

**TEXAS BOARD OF CHIROPRACTIC EXAMINERS
BOARD MEETING
August 25, 2005**

Notice having been duly posted with the Secretary of State, the Texas Board of Chiropractic Examiners met in open session on August 25, 2005 at the William P. Hobby Bldg., 333 Guadalupe, Tower 2, Room 225, Austin, Texas.

ROLL CALL

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

Guests: Patte Kent
Jeb Boyt
Joe Thrash
Delmar Walker, D.C.
Keith Taylor
Jamie Sarra
Hetul Bhakta
Mary Garcia-Little
Huynhle Linh
Lynnea Wright, D.C.
Bob Hollander, D.C.
Scott Wofford, D.C.
Wade Brandt, D.C.

Call to Order

Dr. Jensen called the meeting to order at 12:40 P.M. and declared the presence of a quorum.

Introduction of Guests

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

Approval of Minutes of the June 2, 2005 TBCE Board Meeting

Mrs. Marcia Daughtrey reported a technical correction in the June 2, 2005 Board minutes. Mrs. Marcia Daughtrey stated page five, item three, letter a, fifth line down, the minutes stated there have been no other problems since the first arrest; the word first should be stricken. Mrs. Pam Harris stated there were two, one was deferred adjudication and additional background information was given to the committee. Mrs. Marcia Daughtrey stated, stand corrected.

Motion: Dr. Robert Coburn made a motion to approve the minutes of the June 2, 2005 Board meeting. Dr. Scott Isdale seconded the motion.

Yeas: All voted "yes."

Nays: None

A. Executive Committee Report

1. President's Report

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

Dr. Sandra Jensen reported Dr. Bob Hollander, President of the Texas Chiropractic Association, sent a letter in regards to the Board's position on the Sunset staff's recommendations. Dr. Sandra Jensen stated that she will be working on her response, no discussion at the time.

b. Update from the Governor's Appointment Office

Dr. Sandra Jensen reported that she has spoken to Gabby Fuentes (Appointments Manager) at the Governor's Appointment Office. The Governor cannot make any appointments during a special session of the legislature; therefore, the three new appointments should be announced in the next 30 days. Dr. Sandra Jensen and/or Ms. Sandra Smith will keep the Board updated on any announcements.

c. Committee Chairman appointment for Licensure & Education Committee

Dr. Sandra Jensen reported Mr. Paul Dickerson has been called to a new appointment to serve as Chief of Staff for Trade Promotion and U.S. and Foreign Commercial Service. He has relocated to Washington, D.C. Dr. Sandra Jensen appointed Dr. David Sime as the

new chairman of the Licensure & Education Committee. Dr. Sandra Jensen thanked Dr. David Sime for accepting the invitation to serve as the new chairman.

2. **Executive Director's Report**

a. Introduction of New Staff Member

Ms. Sandra Smith reported that the new Enforcement Director, Mr. Doug Ferris comes highly recommended from the Board of Dental Examiners and has former police experience. The Board is happy to have him and look forward to him being a beneficial contribution to its staff.

b. Fees and the Budget Process

Ms. Sandra Smith reported during each biennial, agencies put forth an LAR request to the Legislative in hopes the Board will receive funding for the items the agency requires. The Board is being requested to raise its fees based on a contingency writer in its method of financing and bill pattern. Page VIII-8, Department of Banking, number three, Contingent Revenue, this speaks in regards to the amount of fees the agency must raise in order to gain the additional items it has asked for in the LAR. The \$16,361 includes the following items: the new position, the Executive Director salary increase, and the peer review committee funding, etc.

Dr. Scott Isdale questioned if it was possible for the Board to raise anything else other than what the Board has already delineated? Ms. Sandra Smith stated the Board can raise more money, but cannot receive any more money. If the Board were to raise the fees, the money the goes to the General Revenue fund, the agency cannot expend any additional money.

c. Approval of Executive Director salary increase

Ms. Sandra Smith reported that it is a requirement for when the Legislature approves the salary increase for an Executive Director through the raising of the agency's fees, there must be a letter from the Board or the Board's minutes indicating the approval of the salary increase.

Motion: Dr. Sandra Jensen made a motion for the Board to approve the Executive Director's salary increase. Dr. Robert Coburn seconded the motion.

Yeas: All voted, "yes."

Nays: None

d. Providers of Approved Continuing Education (P.A.C.E.) Committee

Ms. Sandra Smith reported that she was approached by Dr. Buddy Smith, a former President of the Board, to serve on the P.A.C.E. committee sponsored by the Federation of Chiropractic Licensing Boards. Ms. Sandra Smith accepted, in order to get more information and to see if the Board might not want to adopt some of what the organization provides. Ms. Sandra Smith stated that with the Board and its limited staff and resources can improve the continuing education audits and oversights if were to be adopted in the future. Ms. Smith informed the Board of her selection to serve on this committee.

e. Travel Rate Changes

Ms. Sandra Smith reported to the Board that the Legislature did increase some travel provisions for state employees and Board members. Mileage increased 35 cents to 40 cents, hotel reimbursements increased \$80 to \$85, and meals increased \$30 to \$36. When travel vouchers are filled out, this is what will be recompensated at in the future beginning September 1' 2005.

f. Executive Director meeting with Representative Helen Giddings

Ms. Sandra Smith reported that she was approached and called by Representative Helen Giddings to attend an informal meeting at the Capitol regarding HB 7, the Workers' Compensation Bill. She stated there was a rumor or miscommunication that she had somehow spoken to TWCC and had made a suggestion to which she denies. Mr. Jeb Boyt also attended this meeting.

Dr. Scott Isdale questioned if the Board will get more information than what has been supplied? Ms. Sandra Smith stated the Texas Workers' Compensation Commission scheduled an appointment for both her and the attorney to meet with them. She declared that they comprised a list of chiropractors who they were targeting to remove from the Approved Doctor's List. This list has been given to them of the chiropractors that were to be removed.

g. HB 972 Requirements for the agency

Ms. Sandra Smith reported some of the requirements of the Legislative HB 972. These requirements are not part of the rulemaking process as of right now. In the board packets, one of the requirements was to use technological solutions to improve the Board's ability to perform its functions. Another, was to encourage or to implement a policy to encourage the use of negotiated rule making procedures and appropriate alternative dispute resolution procedures and to include in the annual financial report all investigations conducted by the Board with the cooperation and assistance of TDI and TWCC. Lastly, the Board maintains the Board's internet website in regards to local peer review committees including the services the committee provided and the types of disputes the committee will mediate.

Dr. Scott Isdale questioned item four, when will the Board have this mandated by? Ms. Sandra Smith responded by January 1, 2006, something will be in place. The Rules Committee has taken the task.

h. Budget and Performance Measures, Fiscal Year End Close

Ms. Sandra Smith reported that due to Mr. Moss' good efforts, the Board is in the black and has extra revenue to purchase a server.

Mr. Jim Moss reported page one displays the Budget Summary, the collected funds in revenue for the General Revenue Fund totaling \$1,710,333 as of the end of July. Mr. Jim Moss stated the agency is right on track with last year's performance. The budget remaining is \$75,000. This is what has already been spent of the August operating expenses including the August payroll. The collected \$18,000 in excess Appropriated Receipts, this is the money that the Board has the flexibility to spend on operating expenses above and beyond its regular budget. This will cover the cost of the server. There will be other funds available for additional purposes between now and the end of August.

Page two is the breakdown of the detail that makes up the summary numbers. Pages five through nine are the performance measures identifying quarter by quarter and explanation of the variances. Page ten outlines the Board's response to the appropriate writer that Ms. Sandra Smith has referred to earlier.

Dr. Scott Isdale questioned if the \$17,000 is set aside for the server? Does the Board have a projected figure that it intends to have at the end of the year and will use for discretionary needs? Mr. Jim Moss responded that he is expecting \$19,000 in the excess receipts and another expected \$20,000 in the budgeted funds that the Board has not expended, using for the server.

Dr. Scott Isdale questioned if that will be over between now and the fiscal year or is something the Board will expect yearly, when is the starting and ending point? Mr. Jim Moss stated August 31, 2005 will be the ending point. The Board needs to commit these funds, but does not need to disperse them. The Board will need to encumber the funds contractually; otherwise it goes to the Legislature.

Dr. Scott Isdale questioned that in the course of a year; does the Board have a computation or figuration in the budget that predicts what the Board will have over the year? Mr. Jim Moss stated the agency has begun the fiscal year 2006 budget set up. Mr. Jim Moss will be reviewing the budget plans with Ms. Sandra Smith before the numbers are published.

Dr. Scott Isdale questioned if the Board has set aside a separate figure for contingencies? Is it a surplus the Board can not count on until it happens? Mr. Jim Moss replied, yes, the budget that is being made does contain a section at the end that is called contingencies.

The contingencies fund can be moved to where it needs to be budgeted. For unexpected expenses, a transfer can be made. Ms. Sandra Smith stated that the provision in the Legislature is that an agency is not allowed if it were able to, save up money, and spend it at the last quarter. The agency cannot expend more than 25% in the last quarter, it is the law.

Page ten of the contingency writer, displays budgeted funds for the operation of the agency for the upcoming year, \$340,000. It is required of the agency to increase the previous year's revenue by this amount. This revenue goes to the General Revenue Fund. Page ten also displays a breakdown of revenue that is required, such as exempt salaries, staff salary per SB 1 (4% for fiscal year 2006 and 3% for fiscal year 2007), late fee decrease per Sunset Fiscal Note (drop by \$32,800 in fiscal year 2006), funding for 1.5 FTE (the Board would have to raise \$16,361 before it could hire a FTE, if it does not, the Board would have to give that money back to the Legislature to show there was not much of an increase), loss of inactive renewal fees (cost the Board \$35,000), and peer review (cost the Board \$5600), total of \$101,000. Overall, the Board has to increase its funds over the last year's level. The only place to obtain this is in the license and facility fees. Fees will not be collected until the increase occurs in by November.

Dr. Scott Isdale questioned if the Board has an option to make it all licensing fee increases instead of chiropractic licensing fee increases? How is it decided? It was recommended non DC owned facilities should contribute to the fee increase. Mr. Jim Moss stated there is a limit, a cap, cannot charge a facility license more than \$75.00. The \$25.00 increase will bring it up to \$65.00. If the Board were to go to the max on the fee of the facility license, the savings to each chiropractor would be less \$1.00 per year. 87% of the facilities are owned by chiropractors.

Dr. Jim Moss reported the completion of the claims audit from the Texas Comptroller of Public Accounts. The good news is the interagency transfer vouchers, there were no errors. Also, the procurement vouchers, buying supplies and paying operating expenses of agency, there was improvement. The bad news is travel vouchers. A synopsis of the requirements on travel will be mailed or emailed within a week.

Mr. Jim Moss stated travel vouchers require original signature, no faxes will be accepted. All supporting documents have to be the original receipts, a copy can be excepted only if it's accompanied by statement that original was lost or is not available. Airline fares cannot exceed contract fare between home headquarters and Austin. If a board member were to find airfare that is less, the Board will accept, but cannot exceed contract rate. Even though the Board member may fly on a contract airline, unless the Board member tells them that he/she is with the State and wants the contract rate, the Board member can fly on the correct plane and possibly be paying too much money. This will not be accepted.

If the Board member does not use contracted hotels, the Board member will be required to list reasons 1-5 of why he/she is not able to stay in a contract hotel. Rent car receipts, need receipt when car is returned displaying balance of 0, contract vendors only.

Contract rent car vendors include: Advantage, Avis, and Enterprise. Gratuity on alcohol will not be reimbursable. Travel vouchers cannot be signed and then filled out by the agency. Parking receipts are not required if not provided, voucher has to contain statement when and where parking occurred and daily rate. Mileage will only be reimbursed city to city according to the comptroller mileage guide; odometer readings will not be accepted. The agency will not be allowed to pay until the traveler initials or authorizes any form of change; an E-mail initializing the change will be accepted. Only contract vendors used at rate, will charge credit card additional \$12.50 for service, copy of credit card statement agency will reimburse the Board member the \$12.50.

Mr. Narciso Escareno stated Southwest Airlines sends faxed receipts with no original signature for his travel. Mr. Jim Moss stated that he will have to check. A suggestion was provided requesting a statement stating original not provided by the vendor. Mr. Jim Moss will redesign the travel summary form. Mr. Sandra Smith stated that she will provide the Board a copy of the Audit when it is provided.

Dr. Sandra Jensen stated at the beginning of the meeting, there was a quorum but two Board members were not present, as of now, one Board member is not present, Mr. Paul Dickerson.

B. Licensure and Education Standards Committee

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

1. New licenses issued since the June 2, 2005 Board meeting:

Information only.

Dr. David Sime reported the committee met to consider and discuss any appropriate action regarding new licenses. Since the June 2, 2005 Board meeting, 48 new licenses were issued, 20 were female and 28 were male.

2. Jurisprudence Exam Statistics since the June 2, 2005 Board meeting:

Information only.

Dr. Sime reported the jurisprudence statistics since the June 2, 2005 Board meeting; 42 applied for the exam, 25 were male, 17 were female, 41 passed, and 1 failed.

3. Discussion, Consideration, and Possible Action regarding a mandated two-hour annual online continuing education course on Statutes and Rules sponsored by the Texas Board of Chiropractic Examiners

Ms. Sandra Smith stated Dr. Scott Isdale had requested to keep updates on this agenda item and bring back to the Board after a years time. The Board has collected \$600 from

chiropractors voluntarily and applicants who use this as a study guide. Through the conferences and seminars account, Article 9 of the General Appropriations Act, any and all revenue the Board collects for the taking of the course is a reimbursement act. The agency can then use the money. Ms. Sandra Smith stated that when the Board considers this as a mandated situation where the licensee would have to take the two hours, this will be revenue the agency can use. In return, this might help Enforcement issues since rules change quite frequently.

Dr. Scott Isdale questioned if the Board has discussed the possibility of increasing the offerings the type of classes the Board can earn and has this been considered? Ms. Sandra Smith stated that at one of the earlier Board meetings, when the Board was initiating the course, it had mentioned the vendor is willing to sponsor more courses for the Board indicating a HIPAA course and ethics course. A design already is ready to be used on the website, such as a chiropractic assistants course. Dr. Sandra Jensen questioned if these will be provided all online? Ms. Sandra Smith responded, yes. Dr. Scott Isdale questioned what committee will be looking into this agenda item? Dr. Sandra Jensen responded, the Licensure and Education Committee.

Dr. Scott Isdale questioned if the Board can ask how to initiate this, suggested that the agenda item be put on the next Board meeting? An idea on how to initiate is to offer online services at a fee. Ms. Sandra Smith stated the other unappropriated account the Board has is on the Open Records. Mrs. Karen Sands brought in over \$19,000 in Open Records that allows the Board to use.

Tabled.

4. Discussion, Consideration, and Possible Action regarding additional applicant requirement to submit official FBI background check report as part of their application

Dr. Sime reported that the staff recommended that it require applicants to submit criminal background reports with application in doing so, this will lower the fee by \$39.00. The 79th Legislature failed to renew the pass-through appropriation to the Department of Public Safety for DPS and FBY criminal background checks. If the applicant for licensure does not bear the responsibility for the cost of a background check, this agency would be responsible to do so out of its own budgeted funds, shifting the cost from the applicant to the agency.

Motion: Dr. Sime made a motion for the Board to require applicants to submit criminal background reports along with their applications. In doing so, the application fee would be reduced \$39.00. Dr. Steve Minors seconded the motion.

Dr. Scott Isdale questioned if the Board has a system for where this will happen, will the Board give the applicants a place to go and will be told what to do? Mrs. Pam Harris stated that she is currently working on this issue. The Board was notified of this issue a week ago. She has contacted DPS and FBI and in the process of getting full instructions

of what the applicant will be required to do, at which time she will create documents on the website where an applicant can download to determine exactly what they need to provide to the Board. The FBI has a downloadable fingerprint card. What will need to happen is they will have to send a letter and fingerprint card to FBI requesting their criminal background check to be done and the summary or rap sheet will be forward to Mrs. Pam Harris' direct attention. This will disallow any opportunity for tampering with the report, the fee will be \$18.00. The FBI will take a longer period of time rather than the DPS. The Board has a ORI number assigned to the agency. The time period was 6-8 weeks, it may now be 10-12 weeks. As soon as this is completely resolved and approved by the Board, Mrs. Pam Harris will then approach the Texas colleges to let them know this will be a new requirement. The Board does not want the report to be any older than 90 days in the event that an arrest or conviction that came up in between the time it was provided to the Board and the time they were licensed. Mrs. Pam Harris stated that her suggestion to the applicant is to start the process two months prior to applying with TBCE, if results are received earlier, they will be held.

With DPS, it is the same process, the applicant will send a money order or cashiers' check in the amount of \$15 to DPS and have the results forwarded to TBCE. The cost is the same for the applicant. Before this change they were sending the money to TBCE to process, but will not be able to because the Board has lost that appropriation. This is what the Board has to do to ensure the background checks are thoroughly done. This will go into affect September 1, 2005. Ms. Sandra Smith stated in the interim, the agency will be picking up the cost, the Board does not want to offer licenses to those who have not had background checks, this will take a hit on the budget.

Yeas: All voted, "yes."

Nays: None

5. Request for refund of late fee for Troy Clark, D.C.

Motion: Dr. David Sime reported the committee met to discuss and consider appropriate action regarding the request for refund of late fee for Troy Clark, D.C. The staff recommended Dr. Troy Clark be denied his request to receive a refund for late fees. Mrs. Marcia Daughtrey seconded the motion.

Dr. Steve Minors requested more information.

Dr. David Sime stated Troy Clark wrote a letter, appealing to get a refund on his fees. Mr. Clark explained to Ms. Sandra Smith that he closed his office in February of 2003 and had not been in practice since that time. March of 2003 he went to work for the Texas Department of Public Safety as a state trooper. Although he was attending the DPS Academy from March to September, upon receipt of renewal for reminder from TBCE, he was in Austin and hand delivered the Inactive renewal form prior to the required date of September 1st. After graduating from the Academy, he completed the required continuing education hours and soon after submitted an Active renewal form

which kept his license current through September 1, 2004. At no time prior to that renewal date of September 1, 2004 did he receive any form of correspondence from TBCE. He forgot about the license due to working as a state trooper. He gave explanation of why he was late, he forgot.

Yeas: All voted, "yes."

Nays: None

6. Request for reinstatement of license for Shannon Mitchell, D.C.

Dr. David Sime reported that the committee met to consider and discuss an appropriate action regarding a request for reinstatement of license for Shannon Mitchell, D.C. Dr. David Sime stated that she requested to be reinstated without reapplication or reexam due to financial and health conditions. She was willing to pay all fees. She missed the deadline.

Motion: Dr. David Sime stated that as a subcommittee, it had decided there were needs to guidelines. It was recommended that Dr. Mitchell's request to be reinstated without reapplication or reexam fee be denied. Mrs. Marcia Daughtrey seconded the motion.

Yeas: All voted, "yes."

Nays: None

7. Discussion, Consideration, and Possible Action regarding proposed rule changes:

- a) Amend §73.3, relating to continuing education, to address use on online courses and ending use of video courses.

Mrs. Pam Harris stated that in coming into this position, she became aware of a few doctors once a year, when due to renew, requested to review a video in lieu of attending a seminar. The reason being bad back or medical condition where he/she could not travel to attend a course. The agency has three videos. She realized that one person had taken the same video last year and this year. She stated that it is unequal to require one chiropractor to take 16 hours of continuing education while another person is allowed to take a one hour video and receive the same credit.

Mrs. Pam Harris stated that she recommends the Board to make an exception to be allowed to take 16 hours online rather than 6 that is normally allowed due to a medical condition with a doctor's note stating they are unable to travel. She believes this would be a better solution. Ms. Sandra Smith stated that if they did not have a computer or couldn't get to library a letter submitted to the Board explaining the situation, an exception could be made.

Motion: Dr. David Sime made a motion to amend rule §73.3 relating to continuing education, to address use of online courses and ending of use of video courses. Dr. Steve Minors seconded the motion.

Dr. Steve Minors stated that since the Rules Committee discussed the same amendment does the Board want to discuss the changes or spelling errors now or later? Dr. Sandra Jensen stated, now.

Dr. Steve Minors reported on page two of the said rule, by the bottom of the page, letter “b,” it states, “in order for an online course to be accepted by the board, a licensee must submit a letter from a licensed...” after board, it should be a comma rather than a period, “a” should be a lower case a rather than an upper case “a,” also, physician should be changed to doctor. Also, on page three, middle of the page, “a” should be an upper case letter rather than a lower case letter.

Yeas: All voted, “yes.”

Nays: None

Motion passes.

- b) Amend §73.7, relating to approved continuing education courses, to require that the title of an approved course be used to advertise the course to the public.

Ms. Sandra Smith reported that there was an incidence where a doctor had submitted a course and advertised significantly different from what was advertised, causing controversy, this was the result. Mr. Narciso Escareno seconded the motion.

Yeas, All voted, “yes.”

Nays: None

8. Request for approval of Manipulation under Anesthesia continuing education course sponsored by Texas Chiropractic College

Mrs. Pam Harris reported that in reviewing the applicants for continuing education, the course title raises a red flag, bring in front of the board for discussion to deny/approved, until further resolution.

Tabled.

9. Request for approval to sit for the Texas Jurisprudence Exam: Hetul Bhakta

Dr. David Sime reported that Mr. Hetul Bhakta was arrested on December 17, 2004 for a Misdemeanor charge of Driving While Intoxicated (DWI). There had been no criminal activity before or after this charge. The applicant was 25 years old at the time of the

arrest and is now 26 years old. Less than one year has elapsed since the arrest. The applicant attended Cleveland Chiropractic College from 2001 to 2005. The applicant has paid a \$56 fine, \$500 in court costs, served 20 hours of community service, and was sentenced to two years probation. The applicant has also provided the Board with a personal request letter, recommendation letter, certification of completion of Midwest Victim Impact Program, and all requested court documentation.

Motion: Dr. David Sime stated the staff made a recommendation that Mr. Bhakta be granted the opportunity to sit for the Jurisprudence exam. Upon successfully completing the Jurisprudence exam, license will be suspended and probated in its entirety to run concurrent with his criminal probation. Probation will be up in April 2007. Probation officer must submit a report at the conclusion of his probation verifying that all terms of his probation were satisfied.

Dr. Sandra Jensen reported a correction in making a motion, rather than the staff made a recommendation, it should be the committee made a recommendation.

Mr. Narciso Escareno seconded the motion.

Yeas: All voted, "yes."

Nays: None

10. Request for approval to sit for the Texas Jurisprudence Exam: Tyler Ray Bodin

Dr. David Sime reported that Mr. Tyler Bodin was arrested for two misdemeanor DWI charges; one on September 21, 2002 and the second on March 13, 2004. He has not submitted any of the documents that the committee needed to see. He is not present today.

Motion: Dr. David Sime stated that he needs to make himself present at the next Board meeting and have the necessary documents submitted. There was a question whether or not to table this agenda item. Dr. David Sime stated that he had two DWI charges and didn't have any of the paperwork submitted that the committee needed as far as completing probation. Mr. Narciso Escareno stated that he needed to present himself in front of the Board.

Dr. Scott Isdale spoke of his concern with the wording of the motion. He stated the Board cannot require anyone to come before the Board. Dr. David Sime restated the motion.

Motion: Dr. David Sime restated the motion to read as the committee recommended to the Board that he appear at the next meeting and deny its consideration of sitting for the exam. Mrs. Marcia Daughtrey seconded the motion.

Yeas: All voted, "yes."

Nays: None

11. Request for approval to sit for the Texas Jurisprudence Exam: Linh Huynhle

Dr. David Sime reported Mr. Linh Huynhle was arrested on March 11, 1994 for Forgery Financial Institute. He received deferred adjudication for that charge and therefore it did not constitute a conviction. Mr. Huynhle was arrested on November 22, 1995 for Robbery. He was convicted of a lesser charge of Assault. It was ordered that he could continue his deferred adjudication for the 1994 charge which was reinstated when the 1995 incident occurred. There has been no criminal activity before or after the charge. The applicant was 22 years old at the time of the first arrest and is now 31 years old. Nine years have elapsed since the first arrest. The applicant attended Parker Chiropractic from 1995 to 1999. The applicant paid a \$300 fine, completed his community service, and completed a one year probation sentence. The applicant has provided the Board with a personal request letter, letters of recommendation from several people, and all required court documentation. He was present at the last meeting. There was some question on some of the letters of recommendation, the letters were emailed to him, since now has been signed.

Motion: Dr. David Sime made a motion to recommend that Mr. Huynhle be granted the opportunity to sit for the Jurisprudence exam.

Dr. Serge Francois questioned what was he arrested for in 1994? Dr. David Sime stated March 11, 1994 he was arrested for Forgery Financial Institute and received deferred adjudication for that charge and did not constitute a conviction. Dr. Scott Isdale questioned when did the second occur? Dr. David Sime responded November 22, 1995 for Robbery. Mrs. Marcia Daughtrey questioned if it was a domestic dispute? Dr. David Sime responded shoplifting. Dr. Steve Minors questioned when did he start school, 1995? Dr. David Sime and Mr. Narciso Escareno replied yes, graduating in 1999.

Dr. Steve Minors questioned while he was in school when did he comment robbery? The response was the 8th trisemester. Mr. Narciso Escareno stated that this is the same person that was denied last month, he reapplied, everything is the same except the signatures on the recommendation letters have been provided. Dr. Serge Francois questioned who provided the recommendation letters? Dr. David Sime stated that he received recommendation letters from Summit Health & Rehab, a clinic director, Richard Allen Le, M.D., President of a Tutoring Co., and a project manager of Enterprise Products Operating, L.P.

Dr. Sandra Jensen stated that Mr. Linh Huynhle is present to speak on his behalf. Mr. Linh Huynhle: testimony.

Mrs. Pam Harris stated that she had the opportunity to discuss the entire situation with Mr. Huynhle. He indicated that the recommendation letters were e-mailed and therefore had no signatures. Mrs. Pam Harris advised him that he needed to fill out the application

completely and obtain letters of recommendation with original signatures. The letters of recommendation were sent directly not fully realizing they were not signed.

Dr. Serge Francois questioned how do you authenticate signatures? Dr. David Sime responded that there is no way of authentication.

Dr. Scott Isdale stated that with two strikes, whether deserved or not, they are still there. The Board is here for the public. If the Board allows this person to take the exam and under the assumption that he passes, would the Board have some recourse and require that if he has something brought against him, the Board can use that incident as a form of revocation based on the information the Board has? Mr. Jeb Boyt stated that this issue would require more consideration. Mr. Narciso Escareno questioned if this can be some amendment? Dr. Sandra Jensen recommended the suggestion of the applicant taking an ethics and boundaries class during the first year of practice. Dr. Steve Minors questioned how might that help? Dr. Sandra Jensen responded understanding.

Dr. Robert Coburn questioned does the Board have a history, allowed a licensee to sit for the exam with the understanding that if they are on probation for the first year? Mr. Joe Thrash stated that he does not recall anything occurred prior to allowing them to sit for the exam. Mrs. Pam Harris stated that Mr. Bhakta is on probation and has been approved to sit for the exam upon completing successfully the exam and be allowed to receive license and be probated to run concurrent with criminal probation which isn't complete for another one and one half years. Mr. Huynhle isn't on probation.

The motion was seconded by Mrs. Marcia Daughthrey.

Yeas: All voted, "yes."
Majority passes.

Dr. Steve Minors-abstains

12. Request for approval to sit for the Texas Jurisprudence Exam: Mary Little

Dr. David Sime reported that Mrs. Little was arrested on January 22, 1978 for 1st Degree Murder and Robbery. She was convicted and sentenced to serve 25 years to life at the California Institute for Women at Frontera with the possibility of parole. Mrs. Little served 13 years in prison and was then placed on parole for another three years. There has been no criminal activity before or after this charge. The applicant was 17 years old at the time of the arrest and is now 44 years old. 27 years have elapsed since the arrest. 14 years have elapsed since her release from prison. The applicant would like to attend Parker College and take the Texas Jurisprudence Exam upon approval from the Board and after the satisfactory completion of all required education. The applicant spent 13 years in prison and then completed three years of parole time. The applicant has provided the Board with a personal request letter, letter from the District Attorney, court transcripts from her Judgment and Sentencing Hearings, certificate of Discharge from the California Dept. of Corrections, letters of recommendations, copies of numerous awards

received (certificate from President Bush for a service award in recognition of community service), and college transcripts (attending UT at Arlington).

Dr. Sandra Jensen stated that Mrs. Mary Little is present to speak on her behalf. Mrs. Mary Little: testimony.

Dr. Serge Francois questioned what jurisdiction does the Board have as to someone who hasn't attended chiropractic college yet? Mr. Joe Thrash stated that he would have to look at the statute to see if the Board has jurisdiction to decide when she hasn't even attended chiropractic college and isn't eligible otherwise to sit for the exam. Whether the Board has jurisdiction to issue a ruling on this, an aspect not considered. The Board may want to defer a final decision on this until determination is made, doesn't think the story is inconsistent and addition to what has been told during the committee. Mr. Joe Thrash considers her story supplying additional detail to her case. What has happened since prison matters. This is the important part of her story. Mr. Joe Thrash stated that he recommended the Board defer a vote to the end of the meeting and that the Board may want to table agenda item.

Mrs. Mary Little stated that while being out of prison, she has participated in prison ministry, public speaking in high schools, colleges, and churches to help those who have struggled, give hope to change, and is attending UT at Arlington (Senior, Rehab Psychology). She has put her education on hold for hopes of a future career.

Mr. Joe Thrash stated that by examining the statute before an applicant can apply to take the licensing exam, they have to meet certain minimum standards, those are listed in Occupations Code section 201.302. An applicant must be at least 18 years of good moral character, completed 60 hours of college courses other than chiropractic, and be a graduate of or in the final semester of a chiropractic school. In turns of your current eligibility to take exam, you do not meet statutory requirements. Mr. Joe Thrash stated his suggestion to Dr. Sandra Jensen, any opinion that the Board issues right now on your eligibility to take the exam would be an advisory opinion, cannot limit any future Board from ruling on applicant when you meet all statutory requirements.

Dr. Sandra Jensen stated to Mrs. Mary Little that this would be an advisory capacity, if the Board does not vote in your favor it is still your choice as to which direction you choose. Support request on sitting for exam. No vote recorded, only advisory.

Dr. Serge Francois and Mr. Narciso Escareno agreed on advisory decision. The remaining of the Board members, nay. Dr. Steve Minors not present for vote.

13. Request for approval to sit for the Texas Jurisprudence Exam: Jamie Sarra

Dr. David Sime reported Ms. Jamie Sarra was arrested on September 14, 2000 for a Misdemeanor charge of Driving While Intoxicated (DWI). Dr. David Sime stated that there has been no criminal activity before or after this charge. The applicant was 31 years old at the time of the arrest and is now 35 years old. Four and one-half years have

elapsed since the arrest. The applicant attended Life University from 2001 to 2002 and Parker College of Chiropractic from 2003 to 2005. The applicant paid \$900 in fines and court costs, completed 40 hours of community service, and completed 1 year probation. The applicant has provided the Board with a person request letter, Alcohol and Drug Evaluation, certificate of completion of 40 hours of community service, recommendation letters from five people, and all requested court documentation.

Motion: Dr. David Sime made a motion to recommend that Ms. Jamie Sarra be granted the opportunity to sit for the Jurisprudence exam. Dr. Serge Francois seconded the motion.

Yeas: All voted, "yes."

Nays: None

14. Request for approval to sit for the Texas Jurisprudence Exam: Keith Taylor

Dr. David Sime reported Mr. Keith Taylor was arrested on December 28, 1991 for Criminal Trespassing with a Firearm and Evading Arrest. The only record that could actually be documented by the courts was Failure to Keep Deer in Edible Condition. Even though a \$3,000 bond was shown to be paid at the time of arrest, a guilty plea was made to the lesser charge and the original charges were never filed with the District Attorney. The judge and prosecutor are now deceased. Dr. David Sime stated that there has been no criminal activity before or after this charge. The applicant was 17 years old at the time of the arrest and is now 31 years old. Fourteen years have elapsed since the arrest. The applicant attended Parker College of Chiropractic from 2001 to 2004. The applicant paid \$300 in fines. The applicant has provided the Board with a personal request letter, recommendation letters, and all requested court documentation.

Motion: Dr. David Sime made a motion to recommend that Mr. Taylor be granted the opportunity to sit for the Jurisprudence exam. Mr. Narciso Escareno seconded the motion.

Yeas: All voted, "yes."

Nays: None

15. Request for approval to sit for the Texas Jurisprudence Exam: Delmar Walker

Dr. David Sime reported that Mr. Delmar Walker was arrested on November 21, 1979 for Exposure of Self in a Public Place and Disorderly Conduct Solicitation of a Lewd Act. Dr. David Sime stated that there has been no criminal activity before or after this charge. The applicant was 29 years old at the time of the arrest and is now 55 years old. Twenty-six years have elapsed since the arrest. The applicant attended Los Angeles Chiropractic College from 1974 to 1978. The applicant paid no fines or court costs, was required to complete 10-12 hours of counseling, and completed 1 year probation. The applicant has

provided the Board a person request letter, recommendation letters, and Superior Court of California, County of Santa Clara court records reflect a complaint was filed, the file has been destroyed pursuant to statute. All that remains from the file is the docket.

Motion: Dr. David Sime made the motion to recommend Mr. Walker to be granted the opportunity to sit for the Jurisprudence exam. Mr. Narciso Escareno seconded the motion.

Dr. Sandra Jensen stated that Mr. Delmar Walker is present to speak on his behalf. Mr. Delmar Walker: testimony.

Tabled upon pending return of Mrs. Pam Harris.

C. Rules Committee

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

1. Approval of August 1, 2005 Rules Committee Meeting Minutes

Dr. Steve Minors reported that the committee approved the August 1, 2005 Rules Committee minutes as per Dr. Serge Francois' request.

2. Discussion and approval of Rule Priority and Tracking List

Dr. Steve Minors reported that the committee approved the first page illustrating the tracking list and the second page illustrating the revised tracking list.

3. Discussion of new draft rule regarding scope of practice as required under HB 972

Dr. Steve Minors reported that currently the AG reps will be contacting New Mexico and Colorado to see how their rules are coming along if they are receiving numerous scope of practice questions to determine if their way scope of practice questions are written clear enough for their doctors to interpret. In additions, Mr. Jeb Boyt has revised the scope of practice rule 75.16 received from TCA, will be reviewed at the next meeting.

4. Discussion of new draft rule regarding fraud in the practice of chiropractic as required under HB 972

Dr. Steve Minors reported that the Board is currently waiting for TDI to contact Mr. Doug Ferris and updates from Mr. Jeb Boyt.

Tabled.

5. Discussion of new draft rule regarding use of peer review committees as required Under HB 972

Dr. Steve Minors reported that Mr. Jeb Boyt explained Article 21.58a of the Insurance Code. Dr. Steve Minors would like to review. Mr. Jeb Boyt stated that under peer review eligibility investigation, the second page, a new section 75.15 peer review committees. This was approved for publication Texas Register as a proposed rule. The committee thought were to get a rule in place that can be revisited later on as the Board refines its thinking on how to use and implement peer review committees.

Motion: Dr. Steve Minors made a motion for the Board approve 75.15 as written. Dr. Serge Francois seconded the motion.

Yeas: All voted, "yes."

Nays: None

6. University Interscholastic League memo regarding Pre-participation Physical Evaluation Forms and relating questions regarding conducting physicals (Dr. Bobbie Jo Polasek and Ms. Kim Amen.)

Dr. Steve Minors reported the Rules Committee approved the UIL statement from the director, Bill Farney, and have posted on website.

Motion: Dr. Steve Minors made the motion that the Board approve the statement from Bill Farney from the UIL and post on website. Dr. David Sime seconded the motion.

Dr. Scott Isdale questioned if there was a way to get this out besides the website? He stated that apparently this is a question that reappears, can the Board get it to TCA to put in the journal? Dr. Sandra Jensen stated that TCA already notifies the profession.

Dr. Serge Francois seconded the motion.

Yeas: All voted, "yes."

Nays: None

Dr. Steve Minors reported there were six portions to this question:

- 1.) Can a chiropractor perform exams for certification of health for sports activities, new job applicants? Etc
- 2.) Can a chiropractor perform such exams on a relative?
- 3.) Is there a particular form to complete?
- 4.) If no form, what are the criteria for the exam?

- 5.) Any different than any other exam?
- 6.) How much should we charge?

Motion: Dr. Steve Minors reported that he will respond to Dr. Polasek's question as such:

1. Yes, UIL statement and revised scope of practice, forthcoming scope of practice.
2. Yes, you may examine a relative.
- 3-6. Not within jurisdiction purvue.

Dr. Serge Francois seconded the motion.

Yeas: All voted, "yes."

Nays: None

Dr. Steve Minors reported the question from Ms. Kim Amen. Is it lawful in the State of Texas for a chiropractor to perform public and private school physicals, if so, is there a law or code that states this? Dr. Steve Minors stated that he will direct her to the UIL decision. Dr. Robert Coburn seconded the motion.

Yeas: All voted, "yes."

Nays: None

Dr. David Sime stated that he has seen schools often dictate who can be used for physicals due to his own experience in the school system. Dr. Serge Francois stated that FYI, he does not think that Dr. David Sime's statement is relevant to mention in the letter to Ms. Kim Amen.

Mrs. Marcia Daughtrey left the Board meeting at 2:30 P.M.
The time is now 2:41 P.M.

7. Percutaneous Neuromodulation Therapy (Dr. Jay Triano)

Dr. Steve Minors reported that the committee approved this agenda item at the last Rules Committee meeting held on August 1, 2005.

Motion: Dr. Steve Minors made a motion to resend previous Board opinion stating that it was not within scope and that the full Board will issue a new letter of opinion stating PNT is now within scope.

Dr. Sandra Jensen stated render opinions until September 1, 2005. Dr. Serge Francois seconded the motion.

Mr. Jeb Boyt requested amendments for clarification for the Board to recognize PNT is not an incisive procedure.

Yeas: All voted, "yes."

Nays: None

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

Dr. Steve Minors stated, does the Board have any official statement as to whether or not a cash discount can be given at time of service, if so, what are the perimeters on this? In the past, recently, the Board submitted an opinion that it was appropriate. Dr. Steve Minors stated that he would like to resend that decision as the Board is looking into these things, further investigation.

Motion: Dr. Steve Minors made a motion to resend the previous opinion stating that cash discounts at time of service (opinion back then was not within scope), resend that opinion.

Dr. Scott Isdale stated the motion was unclear. Dr. Steve Minors reported that in July of this year, he responded to this question and informed him that it is not illegal to give cash discounts, but be aware there may be certain insurance codes that may apply here. He advised any healthcare providers interested in giving cash discounts to become familiar with these codes as they may state that if you give a discount to a cash paying patient, you must do the same for patient paying for insurance. The committee needs more research. Dr. Steve Minors stated that the committee will resend response to the question rather than resending the previous opinion so further research can be done particularly Article 21.79(e) of the Insurance Code.

Tabled.

Mr. Jeb Boyt stated that at the Board's discretion as to whether or not a vote is taken. Dr. Sandra Jensen stated that since it was not a Board decision to respond to the letter or was it? Dr. Steve Minors stated that it was not. No vote was needed.

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

Dr. Steve Minors stated, is it ethical or legal for a chiropractor, like myself, or a staff to obtain public records defined PIP patients and send them reports about how they could be suffering from soft tissue injuries and the benefits of chiropractic care? Dr. Steve Minors stated that when the committee met, with the input from Mr. Jeb Boyt and Mr. Joe Thrash, that is legal.

Motion: Dr. Steve Minors made a motion to send Dr. Omid Soltani a letter informing that obtaining public records define PIP patients is legal. Dr. Serge Francois seconded the motion.

Dr. Scott Isdale questioned why can't the Board make a statement as to why it is ethical? He states the Board should be able to make a statement as to what is considered ethical. Dr. Scott Isdale does not see how this is in the best interest of the people of Texas. Dr. Serge Francois stated it is best to respond how counsel states it.

Mr. Joe Thrash stated the Board has the authority to determine what is ethical. It is the Board's responsibility with respect to professional ethics coinciding exactly with what is and what is not legal, what is in good taste and what is not in a matter of decision making authority of the Board. Ethical practice should mean legal practice. There are several laws that prohibit people from accessing accident reports. If this person were to use a county clerk, for example, that had professional authority to obtain reports, and to make copies of them being in violation of the restrictions on releasing accident reports to obtain this information. It would be unethical and illegal even if the chiropractor were not the person obtaining those reports through inappropriate means, this would be furthering the illegality of this person who had obtained the records through that device.

Mr. Joe Thrash stated that in the regulation of a profession ethical practice should mean legal practice. Mr. Jeb Boyt stated that amend to that the Board has not actually promulgated any standards to use in evaluating such ethical conduct now.

Dr. Scott Isdale stated that in using the thought process, this would not allow the Rules Committee to make a statement or come to a conclusion and allow the Board to concur. Mr. Joe Thrash stated that the other side to this would be a court case that Mr. Jeb Boyt mentioned, there is a holding court of law that says is protected by the rights of free speech under the U.S. Constitution and is considered commercial speech to provide people with information such as solicitation.

Mr. Narciso Escareno left meeting at 2:52 P.M.
The time is now 2:55 P.M.

Motion: Dr. Steve Minors made a motion to inform Dr. Omid Soltani that obtaining using public records to solicit patients that have been injured in accidents is legal. Dr. Serge Francois, again seconded the motion.

Yeas: All voted, "yes."

Nays: None

10. Definition of terms “chiropractic treatment” and “physical therapy”
(Mr. David D. Carter, Sr.)

Motion: Dr. Steve Minors made a motion to send a letter to Mr. Carter and inform him to visit the website and look at the Statutes concerning chiropractic treatment and visit the Texas Board of Physical Therapists for their definition of physical therapy. Dr. Serge Francois seconded the motion.

Yeas: All voted, “yes.”

Nays: None

11. Use of the term “physical medicine” (Dr. Eric Tondera)

Dr. Steve Minors stated, can a licensed chiropractor in Texas use the term “physical medicine” in special talks, presentations, and or letterhead. Dr. Steve Minors will ask Dr. Tondera to be more specific. Ask Dr. Tondera what does he mean by special talks, presentation, or letterhead and for him to find out by the Board of the Medical Examiners what is their definition of physical medicine.

Tabled.

12. Discussion and Possible Recommendation to publish as proposed rules:

- a) Amendments to §71.3, relating to admission requirements for each student admitted to study chiropractic.

Motion: Dr. Steve Minors made a motion to approve amendments to §71.3, relating to admission requirements for each student admitted to study chiropractic. Dr. Serge Francois seconded the motion.

Yeas: All voted, “yes.”

Nays: None

- b) Amendments to §73.2, relating to licenses and renewals.

Motion: Dr. Steve Minors made a motion to approve amendments to §73.2, relating to licenses and renewals. Dr. David Sime seconded the motion.

Yeas: All voted, “yes.”

Nays: None

- c) Amendments to §73.3, relating to continuing education.

Amendment already approved during the Licensure & Educational Standards Committee.

- d) Amendments to §73.4, relating to inactive status.

Motion: Dr. Steve Minors made a motion to approve amendments to §73.4, relating to inactive status. Dr. David Sime seconded the motion.

Yeas: All voted, "yes."

Nays: None

- e) Amendments to §73.7, relating to approved continuing education courses.

Amendment already approved during the Licensure & Educational Standards Committee.

- f) Amendments to §75.7, relating to required fees and charges.

Motion: Dr. Steve Minors made a motion to approve amendments to §75.7, relating to required fees and charges. Dr. David Sime seconded the motion.

Yeas: All voted, "yes."

Nays: None

- g) Amendments to §75.9, relating to complaint procedures.

Motion: Dr. Steve Minors made a motion to approve amendments to §75.9, relating to complaint procedures. Dr. David Sime seconded the motion.

Yeas: All voted, "yes."

Nays: None

- h) Amendments to §79.1, relating to general requirements for licensure of certain out-of-state applicants.

Motion: Dr. Steve Minors made a motion to approve amendments to §79.1, relating to general requirements for licensure of certain out-of-state applicants. Dr. David Sime seconded the motion.

Yeas: All voted, "yes."

Nays: None

Dr. Steve Minors informed the Board the next Rules Committee meeting will be held sometime between now and the next Board meeting in November. No date has been decided on. New members will be affected.

(out of order)

Licensure & Educational Standards Committee

15. Request for approval to sit for the Texas Jurisprudence Exam: Delmar Walker (continued)

Mrs. Pam Harris requested and received certified letters from California verifying Dr. Walker's license that he has never been subject to disciplinary suspension or revocation. She reported that he held a license from 1978 to 1989 which he cancelled the license. He received certification of licensure from Nevada, was issued license in 1979 with an expiration date December 31, 2005, and has never been subject to disciplinary suspension or revocation. Mrs. Pam Harris also did a SINBAD check which is the official action stata of the federation of the chiropractic licensing boards. No records were found to match request.

Motion: Dr. David Sime restated motion as per Dr. Sandra Jensen to read as follows, Mr. Walker be granted the opportunity to sit for the jurisprudence exam. Dr. Serge Francois seconded the motion.

Yeas: All voted, "yes."

Nays: None

D. Enforcement Committee

Dr. Robert Coburn reported there were no recommendations for this Board meeting. The next Enforcement Committee meeting will be held on September 15, 2005.

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, November 3, 2005.

Adjournment

Motion: Dr. Sandra Jensen moved to adjourn the meeting. Dr. Serge Francois seconded the motion.

Yeas: All voted “yes.”

Nays: None

The meeting adjourned at 3:04 P.M.

Respectfully submitted,

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