

**MINUTES FROM BOARD OF CHIROPRACTIC EXAMINERS  
BOARD MEETING HELD ON NOVEMBER 1, 2007**

The Texas Board of Chiropractic Examiners (the Board) met in a regularly scheduled board meeting on November 1, 2007. The meeting was held in the William P. Hobby Building, Tower 2, Room 225 located at 333 Guadalupe Street, Austin, Texas 78701. A recording of the meeting was made and is on file at the Board offices. This is a summary of the minutes of that meeting.

**1. CALL TO ORDER AND ROLL CALL**

*Dr. Kenneth Perkins, D.C., President (or Presiding Officer)*

**Action Taken:** Board President Dr. Kenneth Perkins called the board meeting to order at 12:38 PM and determined that a quorum was present. All board members were present with the exception of Ms. Marcia Daughtrey, who was ill. The Board voted to excuse Ms. Daughtrey's absence. Also present were General Counsels Jeb Boyt and Joe Thrash. Staff members present were Glenn Parker, Executive Director; Pam Harris, Director of Licensing; Scott Parker, Director of Enforcement, and Jennifer Hertsenberg, Administrative Assistant.

**2. APPROVAL OF MINUTES**

*Dr. Kenneth Perkins, D.C.*

Approval of minutes from the August 26, 2007 board meeting.

**Action Taken:** The Board reviewed and approved the minutes from August 16, 2007 Board Meeting.

**3. PUBLIC COMMENTS**

*Dr. Kenneth Perkins, D.C.*

Forum for licensees, the general public or other interested stakeholders to address the Board.

**Action Taken:** Dr. Perkins opened the floor for public comments. There were no comments received at this meeting.

**4. EXECUTIVE COMMITTEE BUSINESS**

*Dr. Kenneth Perkins, D.C.*

4.1 President's Report (*Dr. Perkins*)

Dr. Perkins commented that United Health Care had rescinded its proposed policy to exclude treatment of children from services for which it would reimburse doctors of chiropractic.

4.2 Executive Director's Report to include update on agency activities  
(*Glenn Parker*)

Executive Director Glenn Parker presented a written and an oral report on agency activities including the FY 2007 Performance Measures Report and the number of outstanding complaints. Mr. Parker also announced that the agency has been removed from the Comptroller's pre-payment audit list and is now able to pay its bills without prior approval and review. Mr. Parker also informed the Board that the staff has begun the process of imaging the original paper license application files for the currently licensed doctors of chiropractic (about 5,000 records). This project should eventually empty more than a dozen file cabinets.

4.3 Senate Bill 29 and Changes to Professional Profile System (*Glenn Parker*)

Executive Director Glenn Parker informed the Board of the passage of SB 29 and, as a result, of the planned implementation of changes to the Professional Profile System that is currently available through DIR for DCs to inform the public of their practice. The Profile system will be used to gather information that is required by SB 29 concerning licensed health professionals and will be used in a statewide study of health professionals in Texas. The project will be coordinated by the Department of Information Resources.

4.4 Doctors of Chiropractic as Emergency Responders (*Dr. Summers & Mr. Parker*)

Mr. Glenn Parker directed Board members to the materials under Agenda Item 4.4 concerning the establishment of a list of emergency responders (health care professionals) in Texas. Dr. Kathleen Summers updated the Board on her discussion with other entities in an effort to make it easier for DCs to be included in this project.

4.5 Letters to MedSolutions and United Health Care (*Glenn Parker*)

Mr. Glenn Parker informed the Board of a letter that he had sent to MedSolutions Inc. in Franklin, Tennessee to inform them that it is within the scope of practice for licensed DCs in Texas to take and interpret x-rays, MRIs, CT scans and other images. Mr. Parker has provided a copy of a letter from the Texas Chiropractic Association to United Healthcare protesting UHCs announced policy to not reimburse DCs for treatment of adolescents and children or for the treatment of headaches.

4.6 Establishment of agency newsletter and associated fee

**Action Taken:** The Board unanimously approved a proposal to amend the fee schedule found in Rule 75.7 to include an \$8.00 annual fee for an agency newsletter. The proposed rule amendment will be published in the Texas Register for comments.

4.7 Establishment of Peer Review Committees (*Glenn Parker*)

Executive Director Glenn Parker informed the Board that the staff will continue to work on developing procedures for the establishment of local peer review committees and an executive peer review committee.

## 5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

*Dr. David Sime, D.C.*

### 5.1 New chiropractic licenses issued since last Board Meeting

Dr. Sime presented data on the number of new chiropractic licenses issued since the last board meeting.

### 5.2 Jurisprudence Exam Statistics since the last Board Meeting

Dr. Sime presented data on jurisprudence examination statistics since the last board meeting.

### 5.3 Requests for approval to sit for jurisprudence exam:

#### 5.3.1 Michael Anderson, New Applicant

**Action Taken:** The board considered and approved without opposition the request by Mr. Michael Anderson to be allowed to sit for the Jurisprudence Examination.

## 6. RULES COMMITTEE BUSINESS

*Dr. Steve Minors, D.C.*

### 6.1 Proposed Rules Eligible for Adoption

#### 6.1.1 Consideration of adoption of proposed amendments to Rule §80.1 regarding delegation of authority

**Action Taken:** The board considered and approved without opposition a motion to adopt previously proposed amendments to Rule 80.1 regarding the delegation of authority as previously published in the Texas Register.

#### 6.1.2 Consideration of adoption of proposed new Rule 71.13 regarding the recognition of chiropractic specialties by the Board

**Action Taken:** The board considered and approved without opposition a motion to adopt previously proposed new Rule 71.13 regarding the establishment of an application process whereby entities can apply to the board for recognition by the board of a chiropractic specialty.

### 6.2 Consideration of proposal to amend Fee Schedule to include fee for application for recognition of a chiropractic specialty

**Action Taken:** The board considered and approved without opposition a motion to amend the fee schedule in Rule 75.7 to establish a \$750 fee for each application for the recognition of a chiropractic specialty. The proposed rule amendment will be published in the Texas Register for comment.

- 6.3 Consideration of proposal to amend Rule 73.3 and Rule 73.7 concerning the Board designating certain courses or subjects as being mandatory for meeting continuing education requirements for doctors of chiropractic

**Action Taken:** The board considered and approved without opposition a motion to propose amendments to Rules 73.3 and 73.7 concerning continuing education for doctors of chiropractic to include required courses in ethics, records keeping and risk management & laws governing the practice of chiropractic in Texas.

- 6.4 Discussion Items

Dr. Minors may update the Board on questions or issues under consideration in the Rules Committee, including but not limited to:

- 6.4.1 Spinal Decompression

This item was for discussion only – no action was taken.

- 6.4.2 Chiropractic Assistants

This item was for discussion only – no action was taken.

- 6.4.3 Possible recognition of CE providers and course approved by other entities

**Action Taken:** Staff was instructed to prepare a study comparing the processes and procedures for approving continuing education providers and courses by various Health Professions Council agencies.

- 6.5 Scope of Practice Questions and Issues

- 6.5.1 Question re: use of hyperbaric chamber and certification to operate such a facility

**Action Taken:** None. This question is still under review.

- 6.5.2 Four (4) related questions from the same person concerning the regulation of a licensed chiropractor “who is not working as a chiropractor,” as follows:

- 6.5.2.1 “Does licensure from the TBCE prohibit a licensed chiropractor from working under the direction of a licensed individual in a profession other than chiropractic? If so, what statutory authority allows the TBCE to regulate activities or services provided in another profession by a chiropractor who is not practicing as a chiropractor?”

**Action Taken:** The Board considered and approved the Rules Committee’s decision to inform the questioner that licensure from the TBCE does not prohibit a licensed chiropractor from

working under the direction of a licensed individual in a profession other than chiropractic if the licensed chiropractor is not practicing as a doctor of chiropractic. If operating under the supervision of another licensed health care professional, then the individual is under the jurisdiction of the applicable health professions board.

- 6.5.2.2 “Can a licensed chiropractor, who is not working as a chiropractor, provide services under the direction of a licensed medical doctor? If so, under what circumstances is that allowed? What statutory authority/regulation prevails?”

**Action Taken:** The Board considered the question and directed staff to inform the questioner that a licensed doctor of chiropractic who is not working as a chiropractor but who is working under the direction of a licensed medical doctor is under the jurisdiction of the Texas Medical Board or other applicable health professions board. The DC may not represent himself as being a DC or provide chiropractic services in those circumstances.

- 6.5.2.3 “Can a licensed chiropractor, who is not working as a chiropractor, be regulated by the TBCE while providing a service which would otherwise fall outside the scope of chiropractic?”

**Action Taken:** The Board considered this question and directed staff to inform the questioner that a licensed chiropractor who is not working as a chiropractor but who is providing services that fall outside the scope of practice for chiropractic would be under the jurisdiction of the state and federal entities that regulate the service in question. A licensed chiropractor who is providing chiropractic services may not perform out-of-scope services or procedures under the umbrella of his or her chiropractic license.

- 6.5.2.4 “Can a licensed chiropractor be prevented and/or sanctioned by the TBCE from working in a facility that requires the use of needles for injection of medication if the chiropractor is not practicing as a chiropractor and [is] under the direction of a licensed medical doctor.”

**Action Taken:** The Board considered this question and directed staff to inform the questioner that a DC who is not working as a chiropractor but who is working under the direction of a licensed medical doctor is under the jurisdiction of the Texas Medical Board or other applicable health professions licensing board.

- 6.5.3 Question regarding whether a doctor of chiropractic “may own, be a part owner, or be the doctor of record of a company that provides laboratory services...to the general public...at locations remote from the primary

office space without the doctor providing a prescreening physical exam?”

**Action Taken:** The Board considered the question and offered the following response: “The questioner should consult with his attorney regarding applicable federal and state laws. This question is not within the jurisdiction of the Board of Chiropractic Examiners if the facility is not being advertised as a chiropractic facility and no chiropractic services are being provided at the facility. If operating under the supervision of another licensed health profession and not as a doctor of chiropractic, then the questioner is under the jurisdiction of the applicable health professions board.”

6.5.4 “Am I [a licensed DC in Texas] allowed to ‘administer’ Botox if it is prescribed by an MD?”

**Action Taken:** The Board considered this question and approved the Rules Committee’s recommendation to inform the questioner that the administration of Botox is outside the scope of practice for a licensed doctor of chiropractic in Texas.

6.5.5 “Is the tuberculosis subcutaneous test with a chiropractor’s scope of practice? What about the TB tine test?”

**Action Taken:** The Board considered this question and approved the Rules Committee’s recommendation to inform the questioner that a licensed doctor of chiropractic in Texas may refer or order out for the test but may not administer the test under Rule 75.17(c) because the test solution is a controlled substance and therefore fall outside scope for a DC in Texas.

6.5.6 “May a Texas Licensed Doctor of Chiropractic perform as, or does [the] scope of [the] Texas Chiropractic Act extend to: Primary Care Provider; or Entry level provider; or Gate keeper status?”

**Action Taken:** The Board considered this question and directed staff to inform the questioner that it is outside the Board’s authority to determine or set rules for insurance plans. While the Board believes that doctors of chiropractic could serve as primary care providers or gate keepers for health issues within scope of practice for chiropractors, the Board has no authority to dictate rules for insurance providers or insurance plans.

6.5.7 Statement on animal chiropractic (general statement for Q&A)

**Action Taken:** Staff and General Counsel Mr. Boyt will draft a statement to inform DCs that “animal chiropractic” or the manipulation or other treatment of animals falls with the jurisdiction of the Texas Board of Veterinary Medical Examiners. DCs may work on animals only under the supervision of and delegation from a licensed doctor of veterinary medicine.

**7. ENFORCEMENT COMMITTEE BUSINESS**

*Dr. Scott Isdale, D.C.*

- 7.1 Summary of FY 2007 YTD Complaints Received and Resolved and YTD FY 2008 Complaints Received and Resolved

Dr. Isdale presented summaries of the data for the number of complaints received and resolved for fiscal year 2007 and fiscal year to-date for 2008.

- 7.2 Summary of Enforcement Committee Hearings held on September 20 and October 25, 2007

Dr. Isdale presented a summary of the Enforcement Committee hearings held on September 20 and October 25, 2007/

- 7.3 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 presented a report to the board informing members that as of October 21, 2007 there were 61 open cases for which the next step in the disciplinary process is to request a SOAH hearing.

- 7.4 Consideration of Board Orders and SOAH Proposals for Decisions

There were no Board Orders or PFDs for consideration at this meeting.

- 7.5 Consideration of Accepted Agreed Orders: The Board will consider approval of the following Agreed Orders:

- 7.5.1 Case # 103-248
- 7.5.2 Case # 106-164
- 7.5.3 Case # 106-169
- 7.5.4 Case # 106-191
- 7.5.5 Case # 107-003
- 7.5.6 Case # 107-025
- 7.5.7 Case # 107-098
- 7.5.8 Case # 107-104
- 7.5.9 Case # 107-125

**Action Taken:** The Board by unanimous vote accepted all the above proposed Agreed Orders as presented.

- 7.6 Recommendations to Approve or Deny Requests to Expunge Records

- |       |                |                              |
|-------|----------------|------------------------------|
| 7.6.1 | Case # 101-114 | EC Recommendation to Expunge |
| 7.6.2 | Case # 101-091 | EC Recommendation to Expunge |
| 7.6.3 | Case #102-231  | EC Recommendation to Expunge |
| 7.6.4 | Case #101-640  | EC Recommendation to Expunge |
| 7.6.5 | Case #104-294  | EC Recommendation to Expunge |
| 7.6.6 | Case #101-143  | EC Recommendation to Expunge |

**Action Taken:** The Board approved all the above Requests to Expunge as presented by staff.

## **8. EXECUTIVE SESSION**

*Dr. Kenneth Perkins, D.C.*

The Board may meet in Executive Session for:

Consultation with counsel pursuant to Section 551.071, Government Code wherein the Board and essential staff will receive a briefing from assigned Assistant Attorney General concerning pending or contemplated litigation and settlement offers including but not limited to:

- 8.1 Texas Medical Association lawsuit against the Board
- 8.2 Case #103-04

Board will reconvene in open sessions after Executive Session to vote on items considered in Executive Session as necessary.

**Action Taken:** No action was taken by the Board in Executive Session. The Board convened in Executive Session at 2:00 to discuss the lawsuit by the Texas Medical Association against the Board and other legal matters as stated above.

The Board re-convened in open session at approximately 2:15 PM. No action was taken in open session on items that were considered in Executive Session.

## **9. CALL FOR FUTURE ITEMS** for discussion and/or consideration by the Board

*Dr. Kenneth Perkins, D.C.*

**Action Taken:** Board President Dr. Kenneth Perkins called for future agenda items and asked board members to forward any agenda item to himself or to Executive Director Glenn Parker.

## **10. MEETING REMINDERS**

*Dr. Kenneth Perkins, D.C.*

- 10.1 The remaining Board meeting dates for Fiscal Year 2008 are: (1) February 28, 2008 (2) May 8, 2008, and (3) August 14, 2008.
- 10.2 The next Enforcement Committee dates are: (1) November 29, 2007; and (2) January 24, 2008. There will not be an Enforcement Committee meeting in December or February.

**Action Taken:** Dr. Perkins informed the board members and staff of the dates and times for future meetings as above.

## **11. ADJOURNMENT**

*Dr. Kenneth Perkins, D.C.*

Action Taken: Dr. Perkins adjourned the meeting at 2:19 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 from the board meeting held on November 1, 2007 were approved by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held:

**February 28, 2008.**

\_\_\_\_\_  
Glenn Parker  
Executive Director  
Texas Board of Chiropractic Examiners

\_\_\_\_\_  
Date