

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

MINUTES FROM THE August 12, 2010 BOARD MEETING

The Texas Board of Chiropractic Examiners (the Board) met in a regularly scheduled board meeting on August 12, 2010. The meeting was held in the William P. Hobby Building, Tower 2, Room 225, located at 333 Guadalupe Street, Austin, Texas 78701. A tape recording was made of the meeting. The following is a summary of 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 1:02 PM. All members were present with the exception of Ms. Kenya Woodruff, who joined the meeting at 1:15 PM. Others present were:

1. Jeb Boyt, Assistant Attorney General, Office of the Attorney General
2. Glenn Parker, Executive Director
3. Hal ten Brink, General Counsel
4. Yvette Yarbrough, Legal Assistant
5. Jennifer Hertsensberg, Director of Licensure
6. Scott Parker, Director of Enforcement
7. Mary Feys, Admin Assistant for Enforcement
8. Anita Wilkerson, Admin Assistant

2. APPROVAL OF MINUTES

Dr. Kenneth Perkins, D.C.

Approval of Minutes from May 20, 2010 Board Meeting

Action Taken: After consideration, the Board approve without changes the minutes from the board meeting that was held on May 20, 2010.

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 none.

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 announced that Dr. Patrick Thomas had proctored Part IV of the National Board Examination and that Dr. Kathleen Summers had travelled to Greeley, Colorado to participate in developing the x-ray portion of the practical examination.

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, enforcement information and will answer questions from the board members concerning agency operations.

Action Taken: None.

4.3 Strategic Plan for 2011 – 2015 (*Glenn Parker*)

Action Taken: After consideration, the Board approved the Strategic Plan for 2011-2015.

4.4 Legislative Appropriations Requests for 2012 – 2013 (*Glenn Parker*)

Action Taken: After consideration, the Board approved the Legislative Appropriations Request for 2012-2013.

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 first-time applicants for approval to sit for the Jurisprudence Examination:

5.1.1 Applicant Michael D. Sims

Action Taken: The Board approved Mr. Sims' request to sit for the jurisprudence examination with the provision that, if he passes, his license shall be placed on probation for the remainder of his current 10-year court probation.

5.1.2 Applicant Roger E. Walker

Action Taken: The Board approved Ms. Walker's request to sit for the jurisprudence examination with the provision that, if he passes, his license shall be placed on probation for the remainder of his current court probation. At the end of his current court probation, Mr. Walker must provide the Board with documentation that his court probation has been completed.

- 5.2 The L& E Committee will make its recommendations to the Board concerning the following requests by former Texas licensees for approval to sit for the Jurisprudence Examination to become relicensed:

5.2.1 Todd Haffner (Adams), Former Texas License #9012

Action Taken: The Board approved Mr. Haffner's (Adams') request to sit for the jurisprudence examination with the provision that, if he passes, he must complete at least 32 hours of CE in specific topics within 4 months of being licensed.

5.2.2 Mark Darner, Former Texas License #5958

Action Taken: The Board approved Mr. Darner's request to sit for the jurisprudence examination.

- 5.3 Request for Reconsideration of Board Approved Initial License Stipulations

5.3.1 Michael T. Martin, DC License #11210, was approved by the Board on May 14, 2009 to sit for the Jurisprudence Exam and – if passed – to be licensed with the stipulation that he be placed on probation for two years. Dr. Martin is requesting that the Board reduce his time to be on probation.

Action Taken: After consideration, the Board took no action on Dr. Martin's request to have his probation period reduced.

- 5.4 Consideration of any applications from specialty recognition groups.

(Staff has no new applications at this time.)

6. RULES COMMITTEE BUSINESS

Janette Kurban, D.C.

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

6.1.1 Consideration to adopt proposed amendment to Rule 75.17 Scope to specify that Vestibular-Ocular-Nystagmus Testing (VONT) and treatment are within the scope of practice for a properly trained doctors of chiropractic who have at least a diplomate in

chiropractic neurology plus at least 150 hours of additional training. The revised proposed rule was published in the June 25, 2010 edition of the *Texas Register*. The Board withdrew the previously proposed rule amendment on this subject and replaced it with the current proposal that requires more education. The Board has received at least two comments on the revised proposed amendment and will consider them.

Action Taken: The Board approved the rule amendment as proposed with a minor editing change by the insertion of the word “of” that had been omitted in error.

- 6.1.2 Consideration to adopt proposed new Rule 71.19 regarding issuing Eligibility Orders for prospective or currently enrolled chiropractic students to determine potential eligibility for licensure upon graduation when those students have a criminal history that may preclude them from being licensed. A new fee of \$150 for eligibility determination requests would also be proposed to be added to the fee schedule under Rule 75.7 Required Fees and Charges. No comments have been received on the proposed new rule or fee.

Action Taken: The Board approved the proposed new Rule 71.19 with no changes.

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

- 6.2.1 Consideration of proposal to amend existing Rule 75.25 (6) concerning impaired licensees and applicants to change the phrase “**chiropractic records** showing that licensee or applicant has an illness or condition...” to “**medical records** showing that...”

Action Taken: The Board directed staff to publish the proposed rule amendment in the Texas Register for notice and comments.

- 6.2.2 Consideration to propose new Rule 80.13 or other Rule number as determined by counsel to restrict use of prepaid contracts for multiple visits or treatments.

Action Taken: This agenda item was tabled and staff was instructed to contact the Texas Department of Insurance to request their input.

- 6.2.3 Consideration of proposal to amend existing Rule 73.3 concerning continuing education to require an additional 8 hours of continuing education for coding for insurance and Medicare/Medicaid submissions to be completed by all Texas DC licensees during calendar year 2011 or 2012.

Action Taken: The Board instructed the staff to publish the proposed rule amendment in the Texas Register for notice and comments.

- 6.2.4 Consideration of proposal to amend Rule 80.3 concerning release of records to expand the rule specifying how much a DC can charge for records to include a maximum charge for authenticating records and for notary fees.

Action Taken: The Board directed the staff to publish the proposed rule amendment in the Texas Register for notice and comment.

- 6.3 Re-adoption of Existing Rules as part of required Rules Review

Action Taken: The Board approved the re-adoption of all existing rules as part of its Rules Review.

- 6.4 Consideration of draft of a “Framework for Determining Whether Certain Procedures, Treatments and/or Equipment are Within Scope of Practice”.

Action Taken: The Board deferred this agenda item for further research and development.

- 6.5 Scope of Practice Questions and Issues

- 6.5.1 May a licensed chiropractor advertise to treat, claim to treat, attempt to treat, or treat a patient for “body sculpting” (by using a Zerona brand or other laser to reduce the size of fat cells and thereby decrease the patient’s overall size in selected body areas as measured in inches)?

Action Taken: The Board determined that the use of a laser for “body sculpting” is primarily cosmetic in nature and is therefore not within the scope of practice for chiropractors in Texas.

- 6.5.2 May a licensed chiropractor advertise to treat, claim to treat, attempt to treat, or treat a patient for Type II Diabetes?

Action Taken: The Board answered this question, “No” and determined that the treatment of Type II Diabetes is not within scope. It further directed the staff to prepare an amendment to the current publicity/advertising rule (Rule 77.2).

- 6.5.3 May a licensed chiropractor advertise to treat, claim to treat, attempt to treat, or treat a patient for thyroid problems (hypo or hyper thyroidism)?

Action Taken: The Board answered this question, “No” and determined that the treatment of thyroid problems is not within

scope. It further directed staff to prepare an amendment to the current publicity/advertising rule (Rule 77.2).

6.6 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: The Board directed staff to revise the Penalty Matrix to make the failure to respond to the Board a higher level violation.

7. ENFORCEMENT COMMITTEE BUSINESS

Dr. Cynthia Tays, D.C.

7.1 Consideration of SOAH Proposals for Decisions

7.1.1 Consideration of SOAH PFD for Case #107-176, Tinh T. Ngo.

Action Taken: The Board revoked the DC license of Dr. Tinh (Tim) Ngo, license #08625.

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 #108-018
- 7.2.2 Case #108-086
- 7.2.3 Case #108-259
- 7.2.4 Case #109-219
- 7.2.5 Case #110-086
- 7.2.6 Case #110-088
- 7.2.7 Case #110-089
- 7.2.8 Case #110-106
- 7.2.9 Case #110-111
- 7.2.10 Case #110-135
- 7.2.11 Case #110-179
- 7.2.12 Case #108-065

Action Taken: The Board reviewed and approved all the Agreed Orders listed above.

7.3 Recommendations to Approve or Deny Requests to Expunge Records

7.3.1 No requests to expunge at this time

7.4 Statutory Suspensions or Revocations for Felony Convictions and/or Imprisonment

7.4.1 Case #110-219 Statutory Suspension for Felony Conviction, DC License #4006, Bill Hudgins

Action Taken: The Board suspended the DC license of Dr. Bill Hudgins for a period of ten years, with the suspension to end on October 1, 2010. However, his license is to remain on Probation through May 19,2020.

7.4.2 Case #110-228 Statutory Revocation for Felony Conviction and Imprisonment, DC License #5934, Lazaro Olivares

Action Taken: The Board revoked the DC license of Dr. Lazaro Olivares, License #05934.

7.5 Cease & Desist Order for Case #107-200

Action Taken: The Board issued a Cease and Desist Order to Khamlor Boulyaphonh, of Garland, Texas, and ordered him to stop representing himself to be a Doctor of Chiropractic or using any associated title.

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 and General Counsel concerning pending or contemplated litigation and settlement offers including but not limited to:

8.1 Texas Medical Association lawsuit against the Board, including discussion of legal impact of scope of practice decisions

8.2 TBCE vs Abbott

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 2:15 PM and reconvened in public session at 2:44 PM. The above listed agenda items were discussed in Executive Session.. No action was taken on the agenda items.

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

Dr. Kenneth Perkins, D.C.

Action Taken: Dr. Perkins requested that future agendas be sent to himself or to Executive Director Glenn Parker. Some topics mentioned by the board members were:

1. Appoint alternate committee members
2. Move "not responding to the board" up higher in the penalty matrix
3. Dr. Montgomery suggested that more planning sessions be held and that be devoted to having representatives from a DC college explain the components of the DC education program, for the benefit of public members and staff.
4. Mr. Turner stated that he would like more information on the background of scope of practice issues.

5. Dr. Summers would like to have a discussion about increasing the number of required CE hours each year.
6. Follow up work is needed on the Acupuncture Special Recognition application.

10. MEETING DATES & ADJOURNMENT

Dr. Kenneth Perkins, D.C

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

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

*Note: All planned board meeting dates through 2015 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) September 14, 2010
- (2) October – None
- (3) November 9, 2010
- (4) December - None

10.3 Adjournment at: _____2:56_____ PM.

Action Taken: Dr. Perkins reminder members of the next board meeting date and adjourned the meeting at approximately 2:56 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 August 12, 2010 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on November 4, 2010.

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners

August 12, 2010
Date