

Summary of Minutes from May 24, 2007 Board Meeting

The Texas Board of Chiropractic Examiners (the Board) met in a regularly scheduled board meeting on May 24, 2007. The meeting was held in the William Hobby Building, Tower 2, Room 225 located at 333 Guadalupe Street, Austin, Texas 78701. A tape recording of the meeting was made and is on file at the Board offices. This is a summary of the minutes of that meeting.

Agenda Item 1: Call to Order and Roll Call

Dr. Sandra Jensen, Board Chair, called the meeting to order at 1:07 PM and passed the gavel to Dr. Kenneth Perkins, who has recently been appointed as board president by Governor Rick Perry. Dr. Perkins called the roll of board members. Members present were:

Dr. Kenneth Perkins, President
Dr. Sandra Jensen (Immediate Past President)
Dr. Scott Isdale (Vice President)
Dr. Steve Minors (Secretary)
Ms. Marcia Daughtrey
Mr. Narciso Escareno (arrived after roll call)
Dr. Kathleen Summers

Board members not present were:

Dr. David Sime (excused)
Ms. Kenya Woodruff (excused)

Also present were:

Jeb Boyt, Assistant Attorney General & Board Counsel
Glenn Parker, Executive Director
Pam Harris, Director of Licensing
Mary Feys, Enforcement Assistant
Anita Wilkerson, Administrative Assistant
Scott Parker
Jennifer Hertsenberg

Action Taken: Dr. Perkins determined that a quorum was present and moved to Agenda Item #2.1

Agenda Item 2:1: Approval of Minutes for Board Meeting held on November 16, 2006.

Action Taken: Minutes from the November 16, 2006 board meeting were reviewed and approved.

Agenda Item 2:2: Approval of Minutes for Board Meeting held on February 22, 2007.

Action Taken: Minutes from the February 22, 2007 board meeting were reviewed and approved.

EXECUTIVE COMMITTEE (Dr. Kenneth Perkins)

Agenda Item 3.1: President's Report

Dr. Kenneth Perkins presented Agenda Items 3.1.1-3.1.7 to the Board as summarized below.

Agenda Item 3.1.1: FCLB Annual Conference in St. Louis May 2-6, 2007 and NBCE Annual Business Meeting in St. Louis, May 4, 2007

Action taken: None. Dr. Perkins reported on the FCLB and NBCE meetings attended by himself and Executive Director Glenn Parker in St. Louis on behalf of the Board.

Agenda Item 3.1.2: NBCE Part IV Exams and Exam Test Committee

Action Taken: None. Dr. Jensen and Dr. Minors reported on their participation in the administration of Part IV of the NBCE Examination. Dr. Perkins reported on the NBCE Part IV Examination Committee meeting held in Greeley, Colorado on June 15, 2007.

Agenda Item 3.1.3: Senate Confirmation of board members Dr. Perkins, Dr. Summers and Ms. Woodruff

Action taken: None. Glenn Parker reported that the appointment of Dr. Perkins, Dr. Summers and Ms. Woodruff to the Board had been confirmed by the Senate.

Agenda Item 3.1.4: TCA Convention in the Woodlands

Action Taken: None. Dr. Perkins announced that the Texas Chiropractic Association will hold its 92nd annual convention in the Woodlands on June 7-10 and that he will attend on behalf of the board.

Agenda Item 3.1.5: Committee appointments, election of officers and designation of delegates to FCLB and NBCE to occur after Governor appoints new board members.

Action Taken: Dr. Perkins recommended and the Board confirmed the appointment of Dr. Jensen to the L&E Committee. Election of officers and other committee appointments will be deferred until the Governor appoints new members.

Agenda Item 3.1.6: Other Items of Interest to the Board

Action Taken: None. This item was for information only. Dr. Perkins announced that Texas chiropractic Oliver "Buddy" Smith, Jr. has been named as president of the Federation of Chiropractic Licensing Boards. Dr. Smith is also a past president of the Texas Board of Chiropractic Examiners.

Agenda Item 3.1.7: Farewell to outgoing Board members Dr. Jensen, Dr. Minors, and Mr. Escareno

Action taken: None. Executive Director Glenn Parker expresses appreciation to the outgoing board members and presented them with awards. (Note: Board member Mr. Escareno left the meeting at this point due to other obligations.)

Agenda Item 3.2: Executive Director's Report

Action Taken: None. Executive Director Glenn Parker presented oral and written materials for Agenda Items 3.2.1 – 3.2.3. Action taken: None. All of the items were for informational purposes only. Items discussed by Mr. Parker included the following:

Agenda Item 3.2.1: Introduction of new staff members Scott Parker (Director of Enforcement) and Jennifer Hertsberg (Administrative Assistant for Licensing)

Agenda Item 3.2.2: Retirement of Vera Gonzales

Agenda Item 3.2.3: Update on agency activities including:

- A. recent personnel changes
- B. an agency audit by the Civil Rights Division of the Texas Workforce Commission (the agency was found to be in compliance)
- C. Progress in recording and resolving complaints
- D. Agency appropriations for the 2008-2009 biennium as found in HB 1, 80th Leg.
- E. Progress on new agency database
- F. Pending story regarding the agency in the Fort Worth Star Telegram

Agenda Item 3.3: Update on Legislative Activities and Bills Filed for 80th Legislature

Action Taken: None.

Executive Director Glenn Parker presented oral and written materials for Agenda Item 3.3 concerning bills of interest to the Board, including the passage of SB 776 which amended the Chiropractic Act to make clear that hours earned in accredited undergraduate programs at colleges that also offer doctor of chiropractic degrees are acceptable in meeting the required 90 hours of undergraduate work for admission to a chiropractic degree program

Agenda Item 3.4: Update on ACN issues and

Action taken: None.

Mr. Jeb Boyt reviewed a draft of a letter and set of questions that the Board will be sending to ACN to continue to convey the Board's concerns about the manner in which ACN is working with doctors of chiropractic who participate in the ACN systems and the effect that ACN's policies are having on doctors of chiropractic and on their patients.

LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE *(David Sime, D.C)*

Agenda Item 4.1: New licenses issued since last Board Meeting

The L&E Committee reported that the Board has issued 89 new DC licenses for the period February 22 through May 24, 2007. Of those, 56 licensees are male and 33 are female. Action Taken: None. This item was for informational purposes only.

Agenda Item 4.2: Jurisprudence Exam Statistics since the last Board Meeting

The L&E Committee reported the Jurisprudence Examinations statistics for the period of February 22 through May 24, 2007. A total of 97 examinations were administered, with 84 candidates passing and 13 candidates not passing. Of the 50 examinations, 8 were re-taking the examination after a prior failure. The 97 examination candidates included 31 females and 66 males.

The Committee also reported that the 97 examinees came from 12 different schools of chiropractic, including 58 candidates from the Parker College of Chiropractic and 17 candidates from Texas Chiropractic College.

Action Taken: None. This item was for informational purposes only.

Agenda Item 4.3: Request by Kyle Raymond Knapp to take the Jurisprudence Examination for the third time in the same calendar year

Action Taken: The Board unanimously denied Mr. Knapp's request to take the Jurisprudence Examination for the third time during calendar year 2007. This action was taken in compliance with Board Rule §71.10.

Agenda Item 4.4: Request to receive a license after having taken and passed the Jurisprudence Examination and then being arrested: for applicant BAC.

Action Taken: None. The case against applicant BAC was dismissed. This agenda item was withdrawn.

Agenda Item 4.5: Requests for Approval to Sit for Jurisprudence Examination

Agenda Item 4.5.1 – Joseph Francis Cacoza, III

Action Taken: Board approved a motion to allow Mr. Cacoza to sit for the Jurisprudence Examination. If he passes the examination he will be granted a license contingent upon Mr. Cacoza signing an Agreed Order probating his license through for a period of two (2) years (24 months).

Agenda Item 4.5.2 – Frances W. Cox

Action Taken: The Board approved a motion to allow Mr. Cox to sit for the Jurisprudence Examination.

Agenda Item 4.5.3 – Gillian Patricia Elliott

Action taken: The Board approved a motion to allow Dr. Elliott to sit for the Jurisprudence examination. (Note: the agenda item was considered after the approval of the minutes in agenda item #2 in consideration of Dr. Elliott's travel arrangements.)

RULES COMMITTEE (*Steve Minors, D.C. - Chair*)

Agenda Item 5.1: Proposed Rules Eligible for adoption

Agenda Item 5.1.1: Consideration of adoption of amendment to Rule §75.2 regarding patient abandonment.

Action taken: The Board approved the adoption of the amendments to Rule §75.2 as published in the March 23, 2007 edition of the *Texas Register* without changes.

Agenda Item 5.1.2: Consideration of adoption of amendments to Rule §75.7 (fees and fee graphic) regarding proposed new fees for sales of statutes and rules booklets and for a Board-sponsored online jurisprudence review course.

Action Taken: The Board approved the adoption of the amendments to Rule §75.2 as published in the April 13, 2007 edition of the *Texas Register* without changes.

Agenda Item 5.1.3: Consideration of adoption of the amendments to Rule §73.3 (Continuing Education) regarding the increase from 2 hours to 8 hours for the maximum number of continuing education hours that a doctor of chiropractic may earn each year for serving as an examiner for the National Board of Chiropractic Examiners Part IV examination.

Action Taken: The Board approved the adoption of the amendments to Rule §73.3 as published in the March 30, 2007 edition of the *Texas Register* without changes.

Agenda Item 5.2: Consideration of proposal to amend §Rule 80.1 – Delegation of Authority

Action Taken: The Board approved a motion to propose amendments to Rule §80.1 concerning the delegation of authority to assistants and other employees, pending final wording of certain sections to be agreed upon by General Counsel and the Rules Committee. (Note: The wording of the proposed rule amendment was not finalized after the board meeting. This proposed rule will be brought back to the Rules Committee and to the Board for consideration on August 16, 2007.)

Agenda Item 5.3: Consideration of proposal to amend Rule §77.2 (publicity) regarding telemarketers

Action Taken: The Board approved a motion to propose amendments to Rule §77.2 that would require doctors of chiropractic and their agents to maintain certain written information concerning the marketing of services and solicitation of patients by telephone. The proposed rule amendments will be published in the *Texas Register*.

Agenda Item 5.4: Review and discussion of proposed Rule concerning Chiropractic Specialties

Action taken: The Board approved a motion to propose new Rule §71.13 Chiropractic Specialties and publish it in the Texas Register. The proposed new Rule §71.13 creates a process by which interested parties may petition the Board to recognize certain practice areas as board-recognized chiropractic specialties.

Agenda Item 5.5: Proposed MOU with Veterinary Board regarding Animal Chiropractic

Action taken: None. General Counsel Jeb Boyt reported to the Board that the Board of Veterinary Medical Examiners would meet on June 14 2007 and would consider the proposed MOU at that time. (Note: At the June 14, 2007 meeting the TBVME subsequently declined to approve the proposed Memorandum of Understanding with the Board of Chiropractic Examiners concerning the practice of “animal chiropractic.”)

Agenda Item 5.6: Discussion Items concerning Rules Committee

Action Taken: None.

Dr. Minors informed the Board that the Rules Committee will continue to look into the following issues:

- Agenda Item 5.6.1 The advertising of Spinal Decompression Therapy
- Agenda Item 5.6.2 University of Houston study to measure education at chiropractic colleges
- Agenda Item 5.6.3 Other issues (no discussion)

Agenda Item 5.6: Unresolved Questions

Action taken: None. There were no unresolved questions considered at the May 24 meeting.

Agenda Item 5.7: Future Items for Discussion

Action taken: None. No discussion.

ENFORCEMENT COMMITTEE (Scott Isdale, D.C. – Chair)

Agenda Item 6.1: Summary of Current Pending Cases/Complaints

The Enforcement Committee reported that, as of May 3, 2007, there were 267 unresolved cases outstanding. A break down of the open complaints by primary charge was also presented

Action taken: None - There item was for informational purposes only.

Agenda Item 6.2: Summary of May 3, 2007 Enforcement Committee Hearings

The Enforcement Committee reported that the Committee had met on May 3, 2007 and had considered 45 cases. Disciplinary action was recommended in 13 of the cases.

Action taken: None. This item was for informational purposes only.

Agenda Item 6.3: Update on cases in which respondents are requesting SOAH hearings or in which the Board has received no response to proposed Agreed Orders

Dr. Isdale informed the Board that, as of April 30, 2007, the Board had 40 cases for which the next step in the disciplinary process is to request a SOAH hearing. Of those 40 cases, 13 respondents had officially requested a SOAH hearing and the remaining 27 individuals had not responded at all to the Enforcement Committee's offer of a proposed Agreed Order.

Action taken: None. This item was for informational purposes only.

Agenda Item 6.4: Consideration of SOAH Proposals for Decisions

There were no PFDs for consideration at this meeting.

Action Taken: None.

Agenda Item 6.5: Consideration of Accepted Agreed Orders

Action taken: The Board considered and approved the following Agreed Orders:

- Agenda Item 6.5.1 Case #105-60 Lic #4946
- Agenda Item 6.5.2 Case #106-108 Lic #9183

Agenda Item 6.6 Recommendation to Approve or Deny Requests to Expunge Records

Action taken: The Board approved the requests to expunge disciplinary records in regards to the following cases:

- Agenda Item 6.6.1 Case #103-131
- Agenda Item 6.6.2 Case #101-085
- Agenda Item 6.6.3 Case #103-126
- Agenda Item 6.6.4 Case #104-057
- Agenda Item 6.6.5 Case #104-96

Agenda Item 7: Executive Session

The Board met in Executive Session from 2:10 PM until 2:22 PM and heard information concerning the following items:

- Agenda Item 7.1 Texas Medical Association lawsuit against the Board
- Agenda Item 7.2 SOAH Case #103-04
- Agenda Item 7.3 Request of AG Opinion concerning the definition of "surgical procedure" as it applies to the Chiropractic Act

Action Taken: None. No votes were taken on any items during the Executive Session and no votes concerning these items were taken when the Board returned to the open session.

Agenda Item 8: Public Comment

Action Taken: None. The Board heard comments from interested parties. The Texas Chiropractic Association spoke in support of HB 1519 regarding prohibiting the solicitation of patients until 30 days after an accident.

Agenda Item 9: Call for Future Items

Action Taken: Dr. Perkins asked Board members and others to submit requests for future agenda items to either Executive Director Glenn Parker or to himself.

Agenda Item 10: Meeting Reminders

Action Taken: Dr. Isdale reminded the board members and staff of future Enforcement Committee meetings set for June 21 and July 19, 2007. The next Board meeting is set for August 16, 2007.

Agenda Item 11: Adjournment

Dr. Perkins adjourned the May 24, 2007 board meeting at 2:37 PM.

Statement:

I affirm that the above is a true and correct rendering of the minutes for the Texas Board of Chiropractic Examiners Board Meeting held on the above referenced date. These minutes were approved by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held:

August 16, 2007.

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners

Date