

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

**MINUTES FOR THE RULES COMMITTEE MEETING HELD ON
AUGUST 1, 2005.**

DR STEVE MINORS CALLED THE MEETING TO ORDER AT 10:05 A.M.
DR. MINORS STATED THAT THERE WAS A QUORUM PRESENT.

BOARD MEMBERS PRESENT INCLUDED:

Present: Steve Minors, D.C. (Chair)
Serge P. Francois, D.C.
Narciso Escareno (not present)
Marcia Daughtrey

GUESTS PRESENT INCLUDED:

Guests: Jeb Boyt-Assistant to the Office of the Attorney General
Stephanie Magers-Office of the Attorney General intern
Patte Kent-Texas Chiropractic Association
Michael Martin, D.C.-Texas Chiropractic Association
Bob Hollander, D.C.-Texas Chiropractic Association
Jason Flanagan, D.C.-Texas Chiropractic College
Jennifer Riggs-Texas Chiropractic Association
David Miller-MS
Traci Meadows-Safeco Insurance Co.

THE FOLLOWING ITEMS WERE DISCUSSED:

I. Presentation given by Texas Chiropractic Association

Dr. Bob Hollander from the Texas Chiropractic Association stated that the Texas Chiropractic Association is here as a resource for development of the scope of practice rules. Dr. Michael Martin presented a draft of scope of practice rules for discussion.

Dr. Jason Flanagan, Dean of Academic Affairs at the Texas Chiropractic College, stated that the college was also available as a resource for the development of the scope of practice rules.

II. New Rules required by HB 972:

A-Scope of Practice:

1- Review of relevant statute requirements.

Dr. Steve Minors stated Section 201.1525: Rules Clarifying Scope of Practice of Chiropractic, section B states “The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.”

2- Clarify and list the groups that will be affected by additional/modified rules.

Dr. Steve Minors stated the groups that will be affected will be schools and professional organizations such as the Texas Chiropractic Association. The Board members agreed on this issue.

Mr. David Miller, a law firm representative, reported that the insurance industry will also be affected. Mr. David Miller requested that the insurance industry be added to the carriers (TCA and TCC as mentioned above). Dr. Steve Minors requested an open forum to give input from the stakeholders. As citizens of Texas and as stakeholders, the rule will mandate what type of supervision is needed.

3- How will these groups be contacted?

Dr. Steve Minors stated that a letter will be sent out to the various stakeholders. This letter will inform stakeholders of opinions and be directed to the TBCE website. Mr. Jeb Boyt stated that by using an informal rulemaking process, the stakeholders and the public will have an opportunity to review and comment. Dr. Steve Minors stated the Board should get something in writing from Mr. David Miller and others by 8/18/05 and put together a draft rule.

Mr. Jeb Boyt stated that if the preliminary comments were received by 8/18/05, a draft rule could be available in time for the 8/25/05 Board meeting. The draft rule could then be circulated for comments by October 1, 2005. Dr. Steve Minors stated this rule should be taken to the formal Board for a decision and get authorization.

A-Scope Questionnaire Form.

Dr. Steve Minors discussed the scope of practice questionnaire that was previously on the TBCE website. Dr. Steve Minors questioned Ms. Sandra Smith as to why this form is no longer on the website. Dr. Steve Minors and Dr. Serge Francois stated that the Board should prepare some form that will streamline the scope of practice questions.

Discussion of and possible approval of unresolved scope of practice Questions:

A-Percutaneous Neuromodulation Therapy (Dr. Jay Triano).

Mr. Jeb Boyt stated that after September 1, 2005, HB 972 will be in effect. The Board will defer acting on this issue at this time, due to the use of needles and the scope of practice rule. Mr. Jeb Boyt stated that the Board needs to complete an analysis. Dr. Steve Minors questioned why the Board should wait to decide on PNT.

Motion: Dr. Steve Minors made the motion to decide PNT is within scope. Dr. Serge Francois abstains. Mrs. Marcia Daughtrey-yeah.

Mr. Jeb Boyt questioned if the committee's determination was that PNT is within acupuncture. Dr. Steve Minors stated, yes, candidate to acupuncture and electric stimulation. Mr. Jeb Boyt questioned if the Board believes PNT is not an incisive surgical procedure. Dr. Steve Minors responded, yes.

The committee affirmed that PNT is not an incisive surgical procedure.

B-Time of service cash discounts (Dr. Richard Gillespie).

Dr. Steve Minors asked whether the Board have any official statement as to whether or not cash discount can be given at time of service. Dr. Steve Minors stated the Board needs to look at 21.79(e) more closely.

Tabled.

C-Public records used to solicit motor vehicle accident victims (Dr. Omid Soltani).

Dr. Steve Minors asked whether it is ethical or legal for a chiropractor like myself or a staff to obtain public records to find P.I. patients and send them report about how they could be suffering from soft tissue injuries and the benefits of chiropractic care. Mr. Jeb Boyt stated that the previous statute addressing this issue had been found to be an unconstitutional limitation on commercial speech.

Dr. Steve Minors stated that a letter to Dr. Soltani will be generated stating why it is legal and state the Board views it as unethical.

D-Quality Assurance.

Dr. Steve Minors stated this issue will remain on the list and will not have a timeline. This agenda item will be put into rule at a later date. This particular issue will require revisions and more time. Dr. Steve Minors stated that he was unsure if there was enough time to cover this issue at the next full Board meeting.

Tabled indefinitely.

5-Further discussion and course of action.

Information only.

B-Fraud:

1-Review of relevant statute requirements.

Dr. Steve Minors stated HB 972, Section 9 Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows: Section 201.1555. Fraud (a) “The Board shall strictly and vigorously enforce the provisions of this chapter prohibiting fraud. (b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to: (1) the filing of workers’ compensation and insurance claims; and (2) records required to be maintained in connection with the practice of chiropractic.”

Dr. Steve Minors questioned Ms. Sandra Smith on how long the Board is required to keep records, six or seven years. Ms. Sandra Smith responded six years based on HIPAA forms. Dr. Serge Francois questioned if there was some form of agency relationship with TDI. Dr. Steve Minors questioned if HIPAA should be a part of the records retention schedule.

(Out of Order)

3-Clarify and list the groups that will be affected by additional/modified rules.

Dr. Steve Minors stated that schools such as Texas Chiropractic College and Parker, along with TDI and TCA, will be interested stakeholders.

2-What type(s) of fraud is TDI experiencing with doctors of chiropractic?

Mr. Doug Ferris reported that between himself and the fraud investigator at TDI, everything is in process. Ms. Marcia Daughtrey stated coding problems are a

concern. Dr. Steve Minors stated that to receive information from the Enforcement committee this would be beneficial. Dr. Steve Minors also stated that the Board needs to acquire stakeholder input from TCA, TCC, TDI, Parker Chiropractic College, Carrier Trade Association, and law firms. Dr. Michael Martin requested that the committee also consider Insurance carriers. Mr. David Miller stated consumers in general also create a fraud issue.

4-Research statutes/rules in other states pertaining to fraud.

Mr. Jeb Boyt stated that he will have to research further and will have information by the August 25, 2005 Board meeting.

5-Further discussion and course of action.

Information only.

C-Peer Review:

1-Review of relevant statute requirements.

Dr. Steve Minors stated that according to HB 972 Section 291.252, Occupations Code, section D, “the board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have: (1) a clean disciplinary record; and (2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.” Dr. Minors questioned Mr. Jeb Boyt if he had a copy of the Insurance Code. Due to the length of the code, Mr. Jeb Boyt stated he will have copies at the next Board meeting.

Tabled.

2-Discuss eligibility requirements.

Tabled.

3-Discuss training programs for Peer Reviewers.

Tabled.

4-Discuss the Peer Reviewer’s role in the standards of care investigation.

Tabled.

5-Further discussion and course of action.

Tabled.

(Out of Order)

D-Rule 73.4 and 75.7 re: Inactive licenses:

Dr. Steve Minors questioned Ms. Sandra Smith for information regarding this agenda item. Ms. Sandra Smith responded that she will do further research for the next Board meeting.

1-Review of relevant statute requirements.

Tabled.

2-Further discussion and course of action.

Tabled.

E-Temporary Suspension:

1-Review of relevant statute requirements.

2-Further discussion and course of action.

Mr. Jeb Boyt reported that there were two Enforcement cases taken to the State Office of Administrative Hearings in the Spring in regards to temporary suspension.

Ms. Jennifer Riggs stated temporary suspension sometimes can take additional timing, and that the Board needs to consider on having a higher standard of proof than preponderance of the evidence. Mrs. Marcia Daughtrey questioned higher standards versus preponderance. Ms. Jennifer Riggs stated not the quality, but the strength of the evidence.

Dr. Steve Minors stated this issue needs to be taken to the Board regarding preponderance of evidence, but leave here for now.

12:30 P.M. break

12:40 P.M. reconvene from break

(Out of Order)

C-Peer Review (continued):

Motion: Dr. Steve Minors made a motion to table this agenda item. Dr. Serge Francois seconded the motion.

Yeas: All voted, "yes."

Nays: None.

F-Complaints:

1-Review of relevant statute requirements.

Dr. Steve Minors stated that under Section 11. Section 201.205 (a), Occupations Code, (2) “require the board to prioritize complaints for purposes of determining the order in which they are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.” Dr. Steve Minors stated the same language is used. A general priority list is recommended.

2-Prioritize complaint categories.

Dr. Steve Minors stated that a list of categorizing complaints needs to be in writing. Ms. Sandra Smith reported the Board already has complaint categories in place and that are prioritized, a complaint matrix is already in place. Ms. Sandra Smith referred the agenda item to Mr. Doug Ferris.

3-Further discussion and course of action.

The matrix simplifies the complaint categories.

(Doug Ferris retrieved the matrix).

(Delayed)

G-College facility registration:

1-Review of relevant statute requirements.

Dr. Steve Minors stated Rule 74.2 (h) “this chapter does not apply to hospitals or public health clinics registered with the Texas Department of Health or another state agency, or a chiropractic facility owned and operated by a Texas college of chiropractic as part of its chiropractic internship program.” Dr. Steve Minors stated this issue required more information.

Tabled.

H-Increase to 90 semester hours of college courses at a non-chiropractic school.

1-Clarify in comparison to CCE.

Dr. Steve Minors stated under Section 20 of HB 972, Section 201.302 of the Occupations Code, is amended to provide (a) “an applicant for a license by examination must present satisfactory evidence to the board that the applicant...(3) has completed 90 (60) semester hours of college courses at a school other than a chiropractic school; and (d) notwithstanding Subsection (a)(3), if the Council on Chiropractic Education or another national chiropractic education accreditation organization recognized by the board requires a number of semester hours of college courses at a school other than a chiropractic school is greater or less than the number of hours specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.”

Dr. Steve Minors requested language from Mr. Jeb Boyt in regards to the amendment of the Board rule 71.3, increase the number of hours.

Dr. Michael Martin questioned if it has to do with time of licensure. Dr. Steve Minors responded that the licensee is held responsible for the criteria at that point in time. Dr. Martin stated in raising the semester hours from 60 to 90, those who come into Texas recently, would they be able to come to the state by reciprocity due to substantially equivalent? Ms. Sandra Smith stated that the new ones need to make sure education is equivalent.

Mr. Jeb Boyt will do language amending 79.1 for the Board meeting.

(Out of Order)

F-Complaint (continued)

Dr. Steve Minors gave an example of a student at Moody Health Center under a DC license practicing without a chiropractic license manipulation? What does this mean? The person has not completed all criteria to become a DC. Dr. Serge Francois clarified a graduate of a chiropractic college, but is not licensed, he or she will not be able to practice nor do manipulation unless under a preceptorship program? Dr. Serge Francois stated what does he/she present them as? Cannot call DC, this would be a violation.

Mr. David Miller questioned cease and desist authority. What can the Board do to a person who calls himself a DC and has name with DC on business card? An example of categorizing complaints, category 1 or 2, depends on how the actions fall. Revocation \$1000/day, as per Ms. Sandra Smith. Ms. Sandra Smith stated with one staff in Enforcement and many mass dockets, this would be a penalty. Complaints are prioritized. Ms. Patte Kent stated the matrix was created in 1995 and was brought before the Board.

No action.

Mr. Jeb Boyt will include the language as to how the Board shall prioritize complaints in 75.9. Dr. Steve Minors questioned if complaints can fall under multiple categories. Ms. Sandra Smith stated will need to rely on previous rulings. Dr. Michael Martin stated to reference the matrix list, giving the priorities of complaints.

Motion: Dr. Steve Minors made a motion. Dr. Serge Francois seconded the motion.

Yeas: All voted, "yes."

III. Public Comment

There was no further public comment.

IV. Adjournment

Motion: Dr. Serge Francois moved to adjourn the meeting. The motion was seconded.

Yeas: All voted "yes."

The meeting adjourned at 1:25 P.M.