

**TEXAS BOARD OF CHIROPRACTIC EXAMINERS
BOARD MEETING
February 10, 2005**

Notice having been duly posted with the Secretary of State, the Texas Board of Chiropractic Examiners met in open session on February 10, 2005 at the William P. Hobby Bldg., 333 Guadalupe, Room 225, 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 (not present)
Marcia Daughtrey
David A. Sime, D.C.
Paul H. Dickerson

Guests: Joe Thrash
Jeb Boyt
Patte Kent
Joe Cacozza

Call to Order

Dr. Jensen called the meeting to order at 12:47 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 attendance.

Approval of Minutes of the August 19, 2004 TBCE Board Meeting

Motion: Mrs. Marcia Daughtrey made a motion to approve the minutes of the November 4, 2004 Board meeting. Dr. Robert Coburn 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:

1. FCLB/NBCE Conference in Montreal

Dr. Sandra Jensen reported that in May, both Dr. Robert Coburn and Ms. Sandra Smith will be attending the FCLB/NBCE Conference in Montreal, on behalf of T.B.C.E. Ms. Sandra Smith nominated the T.B.C.E. Board for outstanding board of the year. Dr. Sandra Jensen will keep the Board updated.

b. Board Appreciation for outgoing members

Dr. Sandra Jensen recognized three Board members for their service: Mr. Paul Dickerson, Dr. Robert Coburn, and Dr. Serge Francois. All three Board members have served as chairman of various committees. Dr. Sandra Jensen stated the Board appreciates what each one of the board members has brought to the Board over the last few years.

c. Future Board meeting dates

Dr. Sandra Jensen stated that Mrs. Karen Sands has provided a list of upcoming Board meeting dates located in the Board packet. The next Board meeting will be held on June 2, 2005, in the Conference Room 100, located off the main lobby in the Hobby Building.

Executive Director's Report

a. Introduction of New Staff Member/Personnel Issues

Ms. Sandra Smith introduced Ms. Pamela Faughnan, the new T.B.C.E. Director of Licensure and Education. She has come to us from TWC. Also, two employees will have new last name changes, Ms. Karen Volney is now Karen Sands and Ms. Pamela Faughnan is now Pam Harris.

b. Budget and Performance Measures

Ms. Sandra Smith referred the Budget and Performance Measures report to Mr. James Moss. Mr. Moss reported that the first page of the financial section is a revenue summary. The revenue summary shows total receipts collected as of February 01, 2005, standing at \$832,102. Of this amount, \$801,781 were licensing and general revenue fees. In addition, the agency has collected \$11,791 in open records request fees. The

remaining \$18,530 of the total are receipts that are passed through to Texas Online, the Office of Patient Protection, and the Department of Public Safety. Mr. Moss noted that the agency gets to keep for its own use all open records fees in excess of \$13,007. As of last week, the open record receipts “turned the corner,” and the agency will benefit from all open records requests from now until the end of the fiscal year. (August 31, 2005)

The next two pages of the financial section show the budgeted amounts for each expense category of the agency, comparing these amounts with actual expenditures on a year-to-date basis. Mr. Moss pointed out that at the end of January the budget year was 42% complete. To stay on budgetary targets, each of the budget categories should show expenditures of 42% or less in the Year-to-Date Percentages column. As expected, some items are over budget and others are under budget. However, total operating expenses as a whole are 33.3% under budget.

The final part of the financial section consists of a series of reports from the Automated Budget and Evaluation System of Texas (ABEST). These reports show performance measures indicating how closely the agency is meeting its targeted operational goals. Variances of more than 5% above or below the targeted goal are explained in the report. The remaining portion of the ABEST reports show expenditures broken out by category and by strategy, segregating the licensing strategy and the enforcement strategy.

c. State of Texas Health Professions Council-Office of Patient Protection Standard Complaint Form-Information item only

Ms. Sandra Smith reported the complaint form in the Health Professions Council is looked upon as a standardized complaint form through the Office of Patient Protection. Ms. Sandra Smith stated the complaint form left out facility under types of health professionals and facilities regulated by the agency. Ms. Sandra Smith reminded all Board members to review the complaint form for any other corrections. The next Health Professions Council meeting will be held on March 14, 2005.

d. Legislative agenda and upcoming bills

Ms. Sandra Smith stated the Board packets include a one page insert of the initial LBB budget for the Board. Ms. Sandra Smith reported that TexasOnline was broken out and given a separate line item. The Board asked for a 5% reduction back, an item in the exceptional item request. This showed a reduction in FTE count of .5%, as a result of the budget reduction. The House creates a separate budget from the Senate until they come together. Dr. Scott Isdale stated that he would like to have the 5% reduction clarified. Did TBCE ask for the 5% reduction? Ms. Sandra Smith clearly stated the Board asked for the 5% reduction to be reinstated.

New Issues (handout)

Ms. Sandra Smith stated that new issues were put on as an item before the Sunset bill. A number of issues the committee has adopted are in the bill; however, some that TBCE has

asked for were not put in the bill. Each session the Board is generally asked by the Legislature if it has any issues that need sponsoring. Ms. Sandra Smith stated that each Board member needs to be aware of any issues. Ms. Sandra Smith stated that issues 5, 6, and 7 are the most important: limit chiropractic facility ownerships to chiropractors, authorize chiropractors to use the term chiropractic physician, and authorize chiropractors to issue temporary handicap parking permits to patients.

Discussion: Dr. Serge P. Francois asked what can be proposed. Ms. Sandra Smith stated the Board is asked what problems are occurring and how they can be solved in a bill. Dr. Scott Isdale stated that he agreed, the one issue that has the most influence on protecting the public is D.C. owned clinics. Dr. Scott Isdale used the comparison; it is like a song and dance. You can have a doctor working in a clinic who never sees bills/services/procedures. How we currently have it, it is not good for public protection. It is strongly recommended that we address the Legislature. Ms. Sandra Smith stated that it needs to be presented to the exclusion of the other issues if more than one issue needs to be addressed, thus be given the highest priority. Dr. Robert Coburn stated that the Board needs to make a big impact by addressing this item.

e. Sunset Update

Ms. Sandra Smith reported that she attended both the Senate Finance Committee Hearing and the House of Appropriations Subcommittee Hearing. The first one had technical difficulties and she was unable to send electronically; however, the second one she was able to send summaries to each Board member. Representative Brown asked at the end of the testimony if the Board was willing to raise its fees to fund the exception item. In the past, Ms. Sandra Smith stated the Board would make it possible. Ms. Sandra Smith stated there was a desire for a letter from the association to indicate their support. Dr. Scott Isdale questioned if the Board needs to do anything as far as addressing that with the other trade associations that the Board would like that support? Ms. Sandra Smith contacted the Executive Director, Ms. Patte Kent, of the TCA and requested a letter to date. They would like both presidents to be in communication. She stated that she did not know the outcome or decision on whether or not the letter would be provided. Dr. Sandra Jensen stated that she would contact Dr. Franz Klein for a discussion. Dr. Scott Isdale questioned if the Board said yes, would it raise its fees? What would keep the Legislature from saying fine, but we won't raise it for the reason you want, I just want more money? Ms. Sandra Smith stated they do not want to see a cut in revenues, so in order for agencies to cover exceptions items, it will be asked to raise fees to cover exceptional items. They do want buy in from the affected industry.

Dr. Scott Isdale questioned if it would be appropriate for someone on the Board to address the TCA as to why it believes specifically that Enforcement is necessary? Last session, Senate Bill 211 was carried by Senator Corona and was highly supported by the association. Could facility fees be capped at \$75.00? The Board hasn't acted on this issue to date. The Board needs to go to TCA to show why the Board is making recommendations for two more Enforcement people. Dr. Serge P. Francois asked if this would be a financial burden. Dr. Sandra Jensen stated that it would be looking at facility

registration fees rather than professional license fees so that non-D.C.'s would also be contributing. Ms. Sandra Smith notified everyone of the Sunset committee's final decision to continue the agency for 12 more years. Ms. Sandra Smith stated the Sunset representative, Ms. Emilie Leroux, is here today. She will be going through the sunset bill to determine the work in front of us and will keep us updated.

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 last meeting

Information only, No action.

Mr. Paul Dickerson reported 42 qualified, 34 passed and 8 failed, 11 male and 31 female. Dr. Scott Isdale questioned a correction in the statistics. Mr. Paul Dickerson reported correction: 31 male and 11 female.

2. a. Request for approval of Jurisprudence Examination Application: Joshua Gary Bailey

Motion: Mr. Paul Dickerson stated the L & E committee recommends approval of the request for Mr. Joshua G. Bailey to sit for the Jurisprudence exam. Mrs. Marcia Daughtrey seconded the motion.

Yeas: All voted "yes."

Nays: None

b. Request for approval of Jurisprudence Examination Application: Joseph F. Cacoza, III

(Will be discussed later--out of order)

c. Request for approval of Jurisprudence Examination Application: Jennifer Dennard

Motion: Mr. Paul Dickerson stated the L & E Committee met to consider the request for Ms. Jennifer Dennard to be granted the opportunity to sit for the Jurisprudence exam. The committee recommends approval of this request. Dr. David Sime seconded the motion.

Dr. Serge P. Francois requested for more information.

Mr. Paul Dickerson stated Ms. Jennifer Dennard was arrested on November 25, 1998 and charged with a misdemeanor offense of minor in possession of alcohol. She was to serve six months probation and attend a six hour class on alcohol. At the end of the probation,

she returned to court to present documentation, but failed to have all documents. She was fined \$568.25 and had to plead guilty due to not having all of the documentation the court had requested. Mr. Dickerson stated that with six analyzing factors, there was no criminal activity before or after the misdemeanor charge. She was 19 years of age and now is 26 years. Seven years have elapsed since the charge. She attended Texas Chiropractic College 2001-2004. She has paid the fine and has supplied the Board with all of the necessary documents. Mr. Dickerson stated the original motion was to approve Ms. Jennifer Dennard the opportunity to sit for the Jurisprudence exam.

Yeas: All voted “yes.”

Nays: None

d. Request for approval of Jurisprudence Examination Application: Andrew Ray Garcia

No Action.

e. Request for approval of Jurisprudence Examination Application: Linh-Vien Huynhle

No Action.

f. Request for approval of Jurisprudence Examination Application: Chase Edward Lindsey

Motion: Mr. Paul Dickerson stated the L & E Committee met to consider the request for Mr. Chase E. Lindsey to be granted the opportunity to sit for the Jurisprudence exam. The committee recommended approval of the request. Dr. David Sime seconded the motion.

Mr. Paul Dickerson stated Mr. Chase Lindsey was arrested on February 4, 1997, for Driving after Consuming while under 21 (DWI). He was fined \$300.00 and ordered to serve 18 months probation. Mr. Dickerson stated that with six analyzing factors, convicted of crime, there was no criminal activity before or after the conviction. He was 19 years of age and now is 27 years. Eight years have elapsed. He attended Texas Chiropractic College 2001-2004. He has also provided the Board with a variety of requested information. Mr. Dickerson stated the original motion was to approve Mr. Lindsey the opportunity to sit for the Jurisprudence exam.

Yeas: All voted “yes.”

Nays: None

g. Request for approval of Jurisprudence Examination Application: Larry McCoy

Motion: Mr. Paul Dickerson stated the L & E Committee met to consider the request for Mr. Larry McCoy to sit for the Jurisprudence exam. The request to sit for the exam was denied. Dr. David Sime seconded the motion.

Mr. Paul Dickerson stated Mr. Larry McCoy has had three crime convictions. Mr. McCoy was arrested February 26, 1998 for possession of a controlled substance. Mr. Dickerson requested that the board's legal counsel explain the rules regarding the denials. Ms. Brenda Loudermilk stated that if the recommendation of the Licensure Committee is to deny an applicant, the applicant needs to be given an opportunity to have a full contested case hearing. It will come back to the full Board for a decision and therefore we are being prudent and not giving you more information at this time. Mr. Dickerson stated the Board wouldn't be given this information now because they would be called on to deal with it later (a fax we have in here may not get into the hearing.) Ms. Loudermilk stated the Board may make its decisions on administrative record and right now it is outside administrative record, procedure recommended. Normally, if he was going to deny it, pass it for no action. If someone asked a question for more information, the Board would make this explanation.

Dr. Sandra Jensen stated no motion, strike it from record; no action taken.

h. Request for approval of Jurisprudence Examination Application: Brian C. Mulhall

Motion: Mr. Paul Dickerson stated the L & E Committee met to consider the request for Mr. Brian C. Mulhall to be granted the opportunity to sit for the Jurisprudence exam. The committee recommends approval of the request. Dr. David Sime seconded the motion.

Mr. Paul Dickerson stated Mr. Brian Mulhall was arrested on January 15, 2000 for Driving while under the Influence of Alcohol. He served time for probation. He paid a fine. He was 26 years of age and now is 31 years. Five years have elapsed. He has provided the Board with the supplied information. Mr. Dickerson stated the original motion was to approve Mr. Mulhall the opportunity to sit for the Jurisprudence exam.

Yeas: All voted "yes."

Nays: None

i. Request for approval of Jurisprudence Examination Application: William J.Pool

Motion: Mr. Paul Dickerson stated the L & E Committee met to consider the request for Mr. William J. Pool to be granted the opportunity to sit for the Jurisprudence exam. Dr. David Sime seconded the motion.

Mr. Paul Dickerson met with Mr. William Pool and discussed an Agreed Order that would require that his license be suspended and then probated in its entirety and to have his license probation run concurrent with his criminal probation. Mr. Pool was comfortable with the decision. At the conclusion of his probation (April 2006), Mr. Pool would need to supply the Board with verification that all of the terms of the probation had been met before the probation could be removed. Dr. Serge P. Francois questioned if

Mr. Pool was arrested last year for DWI? Mr. Dickerson reported that Mr. Pool was convicted in April 2004, fined \$550.00, and placed on probation for two years. Dr. Sime stated there was no criminal activity before this charge. He graduated from Parker Chiropractic College in 2003. By having license suspended and probated to run concurrent with criminal probation, anything that would happen to effect criminal probation would affect his licensure. Dr. Sime reported that Mr. William Pool was out with his brother celebrating (both wives were pregnant for the first time), had too much to drink, and rolled through a stop sign with no complete stop. He agreed to take a sobriety test but failed. This changed his life. He has had no alcohol since the accident and the committee believed what he had to say.

Ms. Brenda Loudermilk questioned if there would be an Agreed Order? Mr. Paul Dickerson replied, yes. The Agreed Order will be signed by him at an appropriate time.

Yeas: All voted “yes.”

Nays: None

j. Request for approval of Jurisprudence Examination Application: Shandy D. Sells

Motion: Mr. Paul Dickerson stated the L & E Committee met to consider the request for Mr. Shandy D. Sells to be granted the opportunity to sit for the Jurisprudence exam. The committee recommends approval of the request. Dr. David Sime seconded the motion.

Mr. Paul Dickerson stated Mr. Shandy Sells was arrested on November 7, 2002 and charged with a misdemeanor DWI. He was convicted and ordered to pay a \$500 fine, court costs of \$100, and to serve one year probation. He was 26 years of age and now is 29 years. Three years have elapsed. He attended Texas Chiropractic College from 1998-2001. He paid the fine, served one year probation, completed all requirements, has supplied the Board with documents along with letters of recommendations, proof that he attended Mother’s Against Drunk Driving classes, lectures, alcohol awareness classes, and has installed a breathalyzer in his automobile.

Yeas: All voted “yes.”

Nays: None

k. Request for approval of Jurisprudence Examination Application: Donald Scott Sweeney

Motion: Mr. Paul Dickerson stated the L & E Committee met to consider the request for Mr. Donald Sweeney to be granted the opportunity to sit for the Jurisprudence exam. The committee recommends approval of the request. Dr. David Sime seconded the motion.

Mr. Paul Dickerson stated Mr. Donald Sweeney was arrested on March 17, 1990 and charged for DWI. He was convicted in 1990 and ordered to pay a fine and have his

license revoked for one year. His unsupervised probation for two years was withdrawn and requirements related to the conviction have been completed. He was 20 years of age and now is 35 years. Fifteen years have elapsed. He attended Texas Chiropractic College from 2001-2004. He supplied the Board with all of the required documents.

Yeas: All voted “yes.”

Nays: None

3. Re-examination request: Bolden Harris

Motion: Mr. Paul Dickerson stated the L & E Committee met to consider the re-examination request for Mr. Bolden Harris to be denied. Mr. Bolden Harris requested to either take exam for free or not take it at all. Dr. David Sime seconded the motion.

Yeas: All voted, “yes.”

Nays: None

4. Reinstatement request: Dean D. Wieben

Motion: Mr. Paul Dickerson stated the L & E Committee met to consider the reinstatement request for Mr. Dean Wieben to be granted the license. The committee recommends approval of the request. Dr. David Sime seconded the motion.

Discussion: Dr. David Sime reported Mr. Dean Wieben had several licenses in different states. Three licenses were in Active status. Mr. Dean Wieben had a clinic in Wyoming and sold it, then moved to Illinois and opened a practice. A complaint was filed; a letter of reprimand. He then bought a practice in Texas. He had a license in Texas in the 1990s. He let the license lapse, not wanting to reinstate the Texas license at that point in time. He practiced for three years before his request for reinstatement of his Texas license. He then filled out the Texas form. He failed to state he had had a license in Wyoming and only gave the name of the states he was Active in; three states rather than all states. He now realizes that in his favor, he made a mistake. Rather than putting all states down on the Texas form, he didn't put down the state where the action was taken. He was not hiding a license. He practiced due to not being able to get an associate. He had an Active license practicing for 20 years, got license in Wyoming, Colorado, California, Texas, and Illinois. He graduated from Logan Chiropractic College where he went to school and got a license in Missouri.

Dr. Serge P. Francois questioned the nature of the complaint. It was reported that Mr. Wieben did not notice cancer on the patient's x-rays. He requested the patient to get an MRI based on the diagnosis. The patient went to an MD and the MD found the cancer. The wife of the man complained and he received a letter of reprimand. The issue was closed. Dr. Sime stated he thought he tried to hide disciplinary actions. He is no threat to the public. He was instructed next time to fill out the application as the questions are

asked and to follow the procedures; send in everything. Mr. Dean Wieben was last active in Texas in 1995. The convictions from 1977 were flagged. Mr. Wieben's status for ten years has been in non-renewable status, reinstatement license. Ms. Jessica Harwell stated 201.355 (Renewal of Expired License by Out-Of-State Practitioner) that ...in another state in practice for than two years, you may forego re-exam. A SINBAD search and criminal search has been completed. Ms. Brenda Loudermilk questioned reinstatement?

Yeas: All voted, "yes."

Nays: None

5. Approval to take 16 hours online: Nancy A. Corso-Ghen, D.C.

No action.

(out of order)

b.Request for approval of Jurisprudence Examination Application: Joseph F. Cacoza, III

Mr. Paul Dickerson stated the committee has made a motion to table this request. Dr. David Sime seconded the motion.

Ms. Brenda Loudermilk provided the committee to make a motion to table the committee's recommendation and then substitute a new recommendation and within that, discuss why you do that.

Discussion:

Mr. Paul Dickerson reported that the staff had alerted the committee that Mr. Cacoza was in the lobby at 9:45 A.M. The committee started at 10:00 A.M. and did not see him. The committee sent staff to find Mr. Cacoza. Mr. Cacoza was placed last on the committee's agenda; however, he never showed up. Mr. Dickerson stated that based on certain factors, the committee decided to deny his request to sit for the Jurisprudence exam. The committee then came up to the Board room. Mr. Dickerson stated that Mr. Cacoza was told to meet at either 10:00 A.M. or 12:30 P.M. The committee meets only at 10:00 A.M. The Board will meet at 12:30 P.M. The staff informed Mr. Cacoza to be at the committee meeting at 10:00 A.M. He had been sitting downstairs for two hours.

Dr. Sime, Mr. Dickerson and legal counsel, not meeting as a quorum, met with Mr. Cacoza. Before the Board meeting, Mr. Dickerson stated the record as we have it here was confusing. The record that was explained by Mr. Cacoza was different. The committee's decision was based on how the record was read at that time. Mr. Dickerson asked if Mr. Cacoza could talk to the Board. Ms. Brenda Loudermilk asked if Mr. Dickerson was changing his recommendation and to explain. Ms. Loudermilk stated that there would be no harm to him; it will only benefit him. If we

talk about it now, it's the same as taking no action and talking where we shouldn't. Ms. Loudermilk stated that talking to him now is not prejudice. Dr. Sime questioned if we were to take no action, we could not talk about it and Mr. Cacoza would then pursue a hearing? Ms. Brenda Loudermilk stated no cause of action will not go back to hearing. If discussed as full board, it will not go to committee. The record seems to read three crime convictions, all occurring between 2001 and 2004. It appeared he was selling drugs while in prison and was arrested subsequent to prison. He attended Parker Chiropractic College. On a set of single set of facts, if Federal law allows for a conviction on something as well as State law, in certain circumstances, a person can be convicted twice for doing one thing.

Mr. Cacoza stated that in September of 2000, he was arrested for delivery of Ecstasy. He made a poor choice; a poor decision after moving to Texas. Through friends he met people at Parker in this lifestyle; this was out of his character. He didn't go to sentencing until one and one-half years after Tri Seven, stopped school, served five months time and then was arrested again for the same situation, same date and evidence. He was released and went back to Parker Chiropractic College; however, he was arrested again while in school. The date of the report, July of 2004, the Federal judge told Mr. Cacoza to go back to school and that after graduation he could return to finish his sentence. While in prison, he petitioned and was let out for one weekend. Mr. Dickerson looked at six factors compared to DWI and other drug convictions.

Dr. Scott Isdale questioned if it was appropriate to require drug testing? Dr. Francois asked what the terms of the probation were. Ms. Loudermilk stated that he was eligible to be off in one-third of the time in regards to part of his probation. Four months were left of Federal probation and seven years left of the state probation. He is eligible to be off at the end of the year because he was never in trouble previously. He completed Part IV while in custody of Federal and passed the exam. Mr. Cacoza stated that he is tested three times a month. He is to call a number, and if they say phase, he is to show up the next day to provide a specimen. He began on phase one while on pre-trial, going once a week for six months. He continued with phase two. Dr. Scott Isdale questioned, did you provide information to the Federal authorities about these people you say that you were associated with? Mr. Cacoza replied "yes." Mr. Cacoza stated the DEA agent could not write a letter to the Board, but could be contacted by phone. Dr. Isdale questioned if there were any ramifications of these individuals? Mr. Cacoza replied "yes." Mr. Cacoza stated this has been a long process - one thing after the other. Dr. Sime asked what it means to use a communication facility during the commission of a drug trafficking crime. Mr. Cacoza responded with an example, "I can get you this." Dr. Sime asked why does it state on the form November 4, 2003 rather than September 2000 when it happened? He was arrested January 2003 and serving sentence January 2004.

Dr. Francois questioned the date of the incident. Mr. Cacoza responded that it was September 13th or 15th of 2000. With the confusion of the specific dates of incidents and date of arrest, Mr. Dickerson stated that it was also confusing to him. Dr. Scott Isdale stated that if the Board approves this request, it may not come back after the fact and say it didn't get everything confirmed. Ms. Brenda Loudermilk interjected and reported there

is a motion pending on the table which is to table the license committee recommendation. If you vote to table it, then the Board can decide what it wants to do. It can decide to take it back to the committee to look at it more thoroughly or it can decide to approve the examination request. If it doesn't do either, that is the message to the committee that it needs to be set for a hearing. Ms. Brenda Loudermilk stated the matter is up to whether or not to grant request. Dr. Jensen stated the original motion should be handled first and to table the committee's recommendation. Mr. Dickerson stated that if we deny the request, it goes to SOAH, and if we grant it, it goes to the next motion. The first committee's motion is to table the committee's first recommendation. Dr. David Sime seconded the motion.

Yeas: All voted, "yes."

Nays: None

Discussion:

The issue was discussed to either grant Mr. Cacoza the authority to take the jurisprudence exam, go back to the committee for more investigation, or refer to a case? Dr. Minors stated if the L & E spoke to a DEA agent it would be a more comfortable decision. We need to have confirmation of current status with well grounded information. Dr. Francois suggested a letter of recommendation? Mr. Cacoza has one on file from pretrial federal officer.

Motion: Mr. Dickerson made a motion to send back to committee for further investigation. Dr. David Sime seconded the motion.

Discussion:

Dr. Scott Isdale questioned if were possible to make it so that if the finding of the facts as presented by Mr. Cacoza were confirmed by TBCE staff after further investigation with the DEA agent and probation officer, then to grant the motion to sit for jurisprudence so he wouldn't have to wait three months. Ms. Loudermilk stated if you articulate to Mr. Dickerson what has to be found, to make a motion at that time. Dr. Minors reported his concern stating that if the information that is given and is told is confirmed by the DEA and probation officer, then it is favorable information and the motion could be made. If the information provided by the DEA agent and probation officer does not coincide with Mr. Cacoza's account of the facts, then the motion could be withdrawn. It was decided to make the motion that Mr. Cacoza be granted the opportunity to sit for the exam contingent upon staff's verification that all paperwork matches the information described on record and that he is in good standing with the DEA office. Ms. Loudermilk stated to give authorization to the Executive Director or committee chair to approve the sitting, delegating approval. Dr. Francois seconded the motion. Ms. Loudermilk directed board staff to verify the information on file and to contact the DEA agent and probation officer. If determined that the information is consistent, have the Executive Director authorized to approve sitting for the jurisprudence exam. Mrs. Marcia Daughtrey requested to restate the motion for clarity. Dr. Sime stated that Mr. Cacoza is still on probation and if he passes the exam and finishes his probation, that he will have a full

license. Dr. Minors stated if the information is inconsistent, come the June meeting, the Board will know what the plan is.

Ms. Loudermilk stated if approval is not given, the matter will go back to the L&E committee, if Mr. Cacoza agrees.

Yeas: All voted, "yes."

Nays: None

Closed Session

At 1:59 P.M., Dr. Jensen announced that the Texas Board of Chiropractic Examiners would go into closed session pursuant to the Texas Open Meetings Act, on agenda items C-1a; D-6 to discuss these matters with and to receive legal advice from its attorneys under Section 551.071 of the Act.

The Closed Session ended at 2:04 P.M. and reconvened in open session at 2:05 P.M.

No action was taken.

C. Rules Committee

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

1. For Discussion:

(Motion will be made at the end of the committee's report.)

a. Fee change for Inactive license

Dr. Steve Minors reported that the fee change for Inactive license will be amended.

b. Post & Preceptorship programs

Dr. Steve Minors stated certain students are working in clinics with licensed doctors and spending more time than they should be. Some are graduating from school and still performing a preceptorship four years past their graduation date. Ms. Sandra Smith will contact both chiropractic colleges in Texas and get more information on pre- and post-preceptorship programs. Dr. Francois questioned the expressing of concerns of findings once information is received, what next? Ms. Sandra Smith will call colleges to get additional information and if need be, a motion will be made at the next meeting addressing standards for these programs.

c. Facility registration for colleges

Dr Steve Minors reported that rule 74.2 (h) will be amended so that chiropractic colleges will no longer be exempt from facility registrations.

d. Advertising of certifications

No action.

e. Contacting a complainant

More information is needed for the next meeting. Ms. Sandra Smith and staff will contact other Boards on this issue. No action.

f. Reporting of Malpractice claims

No action.

g. CE hours increase

No action.

h. Quality assurance

Dr. Steve Minors reported TCA has put forth the quality assurance of peer reviews. Dr. Steve Minors stated when a DC performs a peer review, this issue needs to be addressed that they are a practicing chiropractic in Texas. This is not part of the standard review, it is separate. Dr. Sandra Jensen questioned standard of care? We need to standardize the process. Dr. Serge Francois questioned if the Board should acknowledge the issues involving peer reviews, the Board doesn't have jurisdiction over the doctor doing peer reviews. The problem needs to be addressed. With other individuals found or health care providers and without substantiation, a peer review doctor may perform a peer review that may simply say it is not within their opinion that treatment is appropriate or necessary and at that point the carrier may not and probably will not reimburse the treating doctors for treatment rendered. As a result, the patient may or may not continue to receive treatments that they need if it is appropriate or assuming it is appropriate the treating doctor doesn't get reimbursed and the peer reviewer gets off free, bares no responsibility.

An insurance carrier that is using their document to steer it in a direction that is favorable for them and not possibly in the best interest of the patient, we recognize that there is a strong need for standards to be set for peer reviewers and that the peer review needs to be held to the standard of practicing chiropractic when they perform reviews. The board with the agenda given is not addressing this issue today, in response to reimbursement.

Ms. Sandra Smith suggested to Dr. Steve Minors an OAG opinion? Dr. Minors questioned during the legislature session or after? Dr. Francois stated that he preferred during the session. Dr. Serge Francois used the example in regards to a nurse practitioner doing peer reviews on chiropractic patients as well as PT. Ms. Brenda Loudermilk stated that this issue needs to direct staff to the counsel for any questions (Ms. Loudermilk also stated that TCA needs to take this matter up with legislators, as it is a statutory issue). This issue will be referred to the Executive Director for proper posting for next agenda.

No action.

i. American Health Choice, Inc. letter from J.W. Stucki

Motion: Dr. Serge Francois stated a letter will be sent to the doctor. The Rules Committee's opinion is to write a letter to the doctor to contact TDI rather than the Chiropractic Board; this is not under the board's jurisdiction. Stipulation of the Rule 74, a facility has to have current registration in order to provide services and refer to TDI. Dr. Scott Isdale has seconded the motion.

Yeas: All voted "yes."

Nays: None

Mrs. Marcia Daughtrey stated motion to send letter? Mr. Jeb Boyt stated the motion has been made and seconded on table.

The opinion is if the facility registration is not up to date or has expired, the carrier has the right to deny payment during that time, not with jurisdictions. Ms. Jessica Harwell stated in rule, the facility has to have a current registration in order to provide services. (Rule 74.2). Insurance companies will need to interpret that rule.

j. National Acupuncture Exam for practitioners

No action.

Motion: Dr. Steve Minors reported that he would like to propose the amendments to 1a, 1c as discussed, to amend and nullify fee schedule for Inactive licenses 75.7a and 73.4 Inactive status. Mrs. Marcia Daughtrey seconded the motion.

Yeas: All voted, "yes."

Nays: None.

D. Enforcement Committee

Dr. Scott Isdale wanted to commend Ms. Jessica Harwell for helping him fill in for Dr. Robert Coburn at the last meeting.

1. Pending Complaints (including cases recommended for closure): #s 104-42, 104-78, 104-335, 104-336, 104-337, 104-339, 104-340, 104-342, 104-343, 104-344, 104-345, 104-346, 104-347, 104-348, 104-349, 104-350, 104-351, 104-352, 104-353, 104-354, 104-355, 104-356, 104-357, 104-358, 104-359, 105-12

Information only.

2. Report on complaints administratively closed: #s 104-147, 104-148, 104-149, 104-160, 104-168, 104-174, 104-175, 104-178, 104-179, 104-185, 104-186, 104-188, 104-193, 104-239, 104-307, 104-331, 104-341

Information only.

3. Agreed Orders: Case #s 101-643, 102-943

Motion: Dr. Scott Isdale made a motion that the committee recommends the Board to approve the agreed orders 101-643 and 102-943. Mrs. Marcia Daughtrey seconded the motion.

Yeas: All voted, "yes."

Nays: None.

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

Motion: Dr. Scott Isdale made a motion that the committee recommends the Board to approve the Final Order. Mrs. Marcia Daughtrey seconded the motion.

Yeas: All voted, "yes."

Nays: None.

5. Requests for Expungement: # 93-33, 93-88, 101-035, 101-139, 101-161

Motion: Dr. Scott Isdale made a motion that the committee has no action on request for expungements 93-33, 93-88 and to approve 101-035 and 101-139. Pending complaint-101-161 as per Ms. Jessica Harwell does not qualify. Mrs. Marcia Daughtrey seconded the motion.

Yeas: All voted, "yes."

Nays: None.

6. Cause No. 01-00505-M, Rodney E. Polk v. Texas Board of Chiropractic Examiners, In the 298th Judicial District Court of Dallas County, Texas and Cause No. 05-04-01061-

CV; In Re Texas Board Of Chiropractic Examiners in the Fifth Court of Appeals,
Dallas, Texas.

No action.

7. Enforcement Procedures and status of caseload

No action.

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, June 2, 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 2:28 P.M.

Respectfully submitted,

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