

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

MINUTES FROM THE MAY 14, 2009 BOARD MEETING

The Texas Board of Chiropractic Examiners (the Board) met in a regularly scheduled board meeting on May 14, 2009. The meeting was held in the William P. Hobby Building, Tower 2, Room 225, located at 333 Guadalupe Street, Austin, Texas 78701. The following are the minutes from 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 1:30 p.m. and called the roll and determined that a quorum was present. Board members present were:

Kenneth Perkins, D.C., President
Kathleen Summers, D.C., Secretary-Treasurer
Janette Kurban, D.C.
Larry Montgomery, D.C.
Cynthia Tays, D.C.
Patrick Thomas, D.C.
Mr. Thomas Turner, Public Member

Board members absent and excused because of air travel difficulties were:

Mr. Armando Elizarde, Jr., Public Member
Ms. Kenya Woodruff, J.D., Public Member

Legal 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
Jennifer Hertsenberg, Director of Licensing
Bill Zilar, Investigator, Enforcement Department
Mary Feys, Administrative Assistant for Enforcement
Arlethia Middleton, Chief Financial Officer

2. APPROVAL OF MINUTES

Dr. Kenneth Perkins, D.C.

Action Taken: The Board reviewed and approved the minutes from the February 26, 2009 board meeting.

3. PUBLIC COMMENTS

Dr. Kenneth Perkins, D.C.

Action Taken: Dr. Perkins opened the floor to public comments. Dr. Greg Nelson of the Texas Chiropractic Association addressed the Board concerning issues before the Texas Legislature.

4. EXECUTIVE COMMITTEE BUSINESS

Dr. Kenneth Perkins, D.C.

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

Action Taken: None. .

4.2 Report on FCLB Conference (Glenn Parker)

Action Taken: None. Executive Director Glenn Parker made a brief oral presentation to the Board concerning issues covered at the Federation of Chiropractic Licensing Boards conference that was held May 6-9, 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, audit outcomes, revenues and expenditures, licensing information, and enforcement information. Mr. Parker also discussed the status of the agency's appropriations request for the 2010-2011 biennium.

4.4 Review of Bills Filed by 81st Legislature

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

4.5 Consideration of Appointment of Additional Executive Peer Review Committee Members

Action Taken: The Board voted to appoint Miguel Chiusano D.C. to the Executive Peer Review Committee.

4.6 Election of Board Vice President and Secretary-Treasurer

Action Taken: The Board voted to elect Dr. Kathleen Summers as Board Vice-President and Dr. Cynthia Tays as Board Secretary-Treasurer.

4.7 Appointment of members to Board Committees by Dr. Perkins

Action Taken: Board President appointed the members of the Board's committees as follows:

Executive Committee: Dr. Kenneth Perkins (Chair), Dr. Kathleen Summers, Dr. Cynthia Tays

Rules Committee: Dr. Janette Kurban (Chair), Dr. Kenneth Perkins, Mr. Armando Elizarde, Jr., Ms. Kenya Woodruff, J.D.

Licensing and Educational Standards Committee: Dr. Kathleen Summers (Chair), Dr. Patrick Thomas, Mr. Thomas Turner

Enforcement Committee: Dr. Cynthia Tays (Chair), Dr. Larry Montgomery, Ms. Kenya Woodruff, J.D.

5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

Dr. Kathleen Summers, 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 William H. Wilson, Applicant (tabled from Feb. 26, 2009)

Action Taken: The Board approved Mr. Wilson's request to take the Jurisprudence Examination.

- 5.1.2 Michelle G. Beavers, Applicant

Action Taken: The Board approved Ms. Beavers' request to take the Jurisprudence Examination.

- 5.1.3 Michael Taylor Martin, Applicant

Action Taken: The Board approved Mr. Martin's request to take the Jurisprudence Examination but added stipulations requiring that he be placed on probation for two years as a condition of licensure.

- 5.2 Request for Board Recognition of Chiropractic Specialty Group

- 5.2.1 Academy of Chiropractic Orthopedists

Action Taken: The Board approved the request by the Academy of Chiropractic Orthopedists to recognize chiropractic orthopedics as a chiropractic specialty.

- 5.3 Request for Amendment to Conditions of Licensure

- 5.3.1 **Action Taken:** The Board authorized the staff to work with applicant Daniel Wilgus to find a DC or company that could provide a DC to act as a monitor for Mr. Wilgus and to have Mr. Wilgus meet previously established stipulations before the Board will allow him to be licensed.

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 May 14, 2009 board meeting . The Board has received several comments on the proposed rule that will be addressed.

Action Taken: The Board adopted the previously published amendment to Rule 75.17 concerning manipulation under anesthesia.

- 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 May 14, 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. This is not a change in the scope of practice as acupuncture is already within scope for properly qualified doctors of chiropractic. The Board has received several comments on the proposed rule that will be addressed. In addition, the Rules Committee conducted a public hearing on proposed Rule 75.21 on April 28, 2009. Comments received at that hearing will be addressed.

Action Taken: The Board adopted with changes the previously published Rule 75.21 concerning acupuncture.

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

- 6.2.1 Consideration of proposed amendments to Rule 75.21 (Acupuncture) that would increase the minimum qualifications for the practice of acupuncture by licensed doctors of chiropractic. This proposed rule change would update the Rule 75.21 adopted in 6.1.2 (above)

Action Taken: None.

- 6.2.2 Consideration of proposed new Rule 71.15 Chiropractic Specialties to list chiropractic specialties recognized by the Board

Action Taken: The Board instructed the staff to publish proposed new Rule 75.15 concerning recognized chiropractic specialties in the *Texas Register* for public review and comment.

- 6.2.3 Consideration of proposed new Rule 76.21 Extensions of Time to delegate to the Executive Director the authority to enter into agreements to modify time limits as provided for under the Administrative Procedures Act, Texas Government Code §2001.147.

Action Taken: The Board instructed the staff to publish proposed new Rule 76.21 concerning Extensions of Time in the *Texas Register* for public review and comment.

6.3 Scope of Practice Questions and Issues

- 6.3.1 Question #1 from a D.C re: Vestibular-Occular-Nystagmus Testing:

“Is Vestibular assessment including videonystagmography (VNG), electronystagmography (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?”

Action Taken: This agenda item was discussed but was deferred to the next board meeting to allow time to request or review additional information.

- 6.3.2 Question from an Insurance Company 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: The Board adopted the Rules Committee’s recommendation that, in response to the question, a letter be sent stating that Lithotripsy/Extracorporeal Shock Wave Therapy, CPT Code 50590, is not within scope of practice for licensed chiropractors in Texas. CPT code 50590 is a surgical code used in reference to breaking up kidney stones. Other uses of L/E Shockwave Therapy may or may not be within scope of practice for chiropractic but those uses are not addressed in this response.

- 6.3.3 Scope Question from a D.C. re: Use of ultraviolet light therapy:

“I would like to know if I am able to use ultra violet light therapy in my clinic? ... UV and infrared as been used in this profession for generations, but I did not find any ruling on this with regards for a chiropractor doing this. I am not anticipating using any insurance for payment. This is like a modified tanning bed room. I know of

other doctors who have opened day spas, but as far as I know they did not ask the board if it was ok to do.”

Action Taken: The Board adopted the Rules Committee's recommendation that, in response to the question, a letter be sent stating that the use of ultraviolet light is within scope of practice for licensed doctors of chiropractic in Texas if used as part of a chiropractic procedure.

6.4 Update on other issues under consideration by the Committee

Action Taken: None

7. ENFORCEMENT COMMITTEE BUSINESS

Dr. Cynthia Tays, D.C.

7.1 Consideration of SOAH Proposals for Decisions

Action Taken: None. There were no SOAH Proposals for Decisions at this meeting.

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.

- 7.2.1 Case # 103-277
- 7.2.2 Case # 108-176
- 7.2.3 Case # 108-243
- 7.2.4 Case # 108-246
- 7.2.5 Case # 109-013
- 7.2.6 Case # 109-017
- 7.2.7 Case # 109-028
- 7.2.8 Case # 109-031
- 7.2.9 Case # 109-035
- 7.2.10 Case # 109-044
- 7.2.11 Case # 109-045
- 7.2.12 Case # 109-050
- 7.2.13 Case # 109-075

Action Taken: The Board approved the Agreed Orders as presented for all items 7.2.1 through 7.2.13, above.

7.3 Recommendations to Approve or Deny Requests to Expunge Records

- | | | |
|-------|----------------|-------------------------------|
| 7.3.1 | Case # 101-153 | Recommendation to approve |
| 7.3.2 | Case # 102-139 | Recommendation to approve |
| 7.3.3 | Case # 103-117 | Recommendation to approve |
| 7.3.4 | Case # 103-155 | Recommendation to approve |
| 7.3.5 | Case # 105-030 | Recommendation NOT to approve |
| 7.3.6 | Case # 105-033 | Recommendation NOT to approve |

7.3.7 Case # 101-250 Recommendation to approve

Action Taken: The Board voted to approve the requests to expunge records for Items 7.3.1, 7.3.2, 7.3.3, 7.3.4 and 7.3.7. The Board voted to deny the requests to expunge for Items 7.3.5 and 7.3.6 because they did not meet the Board's stated criteria to have a disciplinary record expunged.

7.4 Statutory Revocations for Felony Convictions and Imprisonment

Action Taken: None. There were no statutory revocations for consideration at this board meeting.

7.5 Requests for Reinstatement after Suspension of DC License

7.5.1 Charles Dement, Lic. #7278

Action Taken: None.

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 convened in Executive Session at approximately 2:25 p.m. and came out of Executive Session and resumed the public meeting at approximately 2:37 p.m. No action was taken.

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

Dr. Kenneth Perkins, D.C.

Action Taken: Dr. Kenneth Perkins asked that members send requests for agenda items for future 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) August 13, 2009
- (2) November 12, 2009
- (3) February 18, 2010
- (4) May 20, 2010
- (5) August 12, 2010
- (6) November 4, 2010

10.2 The next Enforcement Committee dates are scheduled for:

- (1) May 14, 2009 (with full board meeting)
- (2) May 19, 2009
- (3) June 30, 2009
- (4) July 21, 2009
- (5) August 13, 2009 (with full board meeting)

10.3 Adjournment at: _____ PM.

Action Taken: Dr. Perkins reminded members and staff 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 May 14, 2009 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on August 13, 2009.

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners

August 13, 2009

Date