

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

BOARD MEETING: 1:00 p.m. – Adjournment
Hobby Building, Tower 2, Room 225

MINUTES FROM THE
May 21, 2015
BOARD MEETING

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

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

Action Taken: Board Vice-President Kenya Woodruff called the meeting to order at 1:01 PM and called the roll. All board members were present with the exception of Dr. Cynthia Tays, Dr. Karen Campion, and Ms. Anne Boatright, and a quorum was announced.

Mr. Steinberg **MOVED** to excuse Dr. Campion's absence, and Dr. Riggs **SECONDED**. After consideration, the Board **APPROVED** the motion.

Mr. Steinberg **MOVED** to excuse Dr. Tays' absence, and Dr. Riggs **SECONDED**. After consideration, the Board **APPROVED** the motion.

Mr. Steinberg **MOVED** to excuse Ms. Boatright's absence, and Dr. Riggs **SECONDED**. After consideration, the Board **APPROVED** the motion.

Others present were:

Joe Thrash, Assistant Attorney General
Yvette Yarbrough, Executive Director
Bryan Snoddy, General Counsel
Scott Parker, Director of Enforcement
Jennifer Hertsenberg, Director of Licensure
Sarah Matthews, Licensure Assistant

2. APPROVAL OF MINUTES

Approval of Minutes from the February 19, 2015 Board Meeting

Action Taken: Dr. Montgomery **MOVED** and Dr. Thomas **SECONDED** approval of the minutes from the February 19, 2015 Board Meeting. After consideration, the Board **APPROVED** the motion.

3. PUBLIC COMMENTS

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

Action Taken: Dr. James Welch, DC (TCA) made public comments regarding the association's interaction at the legislature during the legislative session. Dr. Welch also thanked the Board for their work in protecting the public.

Dr. Devin Pettiet (TCA) made public comments regarding the Rules Committee agenda. Dr. Pettiet stated that TCA doesn't support any language that would segregate health care professionals (i.e. "chiropractic tasks").

4. EXECUTIVE COMMITTEE BUSINESS

Cynthia Tays, D.C.

4.1 President's Report

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

Action Taken: No report given due to Dr. Tays' absence. No action taken.

4.2 Executive Director's Report

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 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: No action taken.

4.3 FCLB/NBCE Annual Meeting Report

Dr. Tays, Dr. Champion, and Mrs. Yarbrough will report on the Federation of Chiropractic Licensing Boards (FCLB) and National Board of Chiropractic Examiners (NBCE) annual meeting.

Action Taken: No action taken.

4.4 Outgoing Board Member Discussion

The Board will discuss appointments (if any) of future Board members. Outgoing Board members Dr. Larry Montgomery, Dr. Patrick Thomas, and Ms. Anne Boatright terms all expired in February.

Action Taken: No action taken.

5. EXECUTIVE SESSION

5.1 The Board may meet in Executive Session

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 including but not limited to:

- 5.1.1 Texas Medical Association lawsuit against the Board, including remand, concerning Diagnosis.
- 5.1.2 Texas Medical Association lawsuit against the Board regarding Rule 75.17 Scope allowing DCs to perform Vestibular-Ocular-Nystagmus testing and challenge to diagnosis, as well as TMA challenge to definitions of "musculoskeletal system" and "subluxation complex."
- 5.1.3 Texas Association of Acupuncture and Oriental Medicine lawsuit against the Board, including appeal, regarding the Board allowing certain chiropractors to perform acupuncture within scope of practice.

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 1:38 PM and reconvened in Open Session at 1:55 PM.

6. **CONSIDERATION OF MOTIONS RELATED TO ITEMS DISCUSSED IN EXECUTIVE SESSION**

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

6.1 Consideration of Motions Related to Executive Session

Action Taken: None.

7. **LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS**

7.1 Discussion of rules regarding licensure and input into rule review.

Action Taken: None.

7.2 Discussion and comments from Committee Chair concerning Committee business, activities or issues.

Action Taken: None.

8. **RULES COMMITTEE BUSINESS**

8.1 Discussion and Consideration of Rule Amendments and Repeals

- 8.1.1 Discussion and consideration of Rule Review Plan concerning Chapters 71 and 72.

Action Taken: The Rules Committee recommended changing the word "Board" to "Executive Director or their appointee" in the last sentence of Rule 71.2(b) to read as follows: "The petition shall contain the following information as applicable and except as may be waived by the Executive Director or designee: " The Rules Committee **MOVED** and Dr. Thomas **SECONDED** publication of proposal of this amendment to Rule 71.2(b). After consideration, the Board **APPROVED** the motion.

The Rules Committee recommended that Rule 72.2 be modified to explicitly state that the Board has authority to sanction applicants in accordance with Section 201.502 of the Chiropractic Act. The Rules Committee **MOVED** and Dr. Riggs **SECONDED** publication of proposal of this amendment to Rule 72.2. After consideration, the Board **APPROVED** the motion.

- 8.1.2 Discussion and consideration to adopt the amendment of Rule 78.17 (Spinal Screenings).

Action Taken: Tabled.

- 8.1.3 Discussion and consideration to adopt the amendment of Rule 75.6 (Failure to Meet Continuing Education Requirements).

Action Taken: No comments received on this agenda item. The Rules Committee **MOVED** and Mr. Steinberg **SECONDED** adoption of rule amendment. After consideration, the Board **APPROVED** the motion.

- 8.1.4 Discussion and consideration to adopt the amendment of Rule 77.5 (Delegation of Authority).

Action Taken: Tabled.

- 8.1.5 Discussion and consideration to adopt the amendment of Rule 77.9 (Out of Facility Practice).

Action Taken: No comments received on this agenda item. The Rules Committee **MOVED** and Dr. Thomas **SECONDED** adoption of rule amendment. After consideration, the Board **APPROVED** the motion.

- 8.1.6 Discussion and consideration to adopt the amendment of Rule 75.5 (Continuing Education).

Action Taken: No comments received on this agenda item. The Rules Committee **MOVED** and Dr. Thomas **SECONDED** adoption of

rule amendment. After consideration, the Board **APPROVED** the motion.

- 8.1.7 Discussion and consideration to adopt the amendment of Rule 78.6 (Required Fees and Charges).

Action Taken: No comments received on this agenda item. The Rules Committee **MOVED** and Dr. Riggs **SECONDED** adoption of rule amendment. After consideration, the Board **APPROVED** the motion.

- 8.1.8 Discussion and consideration to propose the amendment of Rule 78.13 (Scope of Practice)

Action Taken: The Rules Committee **MOVED** and Dr. Riggs **SECONDED** publication for proposal of rule amendment. After consideration, the Board **APPROVED** the motion.

- 8.1.9 Discussion and consideration to propose new rule pursuant to Texas Government Code Chapter 574 (Dual Office Holding)

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** publication for proposal of rule amendment (with change of "Commission" to "Board"). After consideration, the Board **APPROVED** the motion.

- 8.1.10 Discussion and consideration to propose new rule pursuant to Texas Government Code Chapter 655 (Merit Selection Principles)

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** publication for proposal of rule amendment. After consideration, the Board **APPROVED** the motion.

- 8.1.11 Discussion and consideration to propose new rule pursuant to Texas Government Code Chapter 661 (Sick Leave Pool)

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** publication for proposal of rule amendment (with change of "Commission" to "Board" and "Director Librarian" to "Executive Director"). After consideration, the Board **APPROVED** the motion.

- 8.1.12 Discussion and consideration to propose new rule pursuant to Texas Government Code Chapter 441.006 (Private Donors)

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** publication for proposal of rule amendment (with change of "Commission" to "Board"). After consideration, the Board **APPROVED** the motion.

- 8.1.13 Discussion and consideration to propose new rule pursuant to Texas Government Code Chapter 2261.202 (Contract Monitoring)

Action Taken: The Rules Committee **MOVED** and Mr. Steinberg **SECONDED** publication for proposal of rule amendment. Language will read to the effect of "Contract monitoring, when applicable, is primarily conducted by administrative staff of the agency under the authority and the direction of Chapter 2261 of the Texas Government Code." After consideration, the Board **APPROVED** the motion.

8.1.14 Discussion and consideration to propose new or amended rule pursuant to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses)

Action Taken: The Rules Committee referred this matter to the Licensure & Education Committee for input, so the Board tabled this agenda item.

8.1.15 Discussion and consideration to propose amendment to Rule 77.10 (Rules to Prevent Fraud)

Action Taken: Tabled.

8.1.16 Discussion and consideration to propose amendment to Rule 78.8 (Complaint Procedures)

Action Taken: The Rules Committee recommended that subsection (g)(1)(C) be deleted from Rule 78.8. The Rules Committee **MOVED** and Dr. Thomas **SECONDED** publication of proposal of this amendment to Rule 78.8. After consideration, the Board **APPROVED** the motion

8.1.17 Discussion and consideration to propose amendment to Rule 78.10(b) (Schedule of Sanctions)

Action Taken: Tabled.

8.1.18 Discussion and consideration to propose amendment to Rule 77.7 (Request for Information and Records from Licensees)

Action Taken: Tabled.

8.2 Discussion and comments from Committee Chair concerning Committee business, activities or issues

Action Taken: No action.

9. ENFORCEMENT COMMITTEE BUSINESS

9.1 Consideration of Accepted Agreed Orders. The Board will receive a report from the Enforcement Committee concerning Agreed Orders that have been recommended by the Enforcement Committee and accepted by the Respondents pursuant to the Chiropractic Act §201.554.

- 9.1.1 Case #2014-108
- 9.1.2 Case #2014-190
- 9.1.3 Case #2014-229
- 9.1.4 Case #2014-232
- 9.1.5 Case #2014-247
- 9.1.6 Case #2014-267
- 9.1.7 Case #2015-023
- 9.1.8 Case #2015-024
- 9.1.9 Case #2015-032
- 9.1.10 Case #2015-055
- 9.1.11 Case #2015-078
- 9.1.12 Case #2015-089
- 9.1.13 Case #2015-109
- 9.1.14 Case #2015-132

Action Taken: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** to approve the Agreed Orders listed in Agenda Items 9.1.1-9.1.14. After consideration, the Board **APPROVED** the motion.

9.2 Consideration of Requests to Expunge Records

- 9.2.1 Case #100-293

Action Taken: Dr. Montgomery **MOVED** and Dr. Thomas **SECONDED** to deny the expungement based on failure to meet criteria. After consideration, the Board **APPROVED** the motion.

- 9.2.2 Case #101-076

Action Taken: Dr. Thomas **MOVED** and Dr. Riggs **SECONDED** to approve the expungement. After consideration, the Board **APPROVED** the motion.

- 9.2.3 Case #102-387

Action Taken: Dr. Riggs **MOVED** and Dr. Thomas **SECONDED** to deny the expungement based on failure to meet criteria. After consideration, the Board **APPROVED** the motion.

- 9.2.4 Case #104-198

Action Taken: Dr. Riggs **MOVED** and Dr. Thomas **SECONDED** to approve the expungement. After consideration, the Board **APPROVED** the motion.

- 9.2.5 Case #109-084

Action Taken: Dr. Thomas **MOVED** and Dr. Riggs **SECONDED** to deny the expungement based on failure to meet criteria. After consideration, the Board **APPROVED** the motion.

9.3 Consideration of Board Orders

9.3.1 Case #2014-038

Action Taken: Dr. Thomas **MOVED** and Dr. Riggs **SECONDED** to approve this Board Order. After consideration, the Board **APPROVED** the motion.

9.4 Consideration of Cease and Desist Orders

9.4.1 Case #2014-144

9.4.2 Case #2015-114

9.4.3 Case #2014-151

9.4.4 Case #2014-192

9.4.5 Case #2015-042

9.4.6 Case #2015-043

9.4.7 Case #2015-062

9.4.8 Case #2015-063

9.4.9 Case #2015-112

9.4.10 Case #2015-113

Action Taken: Dr. Riggs **MOVED** and Dr. Thomas **SECONDED** to approve the Cease and Desist Orders in Agenda Items 9.4.1-9.4.10. After consideration, the Board **APPROVED** the motion.

9.5 Consideration of Revocation Orders

9.5.1 Case #2014-218

Action Taken: No action.

9.5.2 Case #2015-179

Action Taken: Dr. Riggs **MOVED** and Dr. Montgomery **SECONDED** to approve the Statutory Revocation Final Order. After consideration, the Board **APPROVED** the motion.

9.6 Discussion and comments from Committee Chair concerning Committee business, activities or issues.

Action Taken: No action.

10. MISCELLANEOUS

10.1 Call for future items for discussion and/or consideration by the Board

10.2 Future Meeting Dates

The planned Board meeting dates for Calendar Year 2015 are:

(1) August 20, 2015

(2) November 19, 2015

**Note: All planned board meeting dates after 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.*

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

- | | |
|---------------------|-----------------------|
| (1) July 14, 2015 | (3) October 13, 2015 |
| (2) August 19, 2015 | (4) November 18, 2015 |

10.3 Adjournment at: 2:38 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 May 21, 2015 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on August 20, 2015.



August 20, 2015

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners