

**TEXAS BOARD OF CHIROPRACTIC EXAMINERS
BOARD MEETING
November 3, 2005**

Notice having been duly posted with the Secretary of State, the Texas Board of Chiropractic Examiners met in open session on November 3, 2005 at the William P. Hobby Building, 333 Guadalupe, Tower 2, Room 225, Austin, Texas.

ROLL CALL

Present: Sandra Jensen, D.C., President
Scott E. Isadale, D.C.
Steve Minors, D.C.
Ken Perkins, D.C.
Kathleen Summers, D.C.
Marcia Daughtrey
David A. Sime, D.C.
Kenya Woodruff
Narciso Escareno (not present)

Guests: Jeb Boyt
Ron Allen
John Cherni
Marie Ouellette

Call to Order

Dr. Jensen called the meeting to order at 12:44 p.m. and declared the presence of a quorum.

Introduction of Guests

Dr. Jensen welcomed all visitors and asked them to sign in. Dr. Jensen stated that there would be opportunity to address the Board after the Committee reports.

Approval of August 25, 2005 TBCE Board Meeting Minutes

Dr. Minors made a motion to approve the minutes; Dr. Sime seconded.

Yeas: All voted "yes"

Nays: None

Approval of September 8, 2005 Emergency Board Meeting Minutes

Ms. Daughtrey made a motion to approve the minutes of the emergency board meeting;
Dr. Sime seconded.

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. Jensen stated she was invited to the National Boards headquarters and served on a test committee for the SPEC test.

b. Announce new members

Dr. Jensen introduced the new members of the Board: Dr. Ken Perkins, Dr. Kathy Summers, and Ms. Kenya Woodruff.

c. Committee Assignments

Dr. Jensen announced the committee assignments as follows:

Enforcement Committee - Dr. Scott Isdale, Chairman, Dr. Kathleen Summers and Ms. Marcia Daughtrey

Licensure & Education Standards – Dr. David Sime, Chairman, Mr. Narciso Escareno, and Ms. Kenya Woodruff

Rules Committee – Dr. Steve Minors, Chairman, Dr. Ken Perkins, Ms. Kenya Woodruff and Mr. Narciso Escareno

d. Election of delegates and alternate delegates for the Federation of Chiropractic Licensing Boards and the National Board of Chiropractic Examiners

Dr. Jensen made a motion that Dr. Isdale serve as the delegate for the FCLB; Dr. Sime seconded.

Yeas: All voted "yes"

Nays: None

Dr. Jensen made a motion that Dr. Ken Perkins serves as the alternate delegate for the FCLB; Dr. Minors seconded.

Yeas: All voted "yes"

Nays: None

Dr. Isdale made a motion that Dr. Jensen serves as the delegate for the National Board of Chiropractic Examiners; Dr. Perkins seconded.

Yeas: All voted "yes"

Nays: None

Dr. Jensen made a motion that Dr. Summers serves as the alternate delegate for the NBCE; Ms. Daughtrey seconded.

Yeas: All voted "yes"

Nays: None

e. Election of Vice President and Secretary-Treasurer

Ms. Daughtrey nominated Dr. Isdale for vice president of the Board; Dr. Sime seconded.

Yeas: All voted "yes"

Nays: None

Dr. Isdale nominated Dr. Minors for Secretary-Treasurer; Ms. Daughtrey seconded.

Yeas: All voted "yes"

Nays: None

f. National Board of Chiropractic Examiners Part IV Administration
November 12th and November 13th of 2005

Dr. Jensen reported that she will attend the NBCE Part IV as an examiner in Portland, Oregon for Western States, and that Dr. Perkins will attend Life West in Hayward, California.

g. Review of the full Board's position on scope of practice issues

Dr. Jensen stated that the full board needs to support changes made by the Rules Committee concerning rulemaking authority and that the board needs to make their input known, prepare for board meetings, and be firm on their vote for scope of practice issues.

2. Executive Director's Report

a. Introduction of new staff member

Ms. Sandra Smith introduced Ms. Barbara Bostick, assistant for the Enforcement Division. Ms. Smith stated there was another vacancy that was filled and Anita will start tomorrow.

b. Budget and Performance Measures

Mr. Jim Moss gave the board an update on DC applicant and renewal revenue. Mr. Moss gave the board an update on budget items.

Mr. Moss discussed some areas for savings that the Board should consider. He suggested publishing the newsletter on the Web site; that the enforcement committee meet every other month instead of monthly.

Dr. Jensen stated that she would prefer to put the newsletter on-line and have the money for the enforcement meetings and the board was in agreement.

Mr. Jim Moss discussed the reconciliation of the ABES to USAS.

c. Fiscal Year 05 annual report

Ms. Sandra Smith stated that she sent out the draft report via e-mail for the board to have a preliminary review. Ms. Smith stated that the board would get a revised report once it was amended.

Mr. Jim Moss stated that they were going to meet with the accountant who prepared it so she could look it over and approve the report, and then they will mail it out to the Board.

d. News and activities relating to the Texas Board of Chiropractic Examiners agency since the last Board meeting

Ms. Sandra Smith stated that the on-line CE class has been temporarily suspended due to the fact that the vendor must go through the Texas On-line E-Pay system in order to continue hosting that course for us. Once the vendor has done that, it will be up and ready for the licensees to use and for the Board to add courses to supplement that. Some discussion followed as to what type of classes can be added in the future.

B. Licensure and Education Standards Committee

1. New licenses issued since the August 25, 2005 Board meeting

Dr. David Sime stated that 60 new licenses were issued since the August 25th Board meeting.

2. Jurisprudence exam statistics since the August 25, 2005 Board Meeting

Dr. Sime stated that 71 applied for the jurisprudence exam; 61 passed, 10 failed.

3. Temporary licenses issued since the September 8, 2005 Emergency Board meeting. Report and possible extension of post-Hurricane Katrina Emergency Rule

Dr. Sime stated that four temporary licenses were issued.

4. Discussion, consideration and possible action regarding establishing guidelines for applicants with criminal convictions appealing to the Board

Dr. Sime stated that Pam Harris, Director of Licensure, would like to explore the possibility of establishing some strict guidelines for applicants with criminal convictions appealing to the board to receive approval to sit for the jurisprudence exam. He then listed some examples.

Ms. Harris stated the reason for bringing this to the attention of the Board is because, in most cases, if someone has had one misdemeanor and they've completed their sentencing, the board usually allows those people to sit for the exam. She stated that if somebody has more than one conviction, it should be standard that they have to come before the Board. Ms. Harris researched what other state boards have done.

Dr. Sime recommended to the Board that Pam Harris present in writing a new rule to be put on an upcoming agenda to be posted regarding the applicant with one misdemeanor. Dr. Sime stated what this rule will do is allow the person to sit for the exam and then probate it concurrent to having the license issued when the probation is done. If the person has more than one conviction, then they have to request approval to sit.

There was discussion and explanation of the time frame between the two convictions, and whether they should have to come before the board.

5. Discussion, consideration and possible action regarding adding additional continuing education courses to the Board's approval list

Dr. Sime recommended that Pam Harris submit courses approved by the Federation of Chiropractic Licensing Board and add them to the Board's continuing education list.

Dr. Sime listed the courses the Board doesn't have as approved courses that the FCLB does: Principles of Practice, Examination Procedures/Diagnosis, Physical Therapy/Physiological Therapeutics, Adjustive Technique, Radiological Technique, Diagnostic Imaging Interpretation, Philosophy of Chiropractic, Basic Sciences, Research Trends, Medical/Legal and Scope of Practice.

Dr. Jensen stated she wanted to know how to proceed to get those courses added. Ms. Pam Harris said she would research it.

6. Discussion, consideration and possible action regarding falsification of applications for licensure

Dr. Sime recommended that if an application for licensure is falsified in any way, that it be denied and the applicant be required to reapply and pay the whole application fee again.

Dr. Sime recommended that Pam Harris present a new rule proposal regarding falsification of licensure application, denying it and having the applicant reapply and make full payment again. Dr. Perkins seconded.

Dr. Summers asked at what point does falsification become fraud. Ms. Harris gave an example of someone answering "no" when asked if they were ever convicted of a misdemeanor or felony, then does a background check and finds out they do have a past misdemeanor or felony. Ms. Harris stated that occasionally someone misreads the application.

Ms. Woodruff asked what the procedure is when a person falsifies information. Ms. Harris stated that there was no procedure in place. Ms. Harris stated it's just something that she thought needed to happen because she's observed it.

Ms. Smith stated that at the very least they would have to pay again to reapply. Dr. Summers suggested having set guidelines. Dr. Isdale asked what happens now when someone falsifies information. Ms. Smith stated if it's a criminal conviction, it goes before the L&E Committee. Dr. Isdale asked if there was no reapplication, the application stands and it just continues as if there was no falsification. Ms. Harris stated, yes, and that's what she would like to change.

Dr. Sime restated the recommendation to the Board that Pam Harris present a new rule proposal regarding falsification of licensure application, and deny the applicant licensure and require the applicant to reapply and make the whole payment.

Dr. Jensen stated they don't want them to reapply because if they falsified records, she's not sure they want them in this state as a licensee. She stated there were members who agree with that, and members who want them to have a second chance.

Ms. Harris stated this is just a matter of discussion. When the applicant reapplied, they could come before the board and present their case. Dr. Perkins stated that if they felt strongly enough about it that they needed to reapply, then give them an opportunity.

There was discussion of placement of the warning statement.

7. Requests for reinstatement of licenses:

a. Roger Hollrath, D.C.

Dr. Sime made a motion that the request for reinstatement of the license for Roger Hollrath be denied; seconded by Ms. Daughtrey.

Yeas: All voted "yes"

Nays: None

b. Erick Field

Dr. Sime made a recommendation that the request for reinstatement of license for Erick Field be denied; seconded by Dr. Minors.

Yeas: All voted "yes"

Nays: None

Dr. Sime informed the Board that Erick Field stated that he had postmarked the money order he had sent in his application and it was postmarked on July 30th. There was discussion that sometimes things can happen with the mail and that it's a gray area when someone did send it but the board never received it. Dr. Jensen recommended that anyone wanted to renew his or her license should do so on-line.

8. Requests for approval to sit for the Texas Jurisprudence exam:

a. Tyler Ray Bodin

Dr. Sime stated that Mr. Bodin was arrested on March 13th, 2004 for a misdemeanor charge of driving while intoxicated. There has been no criminal activity before or after his charge.

The Committee recommends that Mr. Bodin be granted the opportunity to sit for the jurisprudence exam, and upon successfully completing the jurisprudence exam, that license will be suspended and probated until his probation has been completed in March of 2006. Ms. Woodruff seconded.

Yeas: All voted "yes"

Nays: None

b. John Cherni

Dr. Sime stated that Mr. Cherni has been arrested four times for alcohol related offenses as follows: August 2, 1997 for underage consumption of alcohol; October 4, 2005 driving under the influence; May 21, 1999 driving under the influence reduced to reckless operation, disregard; August 24, 1999 driving under the influence.

The Committee recommended, because of the time that has elapsed since the last arrest and that he understands the seriousness of these offenses, that Mr. Cherni be granted the opportunity to sit for the jurisprudence exam. Dr. Perkins seconded.

Mr. Cherni was present and answered questions posed by board members.

Dr. Sime restated the committee's recommendation.

Ayes: All voted "yes"

Nays: None

Abstention: Dr. Minors

c. Alejandra Khit

Dr. Sime stated that Ms. Khit was arrested on December 19, 2004 for a misdemeanor Class B charge of theft, shoplifting, more than \$50 and less than \$500. There has been no criminal activity before or after this charge.

The Committee recommends that Ms. Khit be granted the opportunity to sit for the jurisprudence exam. Her license would be probated to run concurrent with any criminal sentencing she may receive. Dr. Isdale seconded.

Ms. Harris stated that Ms. Khit was not able to attend today due to financial reasons. Ms. Knit's attorney wrote to Ms. Harris indicating that they are attempting to get deferred adjudication.

Mr. Jeb Boyt stated that since Ms. Knit's charge is still pending adjudication, that the Board should deny her application at this point and let her know that she can reapply when she has completed her probation.

Ms. Harris asked if Ms. Knit does receive deferred adjudication and that she's not convicted that the Board allow her at that time, or wait until February to come before the Board again. Mr. Jeb Boyt stated that was a question for the Board.

There was more discussion about Ms. Knit's charges and that her case has not gone to court yet.

The consensus was to table this item until there is court action.

d. Jorge Nieto

Dr. Sime stated that Mr. Nieto was arrested on August 14, 2001 for a misdemeanor Class A charge of unlawful carrying of a weapon. There has been no criminal activity before or after his charge.

The Committee recommended that Mr. Nieto be granted the opportunity to sit for the jurisprudence exam. Dr. Isdale seconded.

Ms. Daughtrey asked if he was charged with illegally carrying a weapon.

Dr. Sime explained that Mr. Nieto was a police officer in Dallas and was also a security coordinator. Mr. Nieto was retiring his badge and gun on that day but was not able to surrender his gun. When he got to his security job, the Drug Enforcement Agency showed up and he had his gun on him. Mr. Nieto tried to explain that he was in charge of security and that he was giving up his gun on that day and was resigning to attend chiropractic school. It was a misunderstanding.

Yeas: All voted "yes"

Nays: None

e. Marie Ouellette

Dr. Sime stated that Ms. Ouellette has been arrested three times as follows: April 20, 2001 for mail fraud; February 11, 2004 for petty theft; April 21, 2005 for driving under the influence.

Dr. Sime stated that Ms. Ouellette is currently on probation until April fo 2006, with early termination possible at the end of October with completion of all conditions of her sentence.

The Committee recommends that Ms. Ouellette be denied the opportunity to sit for the Texas Jurisprudence exam. Ms. Daughtrey seconded.

Ms. Ouellette was present and answered questions posed by the Board.

Yeas: All voted "yes"

Nays: Dr. Isdale

C. Rules Committee

1. Approval of September 30, 2005 Rules Committee Minutes

Mr. Minors seeks approval of the September 30, 2005 Rules Committee meeting minutes. Dr. Minors stated that no action was taken.

2. Recommendation of Proposed rules required by HB 972

a. Scope of Practice Rule: §75.17

Dr. Minors stated that there were a few changes made to the rule. Dr. Minors made a motion that the Attorney General representative make these changes, and after Dr. Minors looks them over and approves them, that the rules be submitted to the Texas Registry. Ms. Daughtrey seconded.

Dr. Isdale wanted to be clear what changes were made. Dr. Minors went through the changes with the Board.

Dr. Jensen stated that Mr. Jeb Boyt had some changes also. Mr. Boyt stated that they needed to add some additional language in the preamble. He then went through what changes he wanted to make.

Dr. Minors restated the motion that the Board allow Mr. Jeb Boyt to make said changes, that after Dr. Minors approves the changes, then submit it to the Texas Register for publishing. Ms. Daughtrey seconded.

There was discussion about what kinds of changes could be made after it's submitted to the Texas Register. Mr. Boyt stated that changes could be made if there are comments submitted in support of the change. Changes can be made at the Board meeting in February.

Yeas: All voted "yes"

Nays: None

b. New Rule: §80.4 Fraud in the Practice of Chiropractic

No action taken

Mr. Boyt stated that he has prepared a memo to the Rules Committee and the Board on this matter.

Dr. Jensen tabled this issue.

c. New Rule: §75.15 Peer Review Committees

Mr. Jeb Boyt would like to go forward and publish this as a proposed rule. This rule is part of a package of rules that the Board is required to have adopted by January 1st.

Dr. Minors made a motion that the Board approves 75.15 Peer Review Committees as it appears in the Board's binders. Ms. Daughtrey seconded.

Yeas: All voted "yes"

Nays: None

3. Recommendation of Proposed Rules and other issues not required by HB 972

a. Discuss amendments to §80.1 – Delegation of Authority

No action taken

b. Facility Renewal Amendment: §74.3

Dr. Minors explained what additions are being made to the rule.

Dr. Minors made a motion that the Board accepts Rule 74.3 as it is stated in their documentation to be published. Ms. Daughtrey seconded.

Yeas: All voted "yes"

Nays: None

c. Telemarketing Regulations

Dr. Minors made a motion that Mr. Jeb Boyt draft language similar to the language to the state of Ohio concerning telephonic solicitations. Dr. Isdale seconded.

Yeas: All voted "yes"

Nays: None

4. Recommendation of Rules for Adoption:

a. Late fees amendment: §73.2

b. Continuing education amendment: §73.3

c. Approved continuing education courses amendment: §73.7

d. Inactive fees & licenses amendment: 75.7

e. Complaint procedures amendment: §75.9

f. Out of state licensure amendment: §79.1

Staff reported that no comments were received on the proposed rules. Dr. Minors made a motion that the Board adopts all of the above rules as proposed. Ms. Daughtrey seconded.

Yeas: All voted "yes"

Nays: None

5. Unresolved Rules Committee questions:

a. Are chiropractors allowed to bill out for office visits (provided they spend the time under each code) every time a patient comes in to the office? In this question, I am referring to a patient who is a PI case. (Farah Derebery)

Dr. Minors made a motion that the Board informs Ms. Derebery that, yes, so long as it is not misleading or deceptive and accurately reflects the work that is necessary and performed in accordance with Rule 75.1 Subsection (A). Dr. Summers seconded.

Yeas: All voted "yes"

Nays: None

b. Can a DC perform PT techniques including PT treatment plans? (Karen Taylor)

Dr. Minors made a motion that the Board informs Ms. Taylor that a doctor of chiropractic may develop rehabilitation treatment plans for patients in return-to-work programs, which may be similar to physical therapy treatment plans for return-to-work programs. Ms. Daughtrey seconded.

Yeas: All voted "yes"

Nays: None

c. Is the use of SpectraClear hair removal machine fall under a DC's scope of practice? (Dr. Brian Shultz)

Dr. Minors made a motion that the Board informs Dr. Shultz that the use of this machine to treat hair removal is not within the scope of practice. Dr. Isdale seconded.

Yeas: All voted "yes"

Nays: None

d. Time of service discounts (Drs. Jonathan Woodward and John Neuerburg)

Dr. Minors made a motion that the Board informs Dr. Woodward that according to Article 21.79 of the Insurance Code that time of service discounts are legal and that the decision to discount the costs of services is left up to that particular facility. Dr. Isdale seconded.

Yeas: All voted "yes"

Nays: None

Dr. Minors made a motion that the Board informs Dr. John Neuerburg that according to Article 21.79 of the Insurance Code that time of service discounts are legal.

Dr. Isdale seconded.

Yeas: All voted "yes"

Nays: None

e. Would a certified personal trainer, certified massage therapist or certified physical therapy aide meet the criteria of a "qualified and properly trained" assistant under Rule 80.1 to perform and demonstrate PT activities? (Chris Salcedo)

Dr. Minors made a motion that the Board informs Mr. Salcedo that so long as the certified therapists mentioned in his question are properly trained in the activities that they must perform and demonstrate at that facility, then they are properly trained under rule 80.1.

Dr. Perkins seconded.

Yeas: All voted "yes"

Nays: None

f. Sleep disorders (Gary Whitaker, D.C.):

- i) Specific training and certification for sleep disorder available
- ii) Can a chiropractor own and operate a sleep disorder clinic?
- iii) Can a chiropractor order, evaluate, and prescribe treatment for sleep disorder (i.e. sleep apnea) – specifically perform sleep disorder testing, prescribe and dispense a c-Pap machine?

Dr. Minors made a motion that the Board informs Dr. Whitaker that, as far as his first question is concerned, yes, but only to the extent resulting from bio-mechanical or musculoskeletal conditions or the effects of subluxation complex, and that he may refer patients to a sleep disorder clinic.

Dr. Minors stated that No. 2 is not within the scope, and that No. 3 the answer would be no.

Ms. Daughtrey seconded.

Yeas: All voted "yes"

Nays: None

g. Is manipulation under anesthesia (MUA) under the scope of practice for chiropractors in the State of Texas? (Jerald Kelly, DC and Ester Scoggins, CRNA)

Dr. Minors made a motion that the Board inform Dr. Jerald Kelly and Ms. Ester Scoggins that we are still investigating manipulation under anesthesia, and that the previous opinion from January 25, 2002 still stands concerning MUA, as it is within scope.

Dr. Jensen stated that they don't need a motion or maybe making a motion that the Board is requesting an AG opinion. Mr. Boyt stated that the Board needed to discuss these larger issues. Mr. Jeb Boyt restated the motion that the Board is continuing to review the question of the MUA at this time and that pending the outcome of the Board's review, the Board is standing by its previous opinion that MUA is in the scope. Dr. Summers seconded.

Mr. Boyt stated that the Board is in a bit of a dilemma because changes in House Bill 972 specify that the Board amend the definition of surgical procedures, that is surgical procedures that are not within the scope of practice to now be referenced procedures that are identified in the Centers for Medicaid Services Codebook. The Centers for Medicaid Services have adopted without change or much consideration the American Medical Association CPT Codebook. Under the CPT Codebook, manipulation under anesthesia is a surgical procedure.

Mr. Boyt stated that an interim charge has been delivered to the House Public Health Committee to look at scope of practice questions. Mr. Boyt recommends that the Board President write a letter to Representative Delisi laying this issue out before the committee.

Dr. Minors made a motion that the Board seek an AG opinion and refer this to the Public Health Committee. Ms. Daughtrey seconded.

Dr. Jensen restated the two motions on the table. First motion is that the Board observe the current opinion on MUAs, that the Board does permit it and it is within the scope of practice.

Yeas: All voted "yes"

Nays: None

Dr. Jensen restated the second motion that the Board requests an AG opinion. Dr. Minors added, "and to refer this matter to the Public Health Committee."

Yeas: All voted "yes"

Nays: None

h. Is an IRB, log and patient consent form still required and if so where do I get it? Are there restrictions on a chiropractor for the use of LLLT, or Laser Hair Removal Lasers? (Dr. Higbee)

Dr. Minors made a motion that the Board informs Dr. Higbee that IRB, log and patient consent forms are no longer required when using the low light laser, and that there are restrictions when chiropractors are using low light laser therapy, such as due diligence and being aware of contraindications; and that laser hair removal lasers are not within the scope. Dr. Isdale seconded.

Yeas: All voted "yes"

Nays: None

i. Are there any rules which regulate chiropractic office records (Dr. Ronald R. McDaniel, D.O.)

Dr. Minors stated that this question was tabled.

j. Electrodiagnostics (Michelle Yungblut)

Dr. Minors made a motion that the Board informs Ms. Yungblut that electrodiagnosis will be addressed under scope of practice. The prior opinion still stands, and that the hours for a neurology diplomate or other diplomate, if approved, may be applied to continuing education hours.

Dr. Summers seconded.

Yeas: All voted "yes"

Nays: None

k. Digitized and electronically stored documents? (Dr. Jonathan Woodward)

Dr. Minors made a motion that the Board informs Dr. Woodward that digitizing and electronically storing documents is legal under Texas Administrative Code Title 22, Part 3, Chapter 80.5; and the same for MRIs and x-ray film.

Dr. Perkins seconded.

Yeas: All voted "yes"

Nay: None

l. Veterinary chiropractic (Dr. Bill Ormston, DVM)

Dr. Minors stated that they are tabling the input on animal chiropractic.

Dr. Jensen recognized Mr. Ron Allen, the executive director of the Veterinary Board, and their legal counsel.

D. Enforcement Committee

1. There are 204 pending cases (excluding those recommended for closure)

Dr. Isdale stated that there are 198 pending cases, included in those pending cases are some cases that are pending with the attorneys. The enforcement division has recorded 37 new complaints and 24 of those have been closed. There are three investigations involving travel to conduct investigations.

Mr. Boyt informed the Board of new information on Case No. 106-033. Mr. Boyt stated that this person had been convicted and sent to prison and that it's required under the statute and rules that the Board remove his license.

Dr. Isdale made a motion to revoke the license in reference to Case 106-033 based on the conviction and imprisonment. Dr. Sime seconded.

Yeas: All voted "yes"

Nays: None

Forum for licensees or the general public to address the Board

Dr. Jensen invited anyone to address the Board about any issues. None requested at this time.

Items for future agenda and meeting dates

Dr. Jensen requested that all tabled and future items be placed on the agenda for the next board meeting, which is scheduled for Thursday, February 23, 2006.

Adjournment

Dr. Minors moved to adjourn the meeting. Dr. Jensen seconded.

The meeting adjourned at 3:08 p.m.

Respectfully submitted,

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