

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

MINUTES FROM THE November 4, 2010 BOARD MEETING

The Texas Board of Chiropractic Examiners (the Board) met in a regularly scheduled board meeting on November 4, 2010. The meeting was held in the William P. Hobby Building, Tower 2, Room 225, located at 333 Guadalupe Street, Austin, Texas 78701. The electronic medium used to record the meeting failed and no recording of the meeting is available. The following is the official 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. The role was called, with the following three board members being absent: Dr. Kathleen Summers, Mr. Armando Elizarde, Jr., and Mr. Thomas Turner. A quorum was present. Also present were Assistant Attorney General Jeb Boyt, Executive Director Glenn Parker, General Counsel Hal ten Brink, Director of Enforcement Scott Parker, Director of Licensure Jennifer Hertsenberg, Legal Assistant Yvette Yarbrough and Administrative Assistant Anita Wilkerson.

2. APPROVAL OF MINUTES

Dr. Kenneth Perkins, D.C.

Approval of Minutes from August 12, 2010 Board Meeting

Action Taken: The minutes were reviewed and approved without changes. The Board requested that the Executive Director provide a copy of the draft of the minutes to the board members within 30-45 days after each meeting. Mr. Parker said that he would do so.

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. Attorney Dan Walden and his client Dr. Jade Malay stated that they would like to be able to make comments later in the meeting on some scope of practice issues. Dr. Perkins

assured them that they would be able to do so when the agenda item came before the board.

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

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. Executive Director Parker presented information about the final expenditures for FY 2010 as well as reporting on final license and enforcement numbers for FY 2010.

4.3 Online Jurisprudence Class (*Glenn Parker*)

Consideration to approve implementation of online jurisprudence class. Staff, in conjunction with E-Strategies Solutions, has developed an online CE class covering the Chiropractic Act and Board Rules (a jurisprudence review class). The online class is expected to be available around January 1, 2011.

Action Taken: The Board approved Mr. Parker's request to continue with the development of the online jurisprudence review CE course and to implement it after completion and testing.

4.4 Executive Peer Review Committee (*Glenn Parker*)

Consideration of possible appointment to the Executive Peer Review Committee. Dr. Jeff Cunningham has expressed an interest in serving on the Committee. Mr. Parker will ask the Board to confirm Dr. Cunningham's appointment to the Executive Peer Review Committee.

Action Taken: None. This item was withdrawn from the agenda because the agency had not received the required application form from Dr. Cunningham.

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 Merissa Ann Baker

Action Taken: None. This agenda item was deferred until after the current court case involving Ms. Baker has been resolved.

- 5.2 Consideration of proposal to recommend to the Rules Committee that it consider an amendment to Rule 71.3 Qualifications of Applicants to remove specific course requirements in 71.3 (c) (2) (A)-(F) and (c) (3) to allow the Board to rely upon the revised current requirements of the Council on Chiropractic Education (CCE). May include invited testimony from representatives of Texas Chiropractic College and Parker College of Chiropractic.

Action Taken: The Board heard testimony from Dr. Campbell from Texas Chiropractic College and Dr. Thomas from Parker College of Chiropractic on current CCE requirements and possible future changes. The Board voted to publish the proposed rule amendments in the Texas Register for notice and comments.

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 previously proposed amendment to Rule 75.25 concerning impaired licensees and applicants and the records that may be relied upon to establish impairment. The Rule, with proposed amendments, was published in the September 3, 2010 edition of the *Texas Register*. No comments on the proposed amendments were received.

Action Taken: The board adopted the proposed amendment to Rule 75.25 as published.

- 6.1.2 Consideration of the proposed amendment to Rule 73.3 concerning requiring 8 CE hours of Medicare coding/documentation has been deferred until February, 2011.

Action Taken: None – deferred until February 2011 board meeting.

- 6.1.3 Consideration to adopt previously proposed amendment to 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. The Rule, with proposed amendments, was published in the September 3, 2010 edition of the Texas Register. The Board has received one comment from the Texas Chiropractic Association in support of the proposed rule amendment.

Action Taken: The board approved the proposed amendment to Rule 80.3 as published.

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

6.2.1 Consideration of proposed amendments to Rule 75.17 Scope to bring the Rule into compliance with recent judicial decisions as discussed by the Rules Committee on October 1, 2010.

Action Taken: After consideration of the input received at the Rules Meeting and public hearing held on October 1, 2010 and additional suggestions, the board approved a proposed amendment to Rule 75.17 Scope and directed staff to publish it in the Texas Register for notice and comments. In addition, the board directed staff to schedule a Rules Committee hearing on December 7, 2010 and to include on the committee agenda a public hearing on the proposed amendment to Rule 75.17. Attorney Don Walden and Dr. Jade Malay made public comments urging the board not to adopt rules that would prevent chiropractors from treating patients for such ailments as Type II Diabetes, thyroid issues and similar problems.

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: The board directed the staff to publish the proposed new Rule 80.13 in the Texas Register for notice and comments.

6.3 Consideration of adoption of FCLB's "Model Framework: Uniform Evaluative Process for Treatments and Devices" for Determining Whether Certain Procedures, Treatments and/or Equipment are Within Scope of Practice".

Staff has removed introductory comments from the Executive Director that were included in the original draft of this Framework and presents the FCLB materials for consideration without comments, additions or deletions.

Action Taken: None. The Rules Committee did not have time to address this item during its meeting and the board therefore deferred consideration of this and subsequent Rules Committee-related items until the February 2011 board meeting.

6.4 Scope of Practice Questions and Issues

- 6.4.1 Reconsideration of the following question from staff: May a licensed chiropractor advertise to treat, claim to treat, attempt to treat, or treat a patient for Type II Diabetes?

Action Taken: None – deferred.

- 6.4.2 Reconsideration of the following question from staff: 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: None – deferred.

- 6.4.3 Can you tell me if chiropractors are allowed to practice homeopathy in your state? Is homeopathy within the scope of practice in your state or are chiropractors specifically excluded from practicing homeopathy? Asked by Sharon Stevenson, Executive Director, National Center for Homeopathy.

Action Taken: None –deferred.

6.5 Other Rules Questions

- 6.5.1 James D. Edwards, D.C. has written to the Board asking for clarification on Rule 77.3 Miscellaneous concerning a DC being required to provide to the patient in writing the full amount of the licensee's charges for that date. A copy of his question is attached.

Dr. Edwards quotes Rule 77.3 in full and then asks, "Based on those provisions, it is very clear that the patient must be shown in writing the license's charges for that day. However, there is no requirement for the patient to sign the document, and no requirement for the licensee to retain the document."

Dr. Edwards continues, "If the TBCE desires to implement any of those requirements – including the length of time the licensee must retain the documentation – I believe a review of the rule would be in order. In the interim, I request written confirmation that my interpretations of the current rule are correct."

Action Taken: None – deferred.

- 6.5.2 A practicing DC asked agency staff for direction "about what I can say as far as treatment of ear infections." A copy of his email is attached. The staff defers his question to the Board. The question is as follows:

“I operate an all cash practice in the Austin/Hill Country Area and have a question about what I can say as far as treatment for ear infections. I understand that you [staff] are not a Chiropractor and may not know about the efficacy of Chiropractic in the treatment of ear infections. I understand that I cannot “guarantee” or “cure” any ailment of any kind. We have many kids in our practice but would like to help many more who don’t know the benefits of Chiropractic. We currently treat kids 10yo and younger for \$500 per year. They are able to come ¾ times per month. We encourage them to come weekly to be checked. I would like to hand out a flyer that says something like this:

WITH REGULAR TREATMENT WE BELIEVE THAT WE CAN HELP YOUR CHILDREN WITH EAR INFECTIONS! WE ARE SO CONFIDENT THAT WE CAN HELP THAT WE ARE PUTTING OUR MONEY WHERE OUR MOUTH IS BY REFUNDING YOUR MONEY IF UNDER REGULAR TREATMENT YOUR CHILD GETS AN EAR INFECTION! CALL US FOR DETAILS...

Let me know what you think and what you might change so that I can star to help more kids in my community.”

Action Taken: None – deferred.

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: None

7. ENFORCEMENT COMMITTEE BUSINESS

Dr. Cynthia Tays, D.C.

7.1 Consideration of SOAH Proposals for Decisions

7.1.1 Consideration of SOAH Proposal for Decision in regard to the Case #108-097 concerning licensee Luis Pena, License #4498. The Final Board Order for this case is combined with and follows the materials for agenda item 7.1.2.

Action Taken: The Board approved a Board Order revoking the DC license of Luis Pena, license #4498.

7.1.2 Consideration of SOAH Proposal for Decision in regard to Case #109-167 concerning licensee Luis Pena, License #4498. (This is a second case involving Dr. Pena.)

Action Taken: In concert with Agenda Item #7.1.1, the board approved Board Order revoking the DC license of Luis Pena, license #4498.

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 Cases #108-142; 110-048; 110-049; 110-195; 110-196
- 7.2.2 Case #108-145
- 7.2.3 Case #110-012
- 7.2.4 Case #110-034
- 7.2.5 Case #110-131
- 7.2.6 Case #110-142
- 7.2.7 Case #110-151
- 7.2.8 Case #110-184
- 7.2.9 Case #110-197
- 7.2.10 Case #110-209
- 7.2.11 Case #110-235
- 7.2.12 Case #110-250
- 7.2.13 Case #110-202 (materials may not be included in notebook)
- 7.2.14 Case #110-050
- 7.2.15 Case #110-269
- 7.2.16 Case #109-147

Action Taken: After consideration, the board approve all the Proposed Agreed Orders listed above.

7.3 Recommendations to Approve or Deny Requests to Expunge Records

7.3.1 Request to expunge Case #104-210: Recommendation to Approve

Action Taken: The board voted to approve the request to expunge Case #104-210.

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

There are no statutory suspensions or revocations for consideration at this meeting.

Action Taken: None

7.5 Discussion of Enforcement Committee proposal to request that the Rules Committee consider at its next meeting a proposal to amend Rule 77.2 Publicity to require testimonials to contain the first and last names of the person giving the testimony and other issues related to testimonials.

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 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 Board's appeal

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 convened in Executive Session at 1:50 PM and received a briefing from Assistant Attorney General Jeb Boyt concerning the agenda items 8.1 and 8.2. No decisions or votes were taken in or out of Executive Session. The board re-convened in open session at 2:20 PM.

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

Dr. Kenneth Perkins, D.C.

Action Taken: None

10. BOARD PLANNING SESSION

This agenda item is intended to provide board and staff with the opportunity to discuss a wide range of issues to help the board and agency staff determine which issues need to be addressed at future board meetings, but not to make final decisions related to any of the issues discussed. Board members and staff will engage in an open discussion to identify issues of concern to the board and staff related to the board's mission, philosophy, operations, committee activities, opportunities for improvement, plans and anything else related to the board's fulfilling its responsibilities. Dr. Perkins may also open the floor for public input. This agenda item may include a presentation from Parker College of Chiropractic or Texas Chiropractic College on the curriculum for the doctor of chiropractic program.

Action Taken: None. The planning session was cancelled due to the absence of two public members.

11. MEETING DATES & ADJOURNMENT

Dr. Kenneth Perkins, D.C.

10.1 The planned Board meeting dates for Calendar Years 2011 & 2012 are:

(1) February 10, 2011

(5) February 23, 2012

- (2) May 19, 2011
- (3) August 11, 2011
- (4) November 17, 2011

- (6) May 24, 2012
- (7) August 16, 2012
- (8) November 15, 2012

*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) November 9, 2010
- (2) December – None
- (3) January 11, 2011

10.3 Adjournment at: _____ PM.

Action Taken: Dr. Perkins reminded board members and staff of the next meetings and adjourned the meeting at approximately 2:30 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 4, 2010 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on February 12, 2011.

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners

February 12, 2011

Date