

Texas Chiropractic Board Report

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GOVERNOR NAMES NEW PRESIDENT, APPOINTS TWO BOARD MEMBERS

Governor Rick Perry recently named Cynthia Tays, D.C. as President of the Texas Board of Chiropractic Examiners and appointed Karen M. Campion, D.C and Tim McCullough, D.C. as new board members. Dr. Tays will serve as President at the pleasure of the Governor. The terms for Drs. Campion and McCullough will expire on February 1, 2017.

Cynthia Tays, D.C.



Cynthia Tays, D.C., of Austin, was named board president by Governor Perry on May 3, 2011. Dr. Tays had previously been appointed to the board by Governor Perry in 2007. Dr. Tays is president and owner of Austin Chiropractic Associates P.A. She is a graduate of Texas Chiropractic College and is a member of the American Chiropractic Association and the Texas Chiropractic Association. She has served four years on the board's Enforcement Committee, the last two as chair. Dr. Tays is also a member of the ACA Sports Council, the ACA Physical Therapy Council, and the American College of Chiropractic Orthopedists. She enjoys travel, hiking, canoeing and volunteering for her church and for Ballet Austin. Dr. Tays replaces Dr. Kenneth Perkins as board president.

Karen M. Campion, D.C.



Karen M. Campion, D.C., graduated from Texas Chiropractic College in 1989, and has practiced in College Station, Texas since 1990. She also is licensed in Colorado since 2002. Her undergraduate studies earned her an Associate of Science Degree in Biology. She is married to Jeffrey L. Brown, D.C., and the couple resides in Bryan, Texas. Dr. Campion is a Certified Chiropractic Sports Practitioner and a Fellow of the International Academy of Medical Acupuncture. She is also a Certified Red Cross Back Injury Prevention Instructor & a PRCA Rodeo chiropractor. Dr. Campion is a member of the ACA and the TCA. She served on the board of the American Cancer Society in Bryan/College Station. She enjoys golfing, hiking, and most outdoor activities.

Tim McCullough, D.C.



Tim McCullough, D.C., received his B.S. in pre-medicine and education from the Louisiana State University then entered the U.S. Army and served for four years as a helicopter pilot. After separation he founded and operated a chain of convenience stores and a real estate investment company.

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Texas Board of Chiropractic Examiners

BOARD MEMBERS

Cynthia Tays, D.C.

Board President
Executive Committee Chair
Austin

Patrick Thomas, D.C.

Board Vice President
Licensing & Education
Committee Chair
Corpus Christi

Larry Montgomery, D.C.

Board Secretary-Treasurer
Enforcement Committee Chair
Belton

Karen M. Campion, D.C.

College Station

Mr. Armando Elizarde, Jr.

Public Member
Harlingen

Janette Kurban, D.C.

Rules Committee Chair
Pantego

Tim McCullough, D.C.

Friendswood

Mr. Thomas Turner

Public Member
Austin

Kenya Woodruff, J.D.

Public Member
Dallas



Yvette Yarbrough, J.D.

Executive Director

A message from the Executive Director...



I am thrilled to have been hired as the new Executive Director of the Texas Board of Chiropractic Examiners! I am following Mr. Glenn Parker, who is retiring effective August 31 of this year. Mr. Parker's dedication to the Board members, the agency, and our licensees has been unparalleled for the last five years. We sincerely thank him for his tireless service to the State of Texas and the TBCE and wish him the best in his retirement.

Having worked at TBCE for the last two years – first as a legal assistant and most recently as a board attorney – and having been a chiropractic patient, I have become intimately familiar with the critical role the chiropractic profession plays in alternative healthcare, as well as the challenges facing the chiropractic profession in Texas. I will continue to assist the TBCE in complying with current legislation and legislative directives, while maintaining an open dialogue with licensees, chiropractic organizations, and other stakeholders.

One of my biggest goals as the Executive Director is to incorporate more technological advances into our daily operations to make our agency as efficient and customer service oriented as possible. We will continue to work to make our website and phone system more user-friendly. Additionally, I hope to utilize social media and e-newsletters to make information more readily available to our licensees and facility owners. While this may take some time, I and the rest of the staff members will continue to answer all questions and concerns to the best of our ability. (We may not return a phone call or email as immediately as some would like, but please remember that we are a small agency with limited staff and resources!)

I look forward to working with all of you in the future and hope that this newsletter provides some insight into the laws/rules governing Texas chiropractic, as well as the agency's operations. If there are any topics you would like to see covered in future issues, please let us know!

Yvette Yarbrough - Executive Director

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Who Defines Scope of Practice and Why Isn't TBCE Protecting My Right to Practice Chiropractic?

The statute governing the Board and chiropractic in Texas is commonly referred to as the Chiropractic Act. The Chiropractic Act defines the legal scope of practice for Texas doctors of chiropractic as follows:

A person practices chiropractic under this chapter if the person:

- (1) Uses objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body;**
- (2) Performs nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system**

The Board's purpose is to administer the Chiropractic Act as it is currently written. This includes writing and adopting rules administering and interpreting the Chiropractic Act. The Board cannot adopt any rule that is contrary to the Chiropractic Act or any other law in Texas. When the Board writes rules regarding scope of practice in Texas, the first and foremost consideration must be the limitations imposed on Texas DCs in the Chiropractic Act.

It is crucial to understand that none of the following define scope of practice: education, training, historical practice, chiropractic philosophy, patient satisfaction, and good results. Only the Legislature, through the Chiropractic Act, defines scope of practice.

Many licensees have the perception that the Board is not doing enough to protect chiropractic and their right to practice. Other licensees argue that the Board should be advocating for an increased scope of practice. However, it is not the Board's place to protect chiropractic or to petition for changes to scope of practice. The mission of the Board is to promote, preserve, and protect the health, safety, and economic welfare of the people of Texas through the regulation of the practice of chiropractic. The

Board's responsibility is to interpret the Chiropractic Act (as it is currently written) and to adopt a scope of practice rule that is in accord with the Act. Organizations including, but not limited to, the Texas Chiropractic Association and the Chiropractic Society of Texas are the proper organizations to promote and protect chiropractic in Texas and to petition the Legislature for any expansion of scope.

Additionally, it has been opined that, in proposing certain changes to the scope of practice rule, the Board is usurping the public's right to choose in health care decisions. This is simply not true. The Legislature set the limits on scope of practice in the Chiropractic Act. The purpose of any proposed amendments to scope of practice in Board rules is to further clarify what the legal scope of practice for DCs is in Texas and what it is not. Any "limitation" of

scope of practice is by virtue of the Chiropractic Act, not the Board's rules.

It has become clear that there is no common understanding of what the legal scope of practice for Texas chiropractors is or has been for several years. Therefore there exists a need for the Board to clarify scope, ensuring that

"The mission of the Board is to promote, preserve, and protect the health, safety, and economic welfare of the people of Texas through the regulation of the practice of chiropractic."

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Chiropractic Act

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clarification is within the bounds of the Chiropractic Act. One effect the proposed rule changes seem to be having is to bring into focus the fact that some chiropractors in Texas may have been practicing beyond what the law allows for several years. Put another way, some Texas chiropractors are just now realizing that they have misunderstood or have been misinformed or uninformed about their legal scope for a long time, according to what the Chiropractic Act allows.

The point is that it is not the Board that is limiting scope via these proposed rule changes, but it is the current Chiropractic Act – the statute, the current law – that is limiting scope. The Board is only attempting to make clear what the actual law and legal scope of chiropractic in Texas really are.

How To Find Proposed and Adopted Rules

Did you know that you can keep up with rules that the TBCE has proposed or adopted online?

The TBCE uploads all proposed and adopted rules onto our homepage at www.tbce.state.tx.us under the “Rules – Recent & Proposed Changes” link.

Additionally, you can view current rules from the Secretary of State website (www.sos.state.tx.us/tac), which is linked to on our homepage under the “Statutes and Rules” link.

All proposed and adopted rules are published in the Texas Register. Current and past issues of the Texas Register are available at www.sos.state.tx.us/texreg. If you'd like to be notified by email whenever the TBCE proposes/adopts/withdraws a rule or schedules an open meeting or public hearing, you can contact the Texas Register at 512-463-5561 or register@sos.state.tx.us.

REGISTRATION RENEWALS DUE FOR NON-DC OWNED CLINICS AND RADIOLOGIC TECHNOLOGISTS

Non-DC Owned Clinics

All chiropractic clinics (facilities) that are owned by organizations or individuals who are not licensed doctors of chiropractic in the state of Texas must renew their facility registrations with the Board by September 1 of each year. Renewal forms reminding clinic owners of the renewal requirements were mailed to all non-DC owned clinics approximately 45-60 days prior to September 1. (Clinics that are owned by DCs must renew their registration by the first day of the DC's birth month – the same date by which the DC's license must be renewed each year.) Facility renewals may be completed online at the Board's website: https://www.tbce.state.tx.us/fac_menu.html Click on “Facility Online Renewal.” Be sure to use a capital F as part of the facility number.

Radiologic Technologists Renewals

All individuals who take x-rays in a chiropractic clinic must be qualified to do so, either by their licensure as a DC, a nurse or another health care professional or must be certified by the Texas Department of State Health Services. All individuals who are certified by DSHS as chiropractic radiologic technologists (Rad Techs) must also register with the TBCE each year. Those registrations with the Board must be renewed annually by January 1 of each year. Renewal forms are sent out by the Board approximately 45-60 days in advance of the renewal date. There is no online renewal for radiologic technologists, so the forms must be completed and submitted with the required fee to the Board via regular mail.

Please contact Director Jennifer Hertsberg at Jennifer.Hertsberg@tbce.state.tx.us if you have questions about renewing a DC license, a clinic (facility) registration or a Rad Tech registration.

10 Ways to Avoid Disciplinary Action

10. NOTIFY PATIENTS OF CHANGE IN EMPLOYMENT OR ADDRESS

Board Rule 75.2 requires licensees to give a patient “adequate notice and the opportunity to obtain the services of another chiropractor” whenever the licensee will not continue treating the patient. Additionally, the licensee must show “reasonable cause” for the discontinuing of treatment and must provide “for the orderly transfer of [the] patient’s records.” Failure to do these things may result in the licensee being disciplined for Patient Abandonment.

If you are going to change employment, leave practice, or move, notify your patients early and often! Phone calls, signage, emails, postcards, and advertisements are all good ways to notify patients. You may also think about distributing an email address or phone number where you will be able to be reached so that patients can contact you to obtain records in the future. Most complaints we receive that result in disciplinary action for Patient Abandonment stem from a patient who wants a copy of their records but can’t find the licensee.

9. REPORT CHANGES OF ADDRESS TO THE BOARD WITHIN 30 DAYS

Board Rule 73.1 requires licensees to maintain a current physical home and business address with the Board. The same rule also requires licensees to notify the Board in writing of any change in address within 30 days of that change. Additionally, Board Rule 74.5 requires a facility to notify the Board in writing of any change in street or mailing address or ownership within 30 days of that change.

Please note that merely submitting a change through Texas Online when completing a license or registration renewal will NOT change your address with the Board. Unfortunately, we do not receive notice of those changes from Texas Online.

8. RESPOND TO BOARD INQUIRIES

When the Board sends a licensee or facility a notice of complaint or a request for information or records, the licensee or facility must respond in writing within fifteen (15) days, pursuant to Board Rule 75.6. This is not discretionary, and failure to do so may result in disciplinary action.

Ignoring a notice of complaint or a request for information is never a good idea. Your response is your opportunity to present your side of the story or to present mitigating evidence. If you need additional time to file a response, contact Board staff about your situation.

7. PRACTICE WITHIN YOUR SCOPE OF PRACTICE

All diagnoses and treatment provided under your DC license must be within your scope of practice. It is important to understand that just because you learned something in school or at a seminar, or just because you have been properly trained on a technique or procedure, does not mean that it is within your scope of practice! Scope of practice in Texas is set out in the Chiropractic Act (Texas Occupations Code). DCs are limited to (1) using objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; and (2) performing nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

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6. ENSURE DOCUMENTATION IS IN COMPLIANCE WITH BOARD RULES

Board Rule 80.5 states that documentation in patient records must support all diagnoses, treatments, and billing. Records must be timely, dated, accurate, signed or initialed by the licensee or the person providing treatment, and legible. (Electronic signatures are acceptable.) Records that are illegible and incomplete or that do not support all billing can easily land you an administrative penalty or other more severe disciplinary action!

5. ENSURE BILLING IS DONE PROPERLY

If you overcharge a patient or bill for services not rendered, you may be subjected to disciplinary action for Grossly Unprofessional Conduct under Board Rule 75.1. Also, ensure that any billing done pursuant to a pre-paid treatment plan complies with Board Rule 80.13.

Other common billing violations that can subject a licensee to disciplinary action involve improper coding. Always make sure to use the proper codes! For example, don't bill a 99205 for an examination that is more appropriate to bill as a 99203. (Ensure your documentation backs up all billing, as stated above.)

4. RELEASE CHIROPRACTIC RECORDS AND BILLING IN A TIMELY MANNER

Upon request from a patient or his/her representative, you must release records within fifteen (15) business days of that request, under Board Rule 80.3. Fees that you may charge are described in that rule. Note that you may NOT withhold records because the patient has a balance with your office or because you were not given a Letter of Protection!

When a patient requests records, you MUST release the records. The only exception is if you determine that access to the information would be harmful to the physical, mental, or emotional health of the patient. In that case, the denial of release and underlying reason must be given to the patient in writing.

Additionally, you must release billing upon request. It is a violation of Board Rule 75.1 (Grossly Unprofessional Conduct) to fail to disclose the full amount charged for any service rendered or goods supplied when a patient so requests. (This does not mean that you must release billing codes, but you must release billing amounts.) Additionally, remember that you are supposed to disclose in writing to the patient, on the date of providing goods or services to a patient, the full amount of the charges, pursuant to Board Rule 77.3!

3. RENEW YOUR LICENSE ON TIME

You must renew your license each year in order to practice chiropractic. In Texas, practicing with an expired license is the same thing as practicing with NO license! Each year, on or before the first day of your birth month, you must renew your license. If you have any questions about the renewal process, contact Jennifer Hertsenberg, Director of Licensure, at 512-305-6702 or via email at jennifer@tbce.state.tx.us.

Failing to renew your license can have many unintended consequences. First, you will have to pay late fees on the renewal of your license. Second, you may have to pay an administrative penalty (separate from the late fees) if disciplinary action is taken against you. Third, if you allow your license to expire for more than a year, the only way to reinstate your license is to submit to reexamination and compliance with the current requirements and procedures for obtaining an initial license. Finally, if you practice with an expired license, you open yourself up to liability for any billing that you submit during that time period. Consult with your private attorney for details about this consequence.

2. REGISTER YOUR FACILITY (AND DON'T FORGET TO RENEW THE REGISTRATION!)

Board Rule 74.2 is very clear: A facility shall not provide chiropractic services without first being registered by the board. Additionally, you must renew that facility registration each year. If you are a DC, then your facility registration will be due at the same time as your license renewal. If you are a non-DC facility owner, then your facility registration will be due on September 1st.

Additionally, if you share office space or staff, but otherwise maintain a separate business identity (i.e. billing, accounting, etc.) from another facility, then you must register as a separate facility.

Governor Appoints McCullough

(continued from page 1)

He then returned to the University of Louisiana at Lafayette and served as the University Ombudsman and Student Advocate and also earned his Masters Degree in special education. He continued on to Texas Chiropractic College and received his Doctor of Chiropractic degree.

Dr. McCullough is a Board Certified Chiropractic Internist, Board Certified Chiropractic Nutritionist, and certified in Acupuncture. He also holds the designation of Advance Practice Chiropractic Physician in New Mexico. He is Past-President of the ACA Council on Diagnosis and Internal Disorders, Chairman of the American Academy of Chiropractic Physicians and a member of the ACA and the TCA. He is married with three children and practices in Houston Texas and maintains a part-time practice in Albuquerque, New Mexico. He and his wife Sherry reside in Friendswood, Texas.

1. COMMUNICATE WITH YOUR PATIENTS

The number one way that you can avoid disciplinary action is to communicate with your patients. Many complaints that are received by the Board are submitted by patients as a result of a miscommunication or misunderstanding with the licensee. A simple conversation with a patient is a great proactive way to ensure that the patient is aware of and understands treatment, diagnoses, billing, etc.

Board Members & Executive Director Depart

The terms of former Board President Dr. Kenneth Perkins and board member Dr. Kathleen Summers expired on February 1, 2011. Both had been appointed to the Board by Governor Perry in November of 2005. Dr. Perkins, who practices in Conroe, was chosen as Board President by Governor Perry in May of 2007.

Dr. Summers, of Andrews, served four years on the Enforcement Committee and chaired the Licensure and Educational Standards Committee during her last two years on the Board. Dr. Summers' dedication is reflected in the fact that she missed only one board meeting during her tenure on the board.

Former Executive Director Glenn Parker retired effective August 31, 2011 after serving in that position for more than five years. Mr. Parker began his career in state government in 1989 and worked at the Board of Nursing, the Barber Board, and the Texas Department of Licensing and Regulation prior to coming to the Board of Chiropractic Examiners. Staff, board members, and many chiropractors offered their best wishes and deep appreciation to Dr. Perkins, Dr. Summers and Mr. Parker for their service to the people of Texas.

TBCE Board Disciplinary Actions Taken

NAME	LIC. #	DISCIPLINE	DATE OF ACTION	CITY
Arola, Ken	DC 10411	Admin. Fine	2/18/2010	Beaumont
Azuike, Joann Abram	F003884	Cease and Desist/Fine	11/12/2009	Houston
Bailey, David Norman	DC 4061	Admin. Fine	5/20/2010	College Station
Barnes, Gerald Cordell	DC 10895	Admin. Fine	11/12/2009	Irving
Barton, Robert A.	DC 6958	Admin. Fine	5/20/2010	Pasadena
Boss, Christopher D.	DC 8094	Admin. Fine	8/12/2010	The Woodlands
Bryson, Randy Wayne	DC 6199	Voluntary Surrender of License	2/9/2010	Waco
Burgos, Marlene Moreno	F007946	Admin. Fine	8/12/2010	Houston
Burow, Paul Anthony	DC 5377	Admin. Fine	5/20/2010	Taylor
Burrows, W. L.	DC 5948	Voluntary Surrender of License	2/18/2010	Weatherford
Burrows, W. L.	DC 5948	Voluntary Surrender of License	2/18/2010	Weatherford
Clifford, Roger	DC 5539	Admin. Fine	2/18/2010	Dallas
Davidson, Truman Andrew	DC 5512	Revocation	5/20/2010	El Paso
Davis, Patrick R.E.	DC 7836	Admin. Fine	8/12/2010	Duncanville
Drake, Brian Stephen	DC 9350	Admin. Fine	8/12/2010	Austin
Ekin, Robert A.	DC 9007	Suspend/Probate w/Stipulations	2/18/2010	Weslaco
Fabling, David Creed	DC 4584	Revocation	11/12/2009	Houston
Faries, Ronald	DC 7134	Admin. Fine	2/18/2010	Keller
Farnsworth, Douglas J.	DC 4789	Admin. Fine	5/20/2010	San Antonio
Feher, Richard Scott	DC 6153	Admin. Fine	5/20/2010	Victoria
Felker III, John Andrew	DC 2247	Admin. Fine	11/12/2009	Stafford
Fernandez, Jacob John	DC 9352	Fine with Stipulations	5/20/2010	Fort Worth
Fields, Ernie Van	DC 6365	Voluntary Surrender of License	5/11/2010	Plainview
Fields, Ernie Van	DC 6365	Voluntary Surrender of License	5/11/2010	Plainview
Fikes, Orlan Lee	DC 2784	Admin. Fine	8/12/2010	San Antonio
Francis, Kate E.	F006403	Admin. Fine	11/12/2009	Houston
Frye, Kayce Ann	DC 5449	Admin. Fine	8/12/2010	Laredo
Garner, Brett Lewis	DC 7138	Admin. Fine	11/12/2009	Houston
Gianopulos, William	F008073	Admin. Fine	11/12/2009	Houston
Guthrie, Joel Damon	DC 10236	Admin. Fine	5/20/2010	Houston
Harrison, Bryan David	DC 9014	Fine with Stipulations	5/20/2010	Dallas
Holifield, Brooks	DC 7230	Admin. Fine	5/20/2010	Vernon
Holman, Randy Kenneth	DC 6222	Admin. Fine	8/12/2010	Houston
Hudgins, Bill W.	DC 4006	Suspend/Probate w/Stipulations	8/12/2010	Fort Worth
Hudson, Juanita	F006179	Admin. Fine	5/20/2010	Houston
Hunter, Kevin M.	DC 7300	Voluntary Surrender of License	10/20/2009	Dallas
Huynh, M. Michael	DC 7986	Revocation	5/20/2010	Arlington
Ivy, Jr., Richard Glenn	DC 2809	Admin. Fine	5/20/2010	Arlington
Jensen, Keith N.	DC 7012	Admin. Fine	11/12/2009	Arlington
Johnson, Kimberly Kaye	DC 4678	Voluntary Surrender of License	4/13/2010	Arlington
Kimmel, Ronald Gary	DC 10480	Admin. Fine	11/12/2009	Watauga

During Fiscal Year 2010

NAME	LIC. #	DISCIPLINE	DATE OF ACTION	CITY
Kobrin, Donna Marie	DC 8457	Admin. Fine	5/20/2010	McKinney
Lee, Junesuk	DC 11133	Admin. Fine	5/20/2010	Coppell
Logan, Debora Lynn	DC 6229	CE hours/restitution to patient	11/12/2009	Austin
Maddalena, Larry D.	DC 10516	Admin. Fine	5/20/2010	Austin
Martinez, LeAnne Beth	DC 11492	Suspend/Probate	8/12/2010	Roanoke
McClung, Michael Claude	DC 2891	Admin. Fine	5/20/2010	Austin
McCreery, Jon A.	DC 8520	Admin. Fine	2/18/2010	Ft. Worth
Meyer, Robert A.	DC 10567	Fine with CE hours	8/12/2010	Keller
Mitchell, Perry Burton	DC 4100	Suspend/Probate with fine	11/12/2009	San Antonio
Mundheim, Thomas James	DC 6579	Suspend/Probate with fine	5/20/2010	Colleyville
Ngo, Tinh T.	DC 8625	Revocation	8/12/2010	Arlington
Nguyen, Trang Khanh Le	DC 8165	Admin. Fine	5/20/2010	Cypress
Olivares, Jr., Lazaro	DC 5934	Revocation	8/12/2010	Beeville
Osborn, Charles Ray	DC 4497	Suspension	5/20/2010	Waxahachie
Patel, Sandeep Kanti	DC 6319	Admin. Fine	5/20/2010	Houston
Patel, Sandeep Kanti	DC 6319	Admin. Fine	5/20/2010	Houston
Porter, David Lamon	DC 8783	Fine with Stipulations	2/18/2010	San Antonio
Reid, Stephanie	DC 6753	Admin. Fine	11/12/2009	Richland Hills
Rice, Allen Kent	DC 2498	Admin. Fine	8/12/2010	Houston
Riley, Linda L.	F007914	Admin. Fine	8/12/2010	Canton
Root, Aaron	DC 6253	Admin. Fine	5/20/2010	San Antonio
Root, Heith	DC 6005	Admin. Fine	11/12/2009	San Antonio
Sanchez, Jorge Rene	F008795	Admin. Fine	8/12/2010	Grand Prairie
Shao, Horng-Yuan	DC 7960	Suspend/Probate	4/21/2010	Richardson
Sheih, Samson	F008672	Admin. Fine	2/18/2010	Conroe
Skolnik, Andrew	DC 8744	Admin. Fine	11/12/2009	Dallas
Solera, Gary R.	DC 8923	Admin. Fine	5/20/2010	Houston
Stephenson, Stewart D.	DC 2258	Admin. Fine	11/12/2009	Rockdale
Stowell, Grant Arthur	DC 8184	Admin. Fine	5/20/2010	Frisco
Strader, James David	DC 6259	Written Reprimand	2/18/2010	Bulverde
Stranahan, Timothy Michael	DC 5485	Admin. Fine	5/20/2010	Austin
Thomas, Donovan L.	DC 6919	Admin. Fine	11/12/2009	Lockhart
Tran, Victor	DC 9772	Admin. Fine	2/18/2010	Austin
Vaclavik, John Matthew	DC 5608	Suspend/Probate with fine	5/20/2010	League City
Valenzuela, Adam	F006280	Admin. Fine	11/12/2009	San Antonio
Wheeler, Wesley Daymon	DC 5335	Admin. Fine	2/18/2010	Jacinto City
White, Rebekah Christin	DC 10751	Admin. Fine	5/20/2010	Houston
Wilgus, Linton Daniel	DC 11390	Suspend/Probate w/Stipulations	2/18/2010	Athens
Winkles, Billy Mike	DC 2516	Reprimand with fine	8/12/2010	Bay City

TBCE Board Disciplinary Actions Taken

NAME	LIC. #	DISCIPLINE	DATE OF ACTION	CITY
Adams, Todd	DC 9012	32 CE Hours	11/4/2010	Trophy Club
Azab, Andrew Paul	DC 6633	Admin. Fine	5/19/2011	Lubbock
Beacham, Wilson Dean	DC 4317	Fine with CE hours	5/19/2011	McKinney
Borazanian, Ghodratt	DC 7109	Admin. Fine	2/10/2011	Sugar Land
Boulyaphonh, Khamlor		Cease and Desist	2/10/2011	Dallas
Cano, Fernando	DC 9397	Admin. Fine	11/4/2010	Dallas
Clawson, Ronald William	DC 3023	Admin. Fine	2/10/2011	Arlington
Cobb, Richard D.	DC 7977	Admin. Fine	5/19/2011	Dallas
Cottle, Lawrence D.	DC 7833	Admin. Fine	7/28/2011	Dallas
Davenport, Michael Alan	DC 7122	Admin. Fine	2/10/2011	Humble
Doss, Jr., Ronald Mack	DC 8805	Admin. Fine	7/28/2011	Kingwood
Dunham, Dustin Michael	DC 10263	Suspend/Probate with fine	7/28/2011	Eules
Erb, David Kelly	DC 8442	Admin. Fine	11/4/2010	Irving
Foster, Carlos R.	DC 7285	Admin. Fine	5/19/2011	Ft. Worth
French II, Stanley Edward	DC 6672	Admin. Fine	11/4/2010	El Paso
Glenn, II, Garland D.	DC 9612	Admin. Fine	5/19/2011	Seneca
Gonzalez, Iohann F.	DC 8954	Admin. Fine	11/4/2010	Plano
Gruza, John Francis	DC 5041	Revocation	5/19/2011	Riverside
Hames, Raymond Lewayne	DC 4450	Admin. Fine	5/19/2011	Athens
Hunter, Dirk W.	DC 7862	Admin. Fine	11/4/2010	Houston
Jones, Ladwig	F005853	Admin. Fine	2/10/2011	Houston
Khan, Rubeena	DC 10848	Admin. Fine	11/4/2010	Sugar land
Kiely, Patrick W.	DC 7154	Admin. Fine	5/19/2011	Southlake
Kiely, Patrick W.	DC 7154	Admin. Fine	5/19/2011	Southlake
Knott, Michael David	DC 10909	Admin. Fine	2/10/2011	Round Rock
Koris, Michael A.	DC 8149	Suspend/Probated for Seven Years	7/28/2011	Houston
Laurents, John Mark	DC 4686	Admin. Fine	2/10/2011	Port Neches
Le, James Chung	DC 6565	Admin. Fine	5/19/2011	Houston
Le, Thomas Thanh Paxton	DC 9623	Admin. Fine	5/19/2011	Houston
Lewis, Steven R.	DC 5515	Admin. Fine	7/28/2011	South Jordan
Maddox, Mike D.	DC 4162	Admin. Fine	2/10/2011	Austin
Martin, John Lewis	DC 2172	Admin. Fine	2/10/2011	Austin
Martin, Jr., Gary D.	DC 6457	Admin. Fine	5/19/2011	Dallas
Martin, Kelly Lynn	DC 7165	Admin. Fine	11/4/2010	Gunter
Martinez, Daniel M.	DC 11396	Suspend/Probate w/Stipulations	5/19/2011	Pasadena
Martinez, Larry Robert	DC 7030	Admin. Fine	2/10/2011	San Antonio
McClung, Michael Claude	DC 2891	Admin. Fine	5/19/2011	Austin
Mitchell, James A.	DC 8314	Admin. Fine	11/4/2010	Eules
Mullen, Mandy Erin	DC 7901	Admin. Fine	7/28/2011	Dallas
Muniz, Jose Isaias	DC 9422	Admin. Fine	5/19/2011	El Paso
Nadeau, Roland Daniel	DC 2844	Written Reprimand	5/19/2011	Houston

During Fiscal Year 2011

NAME	LIC. #	DISCIPLINE	DATE OF ACTION	CITY
Neuerburg, John Michael	DC 2732	Admin. Fine	5/19/2011	Lake Jackson
Nguyen, Tuan	DC 9470	Admin. Fine	2/10/2011	Katy
O'Neill, II, Charles David	DC 10838	Admin. Fine	5/19/2011	New Braunfels
Pardo, Angelife A.	F008458	Admin. Fine	2/10/2011	San Antonio
Parrish, J.D.	DC 7177	Admin. Fine	7/28/2011	Houston
Paul, Judith	F008694	Admin. Fine	7/28/2011	Houston
Pena, Luis E.	DC 4498	Suspension	11/4/2010	McAllen
Pena, Luis E.	DC 4498	Suspension	11/4/2010	McAllen
Peters, Terry H.	DC 2227	Suspend with Stipulations	5/19/2011	San Antonio
Pittmon, Leah Combs	DC 9836	Admin. Fine	11/4/2010	Arlington
Plambeck, Michael	F008094	Admin. Fine	7/28/2011	Tyler
Rodriguez, Joe Henry	DC 8175	Written Reprimand	5/19/2011	Austin
Runnels, Timothy D.	DC 9478	Admin. Fine	7/28/2011	Spring
Schreiber, Henry Duane	DC 7189	Admin. Fine	5/19/2011	Lindsborg
Seymour, Stanley Dee	DC 2822	Admin. Fine	11/4/2010	Ingleside
Sims, Michael Douglas	DC 11570	Suspend/Probate	11/4/2010	Irving
Skaggs, Marc T.	DC 11129	Admin. Fine	7/28/2011	Pearland
Sones, David E.	DC 2737	Admin. Fine	7/28/2011	Dallas
Sones, David E.	DC 2737	Admin. Fine	7/28/2011	Dallas
Stuart, Boyce	DC 6180	Admin. Fine	11/4/2010	Georgetown
Thompson, W. Brent	DC 2412	Admin. Fine	5/19/2011	Dallas
Thompson, W. Brent	DC 2412	Admin. Fine	5/19/2011	Dallas
Tieperman, Robert T.	DC 7417	Admin. Fine	7/28/2011	Madisonville
Tran, Nancy Le	F007497	Admin. Fine	11/4/2010	Houston
Tsing, Tun-Hua		Cease & Desist Order	7/28/2011	Southlake
Ulsrud, Jason C.	DC 8872	Admin. Fine	5/19/2011	Irving
Vajdos, Vanessa	DC 9718	Extra CE Hours	2/10/2011	McQueeney
VanderWerff, Eric A.	DC 7199	Admin. Fine	5/19/2011	Irving
Walker, Roger Edward	DC 11575	Suspend/Probate	11/4/2010	Dallas
Walker, Wendy Michelle	DC 6614	Admin. Fine	5/19/2011	Katy
Weber, Erik Wayde	DC 10002	Admin. Fine	11/4/2010	Taylor
Woods, Bruce David	DC 11364	Admin. Fine	7/28/2011	Dallas
Wren, Vance Rickey	DC 2743	Fine with Stipulations	11/4/2010	Sherman
Yarbrough, Eric Anthony	DC 6928	Suspension	11/4/2010	Amarillo
Yarbrough, Eric Anthony	DC 6928	Suspension	11/4/2010	Amarillo
Yarbrough, Eric Anthony	DC 6928	Suspension	11/4/2010	Amarillo
Yarbrough, Eric Anthony	DC 6928	Suspension	11/4/2010	Amarillo
Yarbrough, Eric Anthony	DC 6928	Suspension	11/4/2010	Amarillo
Zaino, Christopher Robert	DC 10169	Reprimand with fine	11/4/2010	The Woodlands

Enforcement Procedures 101

Hopefully you, as a licensee or facility owner, never have a complaint filed against you! However, it is beneficial to understand the Board's Enforcement process so that you know what to expect if you suddenly find yourself the subject of a complaint.

When a complaint is filed by a complainant, the licensee or facility owner against whom the complaint is filed (called the "respondent") is notified by Enforcement staff. A copy of the complaint is provided to the respondent, along with directions to the respondent to respond in writing to the complaint within fifteen days. The complaint is then investigated by Enforcement staff, who may request patient records, billing information, or additional documents from the respondent.

Once the respondent's response is received by Enforcement staff and all investigations have been completed, the case goes before the Enforcement Committee for their review. The Enforcement Committee is made up of three Board members (two Doctors of Chiropractic and one public member). The Enforcement Committee makes a recommendation as to findings and, if applicable, a penalty. It should be noted that at this point, no disciplinary action has been imposed by the Enforcement Committee – only a recommendation for disciplinary action.

After the Enforcement Committee renders a recommendation, Enforcement staff prepares a proposed Agreed Order, which is essentially a settlement offer. The Order details the pertinent facts of the case (called "Findings of Fact"), the applicable law (called "Conclusions of Law"), and the recommended penalty. If the respondent agrees with this settlement offer, he/she signs and has notarized the proposed Agreed Order. The Order is then approved by the full Board at the next board meeting. This makes the disciplinary action final.

If the respondent does not agree with the proposed Agreed Order and thus does not accept the settlement offer, he/she has two options. One is to request an Informal Settlement Conference ("ISC"). One member of the Board (usually an Enforcement Committee member) meets with the respondent (and the respondent's legal counsel, if applicable) to discuss the case. This is the respondent's opportunity to explain his/her side of the story and present any mitigating information. If the Board member finds that the case should be dismissed or the findings/penalty changed, that Board member then presents his/her opinion to the Enforcement Committee. The Enforcement Committee then either upholds the original settlement offer or sends a new proposed Agreed Order to the respondent.

The other option available if a respondent does not agree with the Enforcement Committee's recommendation is to request a contested case hearing before the State Office of Administrative Hearings ("SOAH"). A SOAH hearing is basically a small trial. The case is heard by an Administrative Law Judge ("ALJ") who hears all testimony and receives evidence from both the Board staff and the respondent.

At the conclusion of the hearing, the ALJ renders what is called a Proposal for Decision ("PFD"). The PFD contains findings of fact, conclusions of law, and a recommendation to the Board on any penalty to be assessed. If a respondent does not agree with a PFD, he/she can submit Exceptions to the ALJ. Because the Board is the final decision authority in enforcement matters, this PFD is considered by the full Board at a board meeting and a decision on findings and a penalty are rendered in a Board Order. If a respondent wishes to appeal a Board Order, he/she must follow procedures detailed in both the Chiropractic Act and the Administrative Procedures Act to request a rehearing and then file an appeal in the civil District Court system.

"...it is beneficial to understand the Board's Enforcement process so that you know what to expect if you suddenly find yourself the subject of a complaint."

Q&As

Q *What is the status of the litigation with the Texas Medical Association?*

A The original lawsuit regarding scope of practice filed against TBCE by TMA (TBCE v. Texas Medical Association, No. 03-10-00673-CV) is currently under appeal with the 3rd Circuit Court of Appeals. Oral argument will be heard by the Court of Appeals in September. We do not know when a decision will be rendered. This case involved MUA, Needle EMG and diagnosis.

The second lawsuit filed against TBCE by TMA (Texas Medical Association v. TBCE, No. D-1-GN-11-00326) is currently pending in the 353rd District Court. This case involves TMA's challenge to the TBCE's scope of practice rule amendment allowing vestibular ocular nystagmus testing. The parties to the case are currently involved in discovery, and no trial date has been set yet.

Q *Can a Texas DC solicit a victim of a car accident?*

A The Texas Penal Code prohibits a Texas attorney or medical professional (including chiropractors) to communicate with potential clients within 30 days of an accident or arrest. This law is commonly referred to as the "Barratry Law."

In 2009, the Barratry Law was challenged by a Houston attorney and an Austin chiropractor. The district court held that the Barratry Law was unconstitutional, as applied to written solicitations and in-person and telephone communication as it violated the U.S. Constitution's First Amendment guarantee of free speech. However, in June 2011, the U.S. Court of Appeals for the Fifth Circuit reversed the district court judge's ruling and held that the Barratry Law is indeed constitutional.

Violations of the Barratry Law could result in a fine up to \$4000, up to one year in jail, or both.

Q *Can a Texas DC perform chiropractic on animals?*

A No. Texas DCs can only perform chiropractic on humans. In Texas, the application of chiropractic techniques or musculoskeletal manipulation to animals is considered the practice of veterinary medicine and falls under the regulation of the Texas Board of Veterinary Medical Examiners. Therefore, having a Texas DC license does NOT confer upon a Texas DC the right to practice on animals, even with the consent of the animal's owner.

Anyone who wants to apply chiropractic or musculoskeletal manipulation techniques to animals can do so ONLY under the direct or general supervision of a licensed doctor of veterinary medicine who has an established veterinarian/client/patient (animal) relationship. If you would like additional information, please contact the Texas Board of Veterinary Medical Examiners at (512) 305-7555 or www.tbvme.state.tx.us.

Note that you may not advertise animal chiropractic services using your Texas DC license or referring to yourself as a chiropractor. Doing so could lead to disciplinary action against you for practicing outside the scope of practice or deceptive advertising.

Q *What are the details of the required 8 hours of CE in Medicare coding and documentation?*

A As you know, pursuant to Board Rule 73.3, a Texas DC is required to complete 16 hours of CE each year. These 16 hours include a minimum of two hours in ethics; a minimum of one hour in risk management relating to the Chiropractic Act, the board's rules, and other laws relevant to the practice of chiropractic in Texas; and a minimum of one hour in recordkeeping, documentation, and coding.

However, during calendar years 2011 or 2012, all chiropractic licensees must complete at least eight (8) hours of CE in coding and documentation for Medicare claims. This is a one-time requirement, meaning that you will not have to take these eight hours again. These eight hours do count as part of the 16 CE hours required during the year in which the eight hours were completed. Licensees who receive their initial Texas chiropractic license on or after September 1, 2012, have 12 months after their initial licensure date to complete these eight hours.

Board Adopts New Rule on Prepaid Treatment Plans

The Board recently adopted new Board Rule 80.13, relating to Prepaid Treatment Plans. The new rule is effective March 9, 2011, and contains requirements and restrictions regarding the use of prepaid plans.

Prepaid treatment plans must specify a limited, defined number of visits. Most importantly, the plan must be cancellable by either party at any time for any reason without penalty of any kind to the patient. Upon cancellation of the plan, the patient must receive a complete refund of all fees paid on a pro rata basis of the number of treatments provided compared to total treatments contracted. (Note if the fees are based on a discount, you may not retroactively cancel the discount.)

Rule 80.13 also contains requirements for what must be contained in the patient's file. The proposed treatment plan must be in the patient's file, including enumeration of all aspects of evaluation, management, and treatment planned to therapeutically benefit the patient relative to the condition determined to be present and necessitating

treatment. Additionally, a contract for services and consent of treatment document must be maintained in the patient's file that specifies the condition for which the treatment plan is formulated.

Finally, 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 or fee.

If a licensee fails to comply with Rule 80.13, the licensee subjects himself/herself to disciplinary action. Failure to comply requirements/restrictions on prepaid treatment plans is classified as a Category I offense in the penalty matrix, meaning that the maximum penalty is \$1,000 per violation and/or revocation. (The penalty matrix can be found in Rule 75.11.)

As a reminder, all Board rules can be accessed from the TBCE homepage under the "Statutes and Rules" link.

Release of Chiropractic Records – What You Need To Know!

When you receive a request for chiropractic records from a patient or a patient's attorney, what do you do? If the first thing you do is check the patient's outstanding balance or call the attorney to ask for an LOP, you may be setting yourself up for trouble!

Any time you receive a request for chiropractic records, accompanied by written consent from the patient, you must release the requested records within fifteen (15) business days, according to Board Rule 80.3. The only exception to this is if you determine that releasing information in the records would be harmful to the physical, mental, or emotional health of the patient. If you determine this exception applies, you must furnish the patient a written statement, signed and dated, stating the reason for the denial.

If you charge fees for copying or releasing records, make sure you consult with subsection (e) of Board Rule 80.3. You may require prepayment, but if you don't receive payment within ten (10) days, you must notify the requestor in writing of the need for prepayment.

The most important thing to remember about records release is that chiropractic records may NOT be withheld based on a past due account, overdue balance, or lack of an LOP!!

BOARD MEETING INFORMATON

The Texas Board of Chiropractic Examiners meets (usually) four times each year, but may meet more or less often as circumstances require. The Board is required to meet at least two times each fiscal year. Unless otherwise announced, board meetings are held in Room 2-225 of the William P. Hobby Building, which is located at 333 Guadalupe Street, Austin, Texas (the corner of 4th and Guadalupe streets in downtown Austin).

Official meeting dates, locations and agendas are published at least seven (7) days in advance by the Secretary of State. To find these notices online, go to the Secretary of State's website at: www.sos.state.tx.us and look for Open Meetings. Tentative dates for TBCE board meetings for the next several years can be found on the agency's website at: www.tbce.state.tx.us under the Calendar section. Tentative dates for the remainder of 2011 and for 2012 are:

- November 17, 2011
- February 23, 2012
- May 24, 2012
- August 16, 2012
- November 15, 2012

AGENCY LICENSING AND REGISTRATION INFORMATION AS OF JULY 31, 2011

Number of DCs	
Active License	4,975
Expired License	308
Inactive License	653
License on Probation	15
License Suspended	9
License Revoked	24
Number of Clinics	
Active Registration	3,732
Expired Registration	212
Number of Radiologic Technologists	
Active Registration	80
Expired Registration	24
New Licenses & Registrations Fiscal YTD	
Doctors of Chiropractic	253
Facilities (Clinics)	402
Radiologic Technologists	15

STAFF CONTACT INFORMATION

Main Office Number 512-305-6700
 Office Fax Number 512-305-6705
 Website www.tbce.state.tx.us
 Office Hours: 8:00 A.M. until 5:00 P.M Monday - Friday except holidays

LICENSING

Jennifer Hertsenberg
 Director of Licensing 512-305-6702
 New DC Applications, DC Renewals & Inactive Status
 Facility (Clinic) Registrations & Renewals
 Radiological Technologist Registrations & Renewals
 Approval of CE Course Applications

LEGAL

Hal ten Brink
 General Counsel 512-305-6715

INFORMATION TECHNOLOGY

Nikell Williams,
 Programmer/Analyst 512-305-7874

ENFORCEMENT

Scott Parker
 Director of Enforcement 512-305-6708
 Bill Zilar
 Investigator 512-305-6704
 Mary Feys
 Admin Assistant for Enforcement 512-305-6901
 Toll-Free Complaint Hot Line
 (to request a complaint form only) 800-821-3205

ADMINISTRATION

Arlethia Middleton
 Chief Financial Officer 512-305-6709
 Mary Ann Garcia
 Administrative Assistant, Purchasing 512-305-6703

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

333 Guadalupe, Suite 3-825

Austin, TX 78701

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Purpose of the Board Report

The Purpose of the *Texas Chiropractic Board Report* newsletter is to disseminate information concerning the laws and regulations governing the practice of chiropractic in Texas to doctors of chiropractic, chiropractic clinic owners, clinic employees, the public and other interested stakeholders. The newsletter provides information on current issues in chiropractic regulation, rules adopted or under consideration for adoption, information concerning licensure and practice and disciplinary actions taken by the Board against licensees or others who violate the Texas Chiropractic Act or Board Rules. While the TBCE attempts to ensure that all information presented in the newsletter is accurate, the Board cannot guarantee that the contents are accurate or legally correct in all circumstances.

In compliance with the Americans With Disabilities Act, this document may be requested in alternate formats by contacting the Board's office at 512-305-6700 (Voice), 512-305-6705 (Fax), by e-mailing us at tbce@tbce.state.tx.us, or by visiting the Board's offices at 333 Guadalupe, Suite 3-825, Austin, Texas 78701.

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The Texas Board of Chiropractic Examiners has its offices in the William P. Hobby Building, which is located at the corner of 4th and Guadalupe streets in downtown Austin (see address above). Office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, except for designated holidays.

The agency's website is: www.tbce.state.tx.us. Please check the website regularly for current information.

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