

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

MINUTES FROM THE FEBRUARY 18, 2010 BOARD MEETING

The Texas Board of Chiropractic Examiners (the Board) met in a regularly scheduled board meeting on February 18, 2010. 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

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

Call to Order, Roll Call and Establishment of a Quorum

Action Taken: Board President Dr. Kenneth Perkins called the meeting to order at 1:15 p.m., called the roll and determined that a quorum was present. Board members present were:

Dr. Kenneth Perkins, President
Dr. Kathleen Summers, Vice President
Dr. Cynthia Tays, Secretary-Treasurer
Dr. Janette Kurban
Dr. Larry Montgomery
Ms. Kenya Woodruff, Public Member

Not present were:

Dr. Patrick Thomas
Mr. Armando Elizarde, Jr.
Mr. Tom Turner

Staff & and Others Present were:

Glenn Parker, Executive Director
Hal ten Brink, General Counsel
Jeb Boyt, Assistant Attorney General and Counsel to the Board
Scott Parker, Director of Enforcement
Jennifer Hertsenberg, Director of Licensure
Bill Zilar, Investigator
Mary Feys, Administrative Assistant for Enforcement
Nikell Williams, Programmer/Analyst

2. APPROVAL OF MINUTES

Dr. Kenneth Perkins, D.C.

Approval of Minutes from November 12, 2009 Board Meeting

Action Taken: The Board reviewed and approved the minutes from the November 12, 2009 board meeting without changes.

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 to public comments. There were no comments made or received.

4. EXECUTIVE COMMITTEE BUSINESS

Dr. Kenneth Perkins, D.C.

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

Dr. Kenneth Perkins may make a brief oral report to the Board on matters of current interest.

Action Taken: None. Dr. Perkins commented on the upcoming FCLB meeting in April/May and on some appointments to be made in regard to FCLB and NBCE.

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

Executive Director Glenn Parker will present written and oral reports to the Board concerning recent agency activities, statistical reports, audit outcomes, revenues and expenditures, licensing information, and enforcement information and will introduce new staff members.

Action Taken: Mr. Parker introduced Mr. Nikell Williams as the agency's new programmer/analyst. Mr. Parker also presented written and oral reports covering the agency's recent activities in licensing, enforcement and finance. He reported no unusual operating issues other than the 5% budget reduction requested by state leaders.

4.3 Report by Executive Director on actions taken to reduce budget by 5% for the 2010-2011 biennium as requested by state officials and discussion of possible effects on operations.

Action Taken: Mr. Parker reported on his plans to reduce funding in certain appropriations to comply with the state's request to reduce General Revenue appropriations by 5% for the 2010-2011 biennium. Mr. Parker stated that the agency would comply by reducing funds not needed for office remodel and equipment related to new employees, money saved from not filling new positions immediately during the fiscal

year, and by reducing or eliminating one-time bonuses or other pay increases for employees. Total savings for the biennium would be \$60,162.

- 4.4 Consideration of designation of FCLB delegate and alternate for 2010.

Action Taken: The Board named board president Dr. Kenneth Perkins as its voting delegate to the FCLB and Executive Director Glenn Parker as the alternate voting delegate.

- 4.5 Consideration of designation of NBCE delegate and alternate for 2010. Delegate and alternate must be DCs members of the Board. Consideration of designation of one DC board member to participate in the June 2010 NBCE Test Committee meeting.

Action Taken: The Board named Dr. Kenneth Perkins as its delegate to the NBCE and Dr. Cynthia Tays as the alternate NBCE delegate. It also named Dr. Kathleen Summers as its representative to the NBCE Test Committee. Dr. Perkins and Dr. Patrick Thomas will serve as examiners for the next NBCE Part IV exam.

- 4.6 Consideration of policy to authorize the Executive Director to participate in ordered/required mediation at the State Office of Administrative Hearings (SOAH) on behalf of the Board (with Board retaining final decision making authority).

Action Taken: The Board authorized the Executive Director to participate in required mediation at SOAH on behalf of the Board, with Board retaining final decision making authority.

- 4.7 Report by Executive Director on formation of the Executive Peer Review Committee and scheduled organizational and orientation meeting.

Action Taken: None. The Executive Director informed the Board of plans to hold the initial meeting of the Executive Peer Review Committee as soon as an acceptable date can be worked out for Committee members. Members are:

1. Miguel Chiusano, D.C.
2. Thomas Klesmit, D.C.
3. Tim McCullough, D.C.
4. Timothy Lee, D.C.

- 4.8 Consideration of naming members to Board working group on Acupuncture

Action Taken: The Board named the following individuals to the TBCE Acupuncture Advisory Committee:

1. Patrick Thomas D.C., Chair – TBCE board member
2. Kathleen Summers, D.C. – TBCE board member

3. Jason Flanagan, D.C. – Texas Chiropractic College
4. Vacant – Parker College of Chiropractic
5. Vacant – Texas Chiropractic Association
6. Rachelle Webb – Member State Board of Acupuncture Examiners
7. Tim Weitz – Executive Director, Texas Association of Acupuncture and Oriental Medicine
8. William R. Morris, Ph.D.- Academy of Oriental Medicine, Austin
9. Lisa P. H. Lin , Lic Ac - Texas College of Traditional Chinese Medicine at Austin
10. Po Chang, Ph.D., Lic Ac – Texas Association of Acupuncturists

The Board authorized Board President Dr. Kenneth Perkins to name individuals to the vacant positions as necessary.

4.9 Consideration of approval of Board Employee Training Policy

Action Taken: The Board approved a policy to allow the Executive Director to assign employees to training duty as appropriate for employee development and the overall benefit of the agency.

5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

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 Applicant John Oliver Baird

5.1.2 Applicant Paiman Shirzadi

Action Taken: The Board approved John Oliver Baird to take the Jurisprudence Exam, and – if he passes – to be licensed with stipulations. The Board also voted to approve Paiman Shirzadi to take the Jurisprudence Exam and to – if he passes – to be licensed without stipulations.

5.2 Consideration for eligibility for reinstatement of previous Texas license

5.2.1 Todd Haffner, previous license # 9012

5.2.2 Horng Shao, previous License # 7960

Action Taken: The Board voted to table the request by Todd Haffner to have his previous Texas DC license reinstated until a current complaint against him is resolved. The Enforcement Committee is to expedite the consideration of his complaint, at which time his request for reinstatement will be brought back before the Licensing & Educational Standards Committee. The Board also voted to reinstate the DC license of Horng Saho, with stipulations.

5.3 Consideration for Approval of Late Renewal for Good Cause

5.3.1 Jerry Pritchett, previously held license # 5874

Action Taken: The Board voted to approve Jerry Pritchett's request to be able to renew his DC license late for good cause.

- 5.4 Discuss and consider possible acceptance of graduates of foreign programs as candidates for licensure in Texas. May ask Rules Committee to propose a rule to allow graduates of certain foreign chiropractic education programs to qualify for licensure in Texas.

Action Taken: The board voted to direct staff to publish a proposed amendment to Rule 71.5 to recognize chiropractic colleges approved by any member of the Council on Chiropractic Education International (CCE – International) as being a “bona fide, reputable chiropractic school as that term is used in subchapter G of the Chiropractic Act.

6. RULES COMMITTEE BUSINESS – (Rules Committee Meeting has a separate agenda)

Janette Kurban, D.C.

- 6.1 Consideration of Previously Proposed New Rules or Rule Amendments Eligible for Adoption

- 6.1.1 Consideration to adopt an amendment to Rule §71.15 Recognized Specialties to list the specialty in chiropractic orthopedics approved by the Board at its meeting on May 14, 2009, and to set forth the qualifications and continuing education requirements for this specialty. The proposed amendment was published in the January 1, 2010 edition of the *Texas Register* and will be eligible for adoption at this board meeting. One comment was received in support of the proposed amendments.

Action Taken: The Board approved the adoption of the proposed amendment to Rule 71.15 without changes.

- 6.1.2 Consideration to adopt new Rule 75.23 to establish requirements for DC employees, staff or agents who wish to do spinal screenings. The proposed new rule was published in the January 1, 2010 edition of the *Texas Register* and will be eligible for adoption at this board meeting. One comment was received in support of the proposed new rule.

Action Taken: After consideration and discussion, the Board voted to change the time for retention of spinal screening records from 24 months to 12 months and to re-publish the proposed rule in the *Texas Register* to allow time for additional comments. The rule was not adopted at this time.

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

- 6.2.1 Consideration of proposal to amend Rule 76.3 to correct error in citation to the Administrative Procedures Act.

Action Taken: The Board voted to publish the proposed amendment to Rule 76.3 as presented in the *Texas Register* for public notice and comment.

- 6.2.2 Consideration of Amendment to Rule 76.11 to correct error in reference to the size of type (font size) that must be used in a certain clause in the Notice of Hearing sent to respondents in complaints.

Action Taken: The Board voted to publish the proposed amendment to Rule 76.11 in the Texas Register for public notice and comment.

- 6.2.3 Consideration to propose an amendment to Rule 73.2 Renewal of License to add a subsection (j) to be used to receive current Rule 80.3 (g) to be transferred from 80.3 to 73.2 to facilitate better organization of board rules.

Action Taken: The Board voted to publish the proposed amendments to Rule 73.2 in the Texas Register for public notice and comment.

- 6.2.4 Consideration to propose a new Rule 75.25, Impaired Licensees, to establish criteria for when the Board can require an impaired licensee to undergo mental and/or physical examinations. This will involve a transfer of existing Rule 80.3 (h) to the new Rule 75.25.

Action Taken: The Board voted to publish the proposed new Rule 75.25 in the Texas Register for public notice and comment after amending the proposed rule to include applicants as well as licensees.

- 6.2.5 Consideration to propose an amendment to Rule 80.3, Request for Information and Records from Licensees, to remove sections (g) and (h) in coordination with items #6.2.3 and 6.2.4 (above).

Action Taken: The Board voted to publish the proposed amendments to Rule 80.3 in the Texas Register for public notice and comments.

6.3 Scope of Practice Questions and Issues

There are no scope-of-practice questions to be considered by the Board at this meeting.

Action Taken: None. There were no scope of practice questions to consider.

6.4 Update on other issues under consideration by the Committee

Dr. Kurban will update the Board on other issues before the Rule Committee but the Board will not take any action on those issues.

Action Taken: None. Dr. Kurban and Executive Director Glenn Parker did inform the Board that the staff and the Rules Committee will be working on a framework for the Committee and the Board to use in determining if specific procedures, techniques and equipment are or are not within scope of practice for DCs in Texas. The starting point for developing the framework will be based on a similar document developed by the FCLB.

7. ENFORCEMENT COMMITTEE BUSINESS

Dr. Cynthia Tays, D.C.

7.1 Consideration of SOAH Proposals for Decisions

There are no PFDs for consideration at this meeting.

Action Taken: None – there were no PFDs to consider.

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 #108-189
- 7.2.2 Case #109-084
- 7.2.3 Case #109-094
- 7.2.4 Case #109-125
- 7.2.5 Case #109-165
- 7.2.6 Case #109-220
- 7.2.7 Case #109-228
- 7.2.8 Case #110-006
- 7.2.9 Case #110-015
- 7.2.10 Case #110-026
- 7.2.11 Case #107-139

Action Taken: The Board voted to approve all of the Agreed Orders as presented for the cases listed in 7.2.1 through 7.2.11, above.

7.3 Recommendations to Approve or Deny Requests to Expunge Records

Action Taken: None - There were no requests to expunge records for consideration at this meeting.

7.4 Statutory Revocations for Felony Convictions and Imprisonment

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

- 7.5 Discussion of legal and operational issues concerning current meetings of the Enforcement Committee to resolve complaints. There is a conflict between the right to privacy of complaints under investigation vs. statutory requirements that Enforcement Committee meetings must be open to the public. Discussion of alternate informal complaint resolution processes that could be used similar to those used by other state health licensing agencies. (*Hal ten Brink*)

Action Taken: The Board voted to approve restructuring the complaint resolution process as recommended by the staff and the Enforcement Committee to allow respondents to meet privately with one EC member and board staff in an attempt to informally resolve complaints.

- 7.6 Consideration of proposal to direct staff to begin review and revision of the “penalty matrix” or “maximum sanctions table” found in Rule 75.11 Schedule of Sanctions. The table was last updated in March, 2004. Changes to the Chiropractic Act and Board Rules have necessitated a review of the sanctions table to ensure that all violations of law are included in the table and that the violations are properly classified according to risk or severity.

Action Taken: The Board voted to direct staff and the Enforcement Committee to review and revise the “Penalty Matrix” or “maximum sanctions table” found in Rule 75.11 and to bring the revised materials to the Board for review and approval.

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 went into Executive Session at 2:14 p.m. and reconvened in public session at 2:35 p.m. No votes or other actions were taken either in executive session or public session on this agenda item.

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

Action Taken: President Perkins asked for future agenda items to be considered.
Possible future agenda items suggested were:

1. Dr. Summers suggested naming alternatives to board committees so that committees would have a quorum when certain members are not in attendance;
2. Mr. Glenn Parker, via Dr. Perkins, suggested reinstating a board CE requirement to have all DCs attend a mandatory session once a year at TCC, Parker College or TCA conventions to hear the TBCE board and staff present an update on board rules, the statute and other items, including answering questions from DCs.
3. Dr. Tays had a question about the legality of firms that offer internet advertising in which the DC would pay per response.
4. Dr. Kurban asked that Dr. Thomas develop a synopsis of the different types of acupuncture groups there are and the differences among them.
5. Dr. Tays suggested that the Board consider adopting a rule specifying that DCs can use equipment used in training students in CCE approved chiropractic schools.
6. Several board members expressed an interest in having a board retreat or planning session the day following a board meeting.

10. MEETING DATES & ADJOURNMENT

Dr. Kenneth Perkins, D.C.

10.1 The planned Board meeting dates for Calendar Years 2010 & 2011 are:

- | | |
|---------------------|-----------------------|
| (1) May 20, 2010 | (4) February 10, 2011 |
| (2) August 12, 2010 | (5) May 19, 2011 |
| 3) November 4, 2010 | (6) August 11, 2011 |
| | (7) November 17, 2011 |

*Note: All planned board meeting dates through 2014 may be found on the agency's website (under "Calendar") at: www.tbce.state.tx.us. All dates are tentative until posted in the Texas Register.

10.2 The next Enforcement Committee dates are scheduled for:

- (1) March 09, 2010
- (2) April 13, 2010

10.3 Adjournment at: __2:40_____ PM.

Action Taken: Dr. Perkins reminded the members of future meeting dates and adjourned the meeting at 2:40 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 18, 2010 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on May 20, 2010.

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners

May 20, 2010

Date