.2 Case #109-205
- 7.2.3 Case #111-206
- 7.2.4 Case #111-224
- 7.2.5 Case #111-254
- 7.2.6 Case #2012-007
- 7.2.7 Case #2012-015/016
- 7.2.8 Case #2012-053
- 7.2.9 Case #2012-056
- 7.2.10 Case #2012-057
- 7.2.11 Case #2012-083
- 7.2.12 Case #2012-105
- 7.2.13 Case #2012-120
- 7.2.14 Case #2012-123
- 7.2.15 Case #2012-097
- 7.2.16 Case #109-146
- 7.2.17 Case #2012-095
- 7.2.18 Case #2012-066

Action Taken: Dr. Thomas **MOVED** and Ms. Woodruff **SECONDED** that the above Agreed Orders contained in Agenda Items 7.2.1 through 7.2.16 be approved. After consideration, the Board **APPROVED** the motion.

7.3 Recommendations to Approve or Deny Requests to Expunge Records

- 7.3.1 Case #103-251

Action Taken: Dr. Montgomery **MOVED** and Dr. Campion **SECONDED** that the above Expunction Orders be approved. After consideration, the Board **APPROVED** the motion.

7.4 Statutory Suspensions or Revocations for Felony Convictions and/or Imprisonment

- 7.4.1 Case #111-160

Action Taken: Dr. Montgomery **MOVED** and Dr. Thomas **SECONDED** that the above Board Order be approved. After consideration, the Board **APPROVED** the motion.

- 7.4.2 Case #2012-166

Action Taken: Dr. Montgomery **MOVED** and Dr. Thomas **SECONDED** that the above Board Order be approved. After consideration, the Board **APPROVED** the motion.

7.5 Comments from Enforcement Chair Dr. Larry Montgomery on any Committee business, activities or issues.

Action Taken: None.

8. EXECUTIVE SESSION

Cynthia Tays, D.C.

The Board may meet in Executive Session for:

Consultation with counsel pursuant to Section 551.071, Government Code wherein the Board and essential staff will receive a briefing from assigned Assistant Attorney General and General Counsel concerning pending or contemplated litigation and settlement offers and personnel issues including but not limited to:

- 8.1 Texas Medical Association lawsuit against the Board, including Board's appeal, concerning MUA, Needle EMG and Diagnosis.
- 8.2 Texas Medical Association lawsuit against the Board, including possible appeal, regarding Rule 75.17 Scope allowing DCs to perform Vestibular-Ocular-Nystagmus testing.
- 8.3 TBCE vs. Abbott regarding disclosure of some contents of Board investigative files
- 8.4 Eric VanderWerff, DC vs. TBCE – Lawsuit brought by Dr. VanderWerff challenging a Board Order issued in an enforcement case

The Board will reconvene in open session after Executive Session to vote on items considered in Executive Session as necessary.

Action Taken: None. The Board went into Executive Session at 2:47 PM and reconvened in public session at 3:24 PM. The above listed agenda items were discussed in Executive Session. No action was taken on the agenda items while in Executive Session.

9. CONSIDERATION OF MOTIONS RELATED TO ITEMS DISCUSSED IN EXECUTIVE SESSION

Cynthia Tays, D.C.

Board members will have the opportunity to offer motions related to any items discussed in Executive Session.

- 9.1 Consideration of Motions Related to Executive Session

Action Taken: None.

10. CALL FOR FUTURE ITEMS for discussion and/or consideration by the Board

Cynthia Tays, D.C.

Action Taken: None.

11. MEETING DATES & ADJOURNMENT

Cynthia Tays, D.C

11.1 The planned Board meeting dates for the remainder of Calendar Years 2012 - 2015 are:

- | | |
|-----------------------|------------------------|
| (1) November 15, 2012 | (7) May 22, 2014 |
| (2) February 21, 2013 | (8) August 21, 2014 |
| (3) May 23, 2013 | (9) November 13, 2014 |
| (4) August 15, 2013 | (10) February 19, 2015 |
| (5) November 21, 2013 | (11) May 21, 2015 |
| (6) February 20, 2014 | (12) August 20, 2015 |
| | (13) November 19, 2015 |

*Note: All planned board meeting dates through November 2015 may be found on the agency’s website (under “Calendar”) at: www.tbce.state.tx.us. All dates are tentative until posted in the Texas Register.

11.2 The next Enforcement Committee dates apart from the board meetings are scheduled for:

- (1) September 11, 2012
- (2) October 30, 2012

11.3 Adjournment at: _____ PM.

Note: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids, services, or special accommodations should contact Ms. Mary Feys at 512-305-6901 a minimum of two (2) working days prior to the meeting so that appropriate accommodations can be made.

Action Taken: Dr. Tays reminded members of the next board meeting dates. The November 2012 meeting was rescheduled for December 4, 2012, due to a conflict with the Formula One racing event to be held in Austin in November. Dr. Tays then adjourned the meeting at approximately 4:57 PM.

Statement: I affirm that the above is a true and correct rendering of the minutes for the Texas Board of Chiropractic Examiners Board Meeting held on the above referenced date. These minutes from the board meeting held on August 16, 2012, were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on December 4, 2012.

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners

December 4, 2012
Date