

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

MINUTES FROM THE July 28, 2011 BOARD MEETING

The Texas Board of Chiropractic Examiners (the Board) met in a regularly scheduled board meeting on July 28, 2011. 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

Dr. Cynthia Tays, D.C., President (or Presiding Officer)

Call to Order, Roll Call and Establishment of a Quorum

Action Taken: Board President Dr. Cynthia Tays called the meeting to order at 1:15 PM. All members were present with the exception of Mr. Thomas Turner, whose absence was voted excused by the Board. Others present were:

1. Glenn Parker, Executive Director
2. Hal ten Brink, General Counsel
3. Yvette Yarbrough, Board Attorney
4. Jennifer Hertsenberg, Director of Licensure
5. Scott Parker, Director of Enforcement
6. Mary Feys, Admin Assistant for Enforcement
7. Bill Zilar, Investigator
8. Arlethia Middleton, Chief Financial Officer
9. Nikell Williams, Programmer Analyst
10. Grace Wang, Legal Intern

2. APPROVAL OF MINUTES

Dr. Cynthia Tays, D.C.

Approval of Minutes from May 19, 2011 Board Meeting

Action Taken: After consideration, the Board approve without changes the minutes from the board meeting that was held on May 19, 2011.

3. PUBLIC COMMENTS

Dr. 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 to public comments. There were multiple comments made by members of the public:

- Janet Martin – regarding scope of practice
- Cynthia Vaughn, D.C. – regarding scope of practice
- Clem Martin, D.C. – regarding scope of practice
- Robin Fuquay, D.C. – regarding scope of practice
- Daniel Gabriel, D.C. – regarding scope of practice and hardships caused by increasing CE hours required for relicensure
- Gary Brettmann, D.C. – regarding scope of practice and CE hours in Medicare required for relicensure
- Lance Durrett, D.C. – regarding scope of practice
- Victor Carsrud, D.C. – regarding scope of practice
- Juaneer Surprise, D.C. – regarding scope of practice
- Scott Stelmach, D.C. – regarding scope of practice
- Glenn Kikel, ACN (Standard Process) – regarding scope of practice (nutrition)

4. EXECUTIVE COMMITTEE BUSINESS

Dr. Cynthia Tays, D.C.

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

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

Action Taken: None. This item was for informational purposes only.

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. This item was for informational purposes only.

- 4.3 Selection of Board Vice-President and Secretary/Treasurer
Dr. Cynthia Tays

Action Taken: After voting via ballot, the Board selected Dr. Patrick Thomas as Board Vice-President and Dr. Larry Montgomery as Secretary/Treasurer.

5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

Dr. Patrick Thomas, D.C.

- 5.1 The L& E Committee will make its recommendations to the Board concerning the following requests by a previously licensed D.C. for approval to renew the non-renewable license with good cause:

5.1.1 Luanne Ellis, previously held TX DC 4194

Action Taken: The Board approved Ms. Ellis' request to renew her non-renewable license with good cause.

- 5.2 Consideration to recommend changes to Rule 71.15 Recognized Specialties to reflect requirements for Chiropractic Nutrition as a recognized chiropractic specialties as approved at the May 19, 2011 Board Meeting.

Action Taken: The Board tabled this agenda item.

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

Action Taken: Dr. Thomas briefed the Board about topics discussed by the Committee. These items were (1) sending an additional three-month reminder to licensees in addition to the ten-month letter for renewal of licenses, (2) an online jurisprudence course/test, (3) utilizing a new character recommendation letter, and (4) better educating licensees on how to interact with the Board (possibly through required CE hours?).

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 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. The proposed amendment was published in the June 17, 2011, edition of the Texas Register. Three comments on the proposed amendment were received during the comment period.

Action Taken: The Board approved the rule amendment as proposed.

- 6.1.2 Consideration to adopt proposed amendments to Rule 80.3 Request for Information and Records from Licensees regarding use of letters of protection. The proposed amendment was published in the June 17, 2011, edition of the Texas Register. One comment on the proposed amendment was received during the comment period.

Action Taken: The Board approved the rule amendment as proposed.

- 6.1.3 Discussion of and consideration to adopt proposed amendments to Rule 75.2 Proper Diligence and Efficient Practice of Chiropractic. The proposed amendment was published in the June 24, 2011, edition of the Texas Register. Multiple comments on the proposed amendment were received during the comment period.

Action Taken: The Board tabled this agenda item.

- 6.1.4 Discussion of and consideration to adopt proposed amendments to Rule 75.17 Scope of Practice. The proposed amendment was published in the June 24, 2011, edition of the Texas Register. Multiple comments on the proposed amendment were received during the comment period.

Action Taken: The Board tabled this agenda item.

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

- 6.2.1 Consideration to propose amendments to Rule 71.13 regarding Chiropractic Specialties and Rule 75.7 regarding Required Fees and Charges to eliminate the fee charged in an application for recognition of a specialty

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

- 6.2.2 Consideration to propose amendments to Rule 71.15 regarding Recognized Specialties to outline the specialty requirements for Chiropractic Neurology, Acupuncture, and Nutrition

Action Taken: The Board tabled this agenda item.

- 6.2.3 Consideration to propose amendments to Rule 75.1 regarding Grossly Unprofessional Conduct to add "or may result" into the rule prohibiting overtreating/overcharging, to make the rules on

sexual misconduct more clear, and to add a requirement that licensees provide gowns/draping for patients disrobing.

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

6.2.4 Consideration to propose new Rule 75.27 regarding Animal Chiropractic

Action Taken: The Board directed staff to prepare a draft rule for the November Board meeting and to discuss a possible Memorandum of Understanding with the Texas Board of Veterinary Medical Examiners.

6.2.5 Consideration to propose amendments to Rule 77.2 regarding Publicity and to Rule 77.5 regarding Misleading Claims to make the rules regarding advertising more specific

Action Taken: The Board directed staff to publish the proposed amendment to Rule 77.2 in the Texas Register for notice and comments. The Board tabled the proposed amendment to Rule 77.5.

6.2.6 Consideration to propose amendments to Rule 80.1 regarding Delegation of Authority: (1) consideration of an amendment to (c)(2) to clarify that while a DC does not need to be in the treatment room, he/she needs to be on-site; (2) consideration of an amendment to (i) to define “on-call.”

Action Taken: The Board directed staff to publish the proposed amendment to Rule 80.1(c)(2) in the Texas Register for notice and comments. The Board tabled the proposed amendment to Rule 80.1(i) and directed staff to research the meaning of “on-call.”

6.2.7 Consideration to propose amendments to Rule 80.11 regarding Code of Ethics to include more provisions from the American Chiropractic Association’s Code of Ethics

Action Taken: The Board tabled this agenda item.

6.2.8 Consideration to propose new Rule 81.1 regarding Definitions and new Rule 81.3 regarding Petition for Adoption of Rules to promulgate rules required the Administrative Procedures Act, § 2001.021 outlining the form of such a petition and the procedure for its submission, consideration, and disposition.

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

6.3 Scope of Practice Questions and Issues

- 6.3.1 Question about the use of interpretation of blood chemistry and recommendations based on those interpretations, as well as advertisement for said interpretation/recommendations

Action Taken: The Board was briefed that the Committee determined that the interpretation of blood chemistry and recommendations based on those interpretations are within the scope of practice for chiropractors in Texas, as long as the interpretations and recommendations are related to the scope of practice as defined by the Chiropractic Act (i.e. the spine and musculoskeletal system and/or subluxation complex).

- 6.3.2 Question about the performance of and use of computerized posturography

Action Taken: The Board was briefed that the Committee determined that the performance of and use of computerized posturography is within the scope of practice for chiropractors in Texas, as long as the performance and use is related to the scope of practice as defined by the Chiropractic Act (i.e. the spine and musculoskeletal system and/or subluxation complex).

- 6.3.3 Question about the online advertisement of the sale of nutritional products and whether this implies a “diagnosis”

Action Taken: The Board tabled this issue and directed staff to clarify this question with the DC who asked about this topic.

- 6.4 Public comment and request from the Chiropractic Society of Texas that the rule regarding additional Medicare documentation CE hours be reconsidered

Action Taken: The Board considered the request and declined to reconsider the rule regarding additional Medicare documentation CE hours.

- 6.5 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. Larry Montgomery, D.C.

- 7.1 Consideration of SOAH Proposals for Decisions

- 7.1.1 Consideration of SOAH Proposal for Decision in regard to the Case #107-124 concerning licensee Michael Koris, License #8149. (Hal ten Brink to present)

Action Taken: The Board suspended the DC license of Dr. Michael Koris, license #8149, effective July 28, 2011, for a period of ten (10) years, with the last seven (7) years probated.

- 7.1.2 Consideration of SOAH Proposal for Decision in regard to Case #108-098 concerning licensee Steven R Lewis, License #5515. (Hal ten Brink to present)

Action Taken: The Board imposed an administrative penalty of \$8,500.00 against Dr. Steven Lewis, license #5515.

- 7.1.3 Consideration of proposal by General Counsel to dismiss one PFD concerning Mike Maddox (former License #04162) and re-file case for a new docket at SOAH to correct a procedural defect

Action Taken: The Board granted the Motion to Dismiss and dismissed the SOAH case against Mike Maddox (Docket 508-11-4254). The Board also directed staff to re-file the case for a new hearing at SOAH.

- 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 #110-096
- 7.2.2 Case #110-178
- 7.2.3 Case #110-205/110-210
- 7.2.4 Case #110-280
- 7.2.5 Case #110-296
- 7.2.6 Case #111-034
- 7.2.7 Case #111-102
- 7.2.8 Case #111-116
- 7.2.9 Case #111-144
- 7.2.10 Case #111-149
- 7.2.11 Case #111-168
- 7.2.12 Case #111-014
- 7.2.13 Case #110-267

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

- 7.3 Recommendations to Approve or Deny Requests to Expunge Records

There are no requests to expunge records for this meeting.

Action Taken: None.

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

There are no statutory revocations to consider for this meeting.

Action Taken: None.

- 7.5 Comments from Enforcement Chair Dr. Larry Montgomery 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 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 4:22 PM and reconvened in public session at 5:01 PM. The above listed agenda items were discussed in Executive Session. No action was taken on the agenda items while in Executive Session.

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.

9.1 Consideration of Motion to hire Executive Director

Action Taken: A motion was made and seconded to hire Yvette Yarbrough as the new Executive Director, effective August 1, 2011. The Board approved this motion unanimously.

9.2 Consideration of Other Motions Related to 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. Dr. Tays called for future items.

- Dr. Thomas suggested the Board implementing a combination facility/license renewal.
- Dr. Montgomery suggested that a rule be implemented requiring documentation conform to national standards of documentation.
- Dr. Montgomery suggested that a rule be implemented requiring a Respondent in an enforcement case to submit all patient records when he/she responds to a complaint.
- Dr. McCullough suggested that the Board require one (1) hour of continuing education on Board procedures and how licensees can interact with the Board. It was discussed that this may be part of an online jurisprudence continuing education course in the future.

11. MEETING DATES & ADJOURNMENT

Dr. Cynthia Tays, D.C

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

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| (1) November 17, 2011 | (3) February 23, 2012 |
| | (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.

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

- (1) August 16, 2011
- (2) October 11, 2011

11.3 Adjournment at: _____ PM.

Action Taken: Dr. Tays reminded members of the next board meeting date and adjourned the meeting at approximately 5:23 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 July 28, 2011 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on November 17, 2011.

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners

November 17, 2011
Date