

TEXAS BOARD OF CHIROPRACTIC EXAMINERS
William P. Hobby Building
333 Guadalupe, Suite 3-825
Austin, Texas 78701

MINUTES FOR THE FEBRUARY 26, 2009 BOARD MEETING

The Texas Board of Chiropractic Examiners (the Board) met in a regularly scheduled board meeting on February 26, 2009. The meeting was held in the William P. Hobby Building, Room 102, 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, ROLL CALL & ESTABLISHMENT OF A QUORUM

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

Action Taken: Dr. Kenneth Perkins called the meeting to order at 1:00 p.m. and called the roll. A quorum was present. Board members present were:

Kenneth Perkins, D.C., President
Scott Isdale, D.C., Vice-President
Kathleen Summers, D.C., Secretary-Treasurer
Ms. Marcia Daughtrey, Public Member
Mr. Armando Elizarde, Jr., Public Member
Janette Kurban, D.C.
Cynthia Tays, D.C.
Kenya Woodruff, J.D., Public Member

Board member David Sime, D.C., was absent with permission.

Counsel and staff members present were:

Jeb Boyt, J.D., General Counsel, Assistant Attorney General
Joe Thrash, J.D., General Counsel, Assistant Attorney General
Glenn Parker, Executive Director
Scott Parker, Director of Enforcement
Jennifer Hertsenberg, Director of Licensing
Mary Feys, Administrative Assistant for Enforcement

2. APPROVAL OF MINUTES

Dr. Kenneth Perkins, D.C.

Action Taken: The Board reviewed and approved without changes the minutes from the November 6, 2008 Board Meeting.

3. PUBLIC COMMENTS

Dr. Kenneth Perkins, D.C.

Action Taken: Dr. Perkins opened the floor to public comments from licensees, the general public or other interested stakeholders to address the Board. There were no comments made.

Mr. Ronnie Huse, a former licensee, asked to speak during the Enforcement Section of the board meeting and was allowed to address the Board at that time. Mr. Huse requested a board hearing or a SOAH hearing because the Board was scheduled to take action at today's (February 26, 2009) board meeting to revoke Mr. Huse's doctor of chiropractic license by statute.

4. EXECUTIVE COMMITTEE BUSINESS

Dr. Kenneth Perkins, D.C.

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

Action Taken: None. Dr. Kenneth Perkins made a brief oral report to the Board on matters of current interest including the legislative session.

4.2 Designation of Representatives for FCLB and NBCE Meetings and Proctors for Part IV of the NBCE Examination May 15-17, 2009

Action Taken: The Board approved the following appointments:

- A. Dr. Perkins was approved as the Voting Delegate to the FCLB and Glenn Parker was approved as the Alternate Voting Delegate.
- B. Dr. Perkins was approved as the Voting Delegate to the NBCE and Dr. Summers was approved as the Alternate Voting Delegate.
- C. Dr. Summers and Dr. Tays were approved as the Board's recommendations to participate in the NBCE Part IV Examinations to be held in May 2009.

4.3 Executive Director's Report (*Glenn Parker*)

Action Taken: None. Executive Director Glenn Parker presented written and oral reports to the Board concerning recent agency activities, statistical reports, a recent report on complaints as they related to clinic ownership, audit outcomes, revenues and expenditures, licensing information, enforcement information and agency plans for a 2.5 % budget reduction for AY 2009. Mr. Parker also discussed testimony given at the Senate Finance Committee and the House Appropriations Committee.

4.4 Review of Bills Filed by 81st Legislature

Action Taken: None. Executive Director Glenn Parker reviewed bills filed to date by the 81st Legislature that would affect the agency and/or the practice of chiropractic in Texas.

5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

Dr. David Sime, D.C.

5.1 The L& E Committee will make its recommendations to the Board concerning the following requests by applicants for approval to sit for the Jurisprudence Examination:

5.1.1 – Richard Bartlett

Action Taken: Approved to take Jurisprudence Exam

5.1.2 – William H. Wilson

Action Taken: None. Tabled until May 14, 2009. Mr. Wilson was not present to present his request.

5.1.3 – Justin Tomblin

Action Taken: Approved to take Jurisprudence Exam

5.1.4 – Michelle Perez

Action Taken: Approved with stipulations to take Jurisprudence Examination. Before taking the Jurisprudence Examination Ms. Perez must pass a drug test. If she passes the drug test and the Jurisprudence Exam, she will be issued a license and placed on probation for 2 years.

5.2 The L& E Committee will make its recommendation to the Board concerning the following individual's request to be given permission to renew her DC license late (more than 1 year) for Good Cause:

5.2.1 – Soveida Ortiz Prather, Non-Renewable, Previously held Texas DC license #6929

Action Taken: Approved to renew late with good cause.

5.3 Request for Board Recognition of Chiropractic Specialty Group for American Chiropractic Board of Radiology (Chiropractic Radiology/Diagnostic Imaging)

Action Taken: The Board approved the request by the American Chiropractic Board of Radiology to have Chiropractic Radiology/Diagnostic Imaging recognized as a chiropractic specialty by the Texas Board of Chiropractic Examiners.

6. RULES COMMITTEE BUSINESS

Janette Kurban, D.C.

6.1 Consideration of Proposed New Rules or Rules Amendments Eligible for Adoption

6.1.1 Rule 75.17: A proposed amendment to Rule 75.17 (Scope of Practice) to clearly specify that manipulation under anesthesia (MUA) is within scope of practice for properly educated and trained licensed DCs was published in the Texas Register on January 2, 2009 and will be eligible for adoption at the February 26, 2009 board meeting . The Board has received several comments on the proposed rule that will be addressed.

Action Taken: None. The Board deferred action on this proposed amendment to Rule 75.17. It will be considered at the May 14, 2009 board meeting and remains eligible for adoption.

6.1.2 Rule 75.21: A proposed new Rule 75.21 (Acupuncture) was published in the Texas Register on January 2, 2009 and will be eligible for adoption at the February 26, 2009 board meeting. The proposed new rule sets forth the minimal acceptable qualifications and procedures for the practice of acupuncture by licensed doctors of chiropractic. The Board has received several comments on the proposed rule that will be addressed.

Action Taken: None. The Board deferred action on this proposed new Rule 75.21 until the May 14, 2009 board meeting so that a public hearing on the Rule can be held. A public hearing was requested by the Texas Association of Acupuncture and Oriental Medicine.

6.1.3 Rule 80.5: A proposed amendment to Rule 80.5 (Professional Conduct) was published in the Texas Register on January 2, 2009 and will eligible for adoption at the February 26, 2009 board meeting. The purpose of the rule amendment is to provide clearer standards for the contents of chiropractic records. Any comments received on this proposed rule amendment will be addressed.

Action Taken: The Board adopted the proposed amendment to Rule 80.5 by a vote of 7-0-1, with Dr. Isdale abstaining.

6.2 Consideration of Proposals for New Rules or Amendments to Existing Rules

There are no proposals for new rules or amendments to existing rules to consider at this meeting.

Action Taken: None.

6.3 Scope of Practice Questions and Issues

6.3.1 Question from a D.C re: Vestibular-Occular-Nystagmus Testing:

“Is Vestibular assessment including videonystagmography (VNG), electronstagnography (ENG) and/or electronic balance screening to evaluate posture/joint positional controls within Scope of Chiropractic in the State of Texas? If not, are the listed diagnostic evaluations within Scope of Board Certified Chiropractic Neurologist(s) and similarly trained Chiropractors in the State of Texas?”

Explanatory materials were included with the question and copies are in board member notebooks.

Action Taken: None. The question was discussed but a decision was deferred to allow time for more research into the question.

6.3.2 Question from a D.C. re: Extracorporeal shock wave lithotripsy:

“We are trying to determine whether Lithotripsy/Extracorporeal Shock Wave Therapy, CPT Code 50590, is considered within or outside of the scope of practice for a chiropractor in Texas, but could not find definitive information on your website.”

Action Taken: None. The question was discussed but a decision was deferred to allow time for more research into the question.

6.4 Update on other issues under consideration by the Committee

Dr. Kurban will update the Board on presentations made to the Committee earlier in the day on the subject of the use of lasers in the practice of chiropractic.

Action Taken: None.

7. ENFORCEMENT COMMITTEE BUSINESS

Dr. Scott Isdale, D.C.

7.1 Consideration of SOAH Proposals for Decisions

There were no SOAH Proposals for Decisions at this meeting.

Action Taken: None

7.2 Consideration of Accepted Agreed Orders: The Board will consider approval of the following Agreed Orders that have been recommended by the Enforcement Committee and accepted by the Respondents (some cases listed below may not be considered if the signed Agreed Orders are not received from the Respondents prior to the Board meeting).

- 7.2.1 Case # 105-087 (Withdrawn – Not accepted by DC)
- 7.2.2 Case # 107-088
- 7.2.3 Case # 108-112
- 7.2.4 Case # 108-150
- 7.2.5 Case # 108-196
- 7.2.6 Case # 108-200
- 7.2.7 Case # 108-236
- 7.2.8 Case # 108-258
- 7.2.9 Case # 108-277
- 7.2.10 Case # 109-008
- 7.2.11 Case # 109-012

Action Taken: The Board approved the Agreed Orders as presented for Item 7.2.2 through Item 7.2.11 and withdrew 7.2.1.

7.3 Recommendations to Approve or Deny Requests to Expunge Records

- 7.3.1 Case # 103-152 Recommendation to approve
- 7.3.2 Case # 103-293 Recommendation to approve

Action Taken: The Board approved the requests to expunge the records for the cases presented in Item 7.3.1. and Item 7.3.2, above.

7.4 Statutory Revocations for Felony Convictions and Imprisonment

- 7.4.1 Case # 104-080 Lic #2405 Ronnie Ray Huse
- 7.4.2 Case # 107-203 Lic #8439 Chris Demond Davis

Mr. Ronnie Huse appeared in person and asked for either a Board hearing or a SOAH hearing before the Board statutorily revoked his license. Board Counsel Jeb Boyt explained that Mr. Huse has no right to either a board hearing or a SOAH hearing in a statutory revocation case.

Action Taken: The Board statutorily revoked License #2405 (Ronnie Ray Huse) and License #8439 (Chris Demond Davis) for felony convictions and imprisonment.

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

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

Action Taken: None. The Board did not go into Executive Session.

9. CALL FOR FUTURE ITEMS for discussion and/or consideration by the Board
Dr. Kenneth Perkins, D.C.

Action Taken: Dr. Perkins asked that members may send requests for future agenda items for board meetings to either himself or to Executive Director Glenn Parker.

10. MEETING DATES & ADJOURNMENT
Dr. Kenneth Perkins, D.C.

10.1 The remaining Board meeting dates for Calendar Years 2009 and 2010 are:

- (1) May 14, 2009
- (2) August 13, 2009
- (3) November 12, 2009
- (4) February 18, 2010
- (5) May 20, 2010
- (6) August 12, 2010
- (7) November 4, 2010

10.2 The next Enforcement Committee dates are scheduled for:

- (1) March 17, 2009
- (2) April 21, 2009
- (3) May 14, 2009 (with full board meeting)
- (4) May 19, 2009
- (5) June 16, 2009

10.3 Adjournment at: 1:47 PM.

Action Taken: Dr. Perkins reminded members of the meeting dates listed above and adjourned the meeting at 1:47 p.m.

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 February 26, 2009 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on May 14, 2009.

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners.

May 14, 2009
Date