

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

Minutes From the May 19, 2011 Board Meeting

The Texas Board of Chiropractic Examiners (the Board) met in a regularly scheduled board meeting on May 19, 2011. The meeting was held in the William P. Hobby Building, Tower 2, Room 225, located at 333 Guadalupe Street, Austin, Texas 78701. The meeting was recorded. 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. (outgoing President) and Cynthia Tays, D.C., President

Call to Order, Roll Call and Establishment of a Quorum, and Transfer of Gavel to New President. Vote as necessary on excusing and absent board members.

Action Taken: New Board President Dr. Cynthia Tays called the meeting to order 1:02 p.m. All board members were present. Also present were Assistant Attorney General Jeb Boyt, Executive Director Glenn Parker, General Counsel Hal ten Brink, Board Attorney Yvette Yarbrough, Director Enforcement Scott Parker, Director of Licensure, Jennifer Hertsenberg and Administrative Assistant for Enforcement, Mary Feys.

The Board and staff expressed their appreciation to Dr. Perkins and Dr. Summers for their service on the Board. This was their last meeting as board members.

2. APPROVAL OF MINUTES

Cynthia Tays, D.C.

Approval of Minutes from February 10, 2011 Board Meeting

Action Taken: The Board voted to approve the minutes from the February 10, 2011 board meeting without discussion.

3. PUBLIC COMMENTS

Cynthia Tays, D.C.

Forum for licensees, the general public or other interested stakeholders to address the Board

Action Taken: Dr. Tays opened the floor for comments to anyone who wanted to address the Board. There was no one present who wished to make a comment.

4. EXECUTIVE COMMITTEE BUSINESS

Cynthia Tays, D.C.

President's Report (*Dr. Cynthia Tays*)

- 4.1 Dr. Cynthia Tays may make a brief oral report to the Board on matters of current interest.

Action Taken: None. Dr. Tays reported on her attendance at the May 2011 annual meeting of the Federation of Chiropractic Licensing Boards. She reported that significant topics of discussion at the FCLB meeting included scope of practice, treatment of patients outside the office (especially in regard to sports teams), registering or licensing chiropractic assistants, licensing doctors trained in doctors educated in DC schools outside the US and Canada. She conclude by saying that the FCLB annual meeting for 2012 will be held in San Antonio and urged members to make plans to attend, if possible.

- 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 issues in the current legislative session. Mr. Parker will answer questions from the board members concerning any agency operations, legislative issues and other matters of concern to the Board.

Action Taken: None. Mr. Parker reported on the current status of agency operations, including financial, licensing and enforcement. He reported no unusual activities and expects to end the fiscal year within budget and with performance measures for licensing and enforcement to be near projections. The backlog of very old complaints continues to be reduced. Open cases are the most current they have been in the past 5 years. Mr. Parker also stated that he plans to retire and that his last day of employment with the agency will be August 31, 2011.

- 4.3 Appointment of Committee Members

Dr. Cynthia Tays

Action Taken: Governor Rick Perry nominated Dr. Karen Campion and Dr. Tim McCullough to the Board to replace Dr. Kenneth Perkins and Dr. Kathleen Summers, whose terms had expired – but who continue to serve until their replacements are confirmed and meet other qualifications to participate on the Board. Assuming they are confirmed by the Senate (and they subsequently were confirmed) Dr. Tays chose to announce the committee appointments so that the committees can meet and conduct their business prior to the next board meeting. The new committee memberships are as follows:

Executive Committee: (Made up of the Board's officers)

1. Dr. Cynthia Tays, President
2. Vice President: to be chosen at the next board meeting
3. Secretary-Treasurer: to be chosen at the next board meeting

Rules Committee:

1. Dr. Janette Kurban, Chair
2. Dr. Cynthia Tays
3. Mr. Tom Turner
4. Ms. Kenya Woodruff, J.D.

Enforcement Committee:

1. Dr. Larry Montgomery, Chair
2. Dr. Karen Campion
3. Ms. Kenya Woodruff, J.D.

Licensure and Educational Standards Committee:

1. Dr. Patrick Thomas, Chair
2. Dr. Tim McCullough
3. Mr. Armando Elizarde, Jr.

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 Mia McDougal, Applicant
- 5.1.2 Justin Helm, Applicant
- 5.1.3 Steven Abro, Applicant

Action Taken: The Board approved the requests by Ms. McDougal and Mr. Abro to sit for the Jurisprudence Exam. The Board deferred a decision on the request by Mr. Helm until such time as the currently pending criminal charges against Mr. Helm are resolved.

- 5.2 Request to Take the Jurisprudence Exam for Reinstatement of License

- 5.2.1 Jason Ulsrud (Previously held Texas DC License #08872)

Action Taken: The Board approved Mr. Ulsrud's request to take the Jurisprudence Exam, made conditional upon his signing of a Proposed Agreed Order to resolve certain outstanding issues.

- 5.3 Specialty Recognition Applications

- 5.3.1 Nutrition – American Clinical Board of Nutrition

Action Taken: The Board approved the request by the American Clinical Board of Nutrition to have Nutrition recognized as a chiropractic specialty. The Board also directed legal staff to draft amendments to Rule 71.13 and Rule 71.15 to specify the requirements. The Board also directed legal staff to draft a rule change to eliminate the application fee for requesting recognition of a chiropractic specialty by future applicants.

- 5.4 Consideration to recommend changes to Rule 71.15 Recognized Specialties to reflect requirements for Chiropractic Acupuncture and Chiropractic Neurology as a recognized chiropractic specialties as approved at the May 20, 2010 and the February 10, 2011 board meetings respectively.

Action Taken: The Board directed legal staff to publish in the Texas Register a proposed rule amendment to recognize Chiropractic Neurology and Chiropractic Acupuncture as chiropractic specialties but to defer the chiropractic acupuncture effective date for one year.

- 5.5 Consideration of recommendation by Dr. Patrick Thomas that the Board issue suggested guidelines for content to be taught at the required continuing education courses on Medicare coding and documentation.

Action Taken: The Board approved Dr. Thomas' request to direct staff to send suggested guidelines to CE providers for the the required Medicare coding and documentation classes.

- 5.6 Comments from Committee Chair concerning Committee business, activities or issues.

Actions Taken: None.

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 78.1 Registration of Chiropractic Radiologic Technologists (Rad Techs) concerning removing the requirement that Rad Techs must show proof of continuing education prior to annual renewal of registration. The proposed amendment was published in the April 1, 2011 edition of the Texas Register. No comments on the proposed amendment were received during the comment period.

Action Taken: The Board adopted the proposed amendments to Rule 78.1 without changes.

- 6.1.2 Consideration to adopt proposed new Rule 77.5 Misleading Claims. The proposed new rule was published in the April 1, 2011 edition of the Texas Register. No comments on the proposed new rule were received during the comment period.

Action Taken: The Board approved the proposed amendments to Rule 77.5 without changes.

- 6.1.3 Consideration to adopt proposed amendments to Rule 75.11 Schedule of Sanctions to move certain offenses from one category to another and to add certain offenses to the schedule. The proposed amendment was published in the April 1, 2011 edition of the Texas Register. No comments on the proposed amendments were received during the comments period.

Action Taken: The Board approved the proposed amendments to Rule 75.11 without changes.

- 6.1.4 Consideration to adopt previously proposed amendments to Rule 77.2 Publicity concerning the use of the term “board certified” or similar terminology in public communications. The proposed amendment was published in the April 1, 2011 edition of the Texas Register. No comments on the proposed amendment were received during the comment period.

Action Taken: The Board approved the proposed amendments to Rule 77.2 without changes.

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

- 6.2.1 Consideration to propose amendments to Rule 75.17 Scope of Practice

Action Taken: After consideration of proposed amendments to Rule 75.17 as drafted by the Texas Chiropractic Association and by the TBCE Rules Committee and staff, the Board voted to direct staff to publish in the Texas Register the proposed amendments as drafted by the Rules Committee and staff. The Board also directed staff to make available a side-by-side comparison of the existing Rule 75.17 in its entirety, the amendments as proposed by TCA, and the amendments as proposed by the Board.

- 6.2.2 Consideration to propose amendments to Rule 75.2 Proper Diligence and Efficient Practice of Chiropractic

Action Taken: After consideration of proposed amendments to Rule 75.2 as drafted by the Texas Chiropractic Association and by the TBCE Rules Committee and staff, the Board voted to direct staff to publish in the Texas Register the proposed amendments as drafted by the Rules Committee and staff. The Board also directed staff to make available a side-by-side comparison of the

existing Rule 75.2 in its entirety, the amendments as proposed by TCA, and the amendments as proposed by the Board.

- 6.2.3 Consideration to propose amendments to Rule 80.3 Request for Information and Records from Licensees regarding use of letters of protection

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

- 6.2.4 Consideration to propose amendments to Rule 74.3 Annual Renewal of Chiropractic Facilities to clarify that operating a facility without a current certificate of registration constitutes operating a facility without a certificate of registration.

Action Taken: The Board voted to direct staff to publish the proposed amendments to Rule 74.3 in the Texas Register for notice and comments.

6.3 Scope of Practice Questions and Issues

- 6.3.1 Question about the use of ultrasound for arterial screening

Action taken: The Board determined that the use of ultrasound by for arterial screening by a DC is not within the legal scope of practice for chiropractors in Texas.

6.4 Update on other issues under consideration by the Committee

Comments from Committee chair Dr. Janette Kurban concerning Committee business, activities or 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 #108-115 concerning licensee Michael McClung, License #02891. (Hal ten Brink to present)

Action Taken: The Board voted to approve the PFD and Final Order to resolve the outstanding complaint against Dr. McClung by imposing a disciplinary action on Dr. McClung.

- 7.1.2 Consideration of SOAH Proposal for Decision in regard to Case #105-135 concerning licensee Eric Vanderwerff, License #07199. (Hal ten Brink to present)

Action Taken: The Board voted to approve the legal staff's version of the Proposal for Decision seeking disciplinary action against Dr. Vanderwerff.

- 7.1.3 Consideration of SOAH Proposal for Decision in regard to Cases 108-274 and 110-133 concerning licensee W. Brent Thompson, License #02412. (Hal ten Brink to present)

Action Taken: The Board approved the Proposal for Decision to take disciplinary action against Dr. Thompson.

- 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 #108-087
- 7.2.2 Case #108-156
- 7.2.3 Case #109-148
- 7.2.4 Case #109-181
- 7.2.5 Case #109-217
- 7.2.6 Case #110-084
- 7.2.7 Case #110-094
- 7.2.8 Case #110-152
- 7.2.9 Case #110-155
- 7.2.10 Case #110-166
- 7.2.11 Case #108-177
- 7.2.12 Case #110-191
- 7.2.13 Case #110-212
- 7.2.14 Case #110-260
- 7.2.15 Case #110-293
- 7.2.16 Case #110-262
- 7.2.17 Case #110-217
- 7.2.18 Case #111-026
- 7.2.19 Case #111-028
- 7.2.20 Case #110-153
- 7.2.21 Case #109-187

Action Taken: The Board approved all the Agreed Orders listed above in 7.2.1 – 7.2.21.

- 7.3 Recommendations to Approve or Deny Requests to Expunge Records

- 7.3.1 Case #102-540 Request to expunge records

Action Taken: The Board voted to approve the request to expunge the records for the listed case.

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

- 7.4.1 Case #111-005

- Action Taken:** The Board voted to revoke the DC license of Dr. John Gruza, license #05041 due to his conviction on a felony criminal offense.

- 7.5 Comments from Enforcement Chair Dr. Cynthia Tays on any Committee business, activities or issues.

- Action Taken:** None

8. EXECUTIVE SESSION

Cynthia Tays, 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 and personnel issues including but not limited to:

- 8.1 Texas Medical Association lawsuit against the Board, including Board's appeal, concerning MUA, Needle EMG and Diagnosis.
- 8.2 Newly filed Texas Medical Association lawsuit against the Board regarding Rule 75.17 Scope allowing DCs to perform Vestibular-Ocular-Nystagmus testing.
- 8.3 TBCE vs. Abbott regarding disclosure of some contents of Board investigative files
- 8.4 Discussion to prepare to hire a new Executive Director

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 3:44 p.m. and came out of Executive Session and resumed its public meeting at 4:03 p.m.

9. CONSIDERATION OF MOTIONS RELATED TO ITEMS DISCUSSED IN EXECUTIVE SESSION

Cynthia Tays, D.C.

Board members will have the opportunity to offer motions related to any items discussed in Executive Session.

Action Taken: None

10. CALL FOR FUTURE ITEMS for discussion and/or consideration by the Board
Cynthia Tays, D.C.

Action Taken: None. Board members suggested the following topics for future consideration:

1. Make mandatory the 2-hour online CE course covering the statute and rules that is currently under development by the staff.
2. Create cleaner guidelines for documentation of treatment
3. Create possible exemption from Medicare CE course requirements for DCs who affirm that they do not and will not treat Medicare patients.
4. Make possible more education of public board members on chiropractic education, training, practice and other issues.
5. Change the delegation rule that currently allows unlicensed chiropractic college graduates to treat patients.

11. MEETING DATES & ADJOURNMENT

Cynthia Tays, D.C.

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

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|-----------------------|-----------------------|
| (1) August 11, 2011 | (3) February 23, 2012 |
| (2) November 17, 2011 | (4) May 24, 2012 |
| | (5) August 16, 2012 |
| | (6) November 15, 2012 |

*Note: All planned board meeting dates through November 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.

Action Taken: The Board voted to move the meeting date for the next Board meeting from August 11, 2011 to July 28, 2011. One purpose of the move will be to give the board time to choose a new Executive Director who could then work with Mr. Parker during August to better effectuate a transition to the new Director.

11.2 The next Enforcement Committee dates apart from the board meetings are scheduled for:

- (1) June 14, 2011
- (2) August 16, 2011
- (3) October 11, 2011

11.3 Adjournment at: ____4:17_____ 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 May 19, 2011 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on July 28, 2011.

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners

July 28, 2011
Date