

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

Committee Meetings: 8:30 a.m. – Noon
(See Committee Agendas for Times and Room Numbers)
Board Meeting: 1:00 p.m. – Adjournment
Hobby Building, Tower 2, Room 225

MINUTES FROM THE
May 24, 2012
BOARD MEETING

BOARD MEETING AGENDA

The Texas Board of Chiropractic Examiners will consider and act, if necessary, on matters within the jurisdiction of the Board which are listed on this agenda. The Board may meet from time-to-time in executive session with respect to the agenda items as authorized by the Texas Open Meetings Act, Chapter 551 of the Government Code.

1. CALL TO ORDER, ROLL CALL & ESTABLISHMENT OF A QUORUM

Cynthia Tays, D.C., President

Call to Order, Roll Call and Establishment of a Quorum. Vote as necessary on excusing any absent board members.

Action Taken: Board President Dr. Cynthia Tays called the meeting to order at 1:04 PM. All members were present with the exception of Mr. Armando Elizarde. Mr. Elizarde's absence was not approved as excused.

Others present were:

1. Yvette Yarbrough, Executive Director
2. Hal ten Brink, General Counsel
3. Scott Parker, Director of Enforcement
4. Mary Feys, Admin Assistant for Enforcement
5. Joe Thrash, Assistant Attorney General
6. Jennifer Hertsenberg, Director of Licensure
7. Sarah Matthews, Licensing Assistant
8. Arlethia Middleton, Chief Financial Officer

2. APPROVAL OF MINUTES

Cynthia Tays, D.C.

Approval of Minutes from February 23, 2012 Board Meeting

Action Taken: Dr. McCullough **MOVED** and Dr. Thomas **SECONDED** the motion to approve the minutes from the February 23, 2012, Board Meeting. After consideration, the Board **APPROVED** without changes the minutes from the February 23, 2012 meeting.

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

- *Devin Pettiet, D.C. (Texas Chiropractic Association) – regarding TCA’s comment to proposed amendment to Rule 75.2 (to explain that there was a need to understand on the record why such general terms are needed) and regarding TCA support of requiring more teaching of rule changes in continuing education*
- *Dr. Po Chang, PhD, LAc (VP, TX Assn of Acupuncturists) – regarding opposition to acupuncture specialty rule amendment*
- *Lisa Lin, LAc (President and CEO, TCTCM; President, TX Assn of Acupuncturists) – regarding opposition to acupuncture specialty rule amendment*
- *Wally Doggett, LAc (President, TX Assn of Acupuncture and Oriental Medicine) – regarding opposition to acupuncture specialty rule amendment*
- *Will Morris, PhD, LAc (President, AOMA Graduate School of Integrative Medicine) – regarding opposition to acupuncture specialty rule amendment*
- *Erika Schultz (Student, AOMA; AAAAOM Student Organization) – regarding opposition to acupuncture specialty rule amendment; read letter from IFCO opposing amendment*
- *Joshua Saul (Student, AOMA; AAAAOM Student Organization) – regarding opposition to acupuncture specialty rule amendment*
- *Gary Brettmann, D.C. – regarding opposition to acupuncture specialty rule amendment*
- *Devin Pettiet, D.C. (Texas Chiropractic Association) – regarding need for DCs’ education during chiropractic college to be taken into account when discussing acupuncture education*
- *I-Pei Hodge (Student) – regarding opposition to acupuncture specialty rule amendment*
- *Grant Hicks (TCTCM Grad) – regarding opposition to acupuncture specialty rule amendment*
- *Ryan Luna (TCTCM Student) – regarding opposition to acupuncture specialty rule amendment*
- *William Lava (AOMA) – regarding opposition to acupuncture specialty rule amendment*

4. EXECUTIVE COMMITTEE BUSINESS

Cynthia Tays, D.C.

4.1 President's Report (*Cynthia Tays, D.C.*)

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 FCLB Conference Recap (*Cynthia Tays, D.C.*)

The FCLB's annual conference was held May 3-6, 2012, in San Antonio. Dr. Tays will present the Board with a recap of information presented at the conference.

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

4.3 Executive Director's Report (*Yvette Yarbrough*)

Executive Director Yvette Yarbrough 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 from the past legislative session. Mrs. Yarbrough 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.

4.4 Strategic Plan Discussion (*Yvette Yarbrough*)

Ms. Yarbrough will present the agency's Strategic Plan, which is due in June 2012, to the Board for comment.

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

4.5 TBCE Administrative Procedures Approval (*Yvette Yarbrough*)

Ms. Yarbrough will present the proposed TBCE Administrative Procedures to the Board for approval. This document details (1) general policies, (2) board member vs. staff duties, and (3) committees, committee procedures, committee structure/composition, and committee function and purpose.

Action Taken: None at this time. Board members will submit comments to Ms. Yarbrough for review at the next meeting.

4.6 Approval of HPC Petition to SOAH for Rulemaking (*Yvette Yarbrough*)

Ms. Yarbrough will present the proposed Health Professions Council (HPC) petition to SOAH for rulemaking for approval. HPC agencies and their legal counsel have drafted a petition for rulemaking with suggestions on how to improve the contested case process and further SOAH's mission to conduct fair, prompt and efficient hearings. Before the TBCE staff signs off on this petition, staff requests the Board's approval.

Action Taken: Dr. Montgomery **MOVED** and Dr. Campion **SECONDED** that the Board delegate authority to approve the petition to Dr. Tays and Ms. Yarbrough. After consideration, the Board **APPROVED** the motion.

5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

Patrick Thomas, D.C.

5.1 Consideration to recommend changes to Rule 71.15, Recognized Specialties, to reflect requirements for Nutrition as a recognized Chiropractic Specialty as approved at the May 19, 2011 Board Meeting

Action Taken: The L&E Committee **MOVED** and Dr. Kurban **SECONDED** that the proposed requirements for the Nutrition specialty be approved.

5.2 Consideration to recommend changes to Rule 71.15, Recognized Specialties, to reflect requirements for Neurology as a recognized Chiropractic Specialty as approved at the February 10, 2011 Board Meeting.

Action Taken: The L&E Committee **MOVED** and Dr. Kurban **SECONDED** that the proposed requirements for the Neurology specialty be approved.

5.3 Consideration of changes to Continuing Education course approval criteria

Action Taken: None at this time.

5.4 Comments from Committee Chair concerning Committee business, activities or issues.

5.4.1 Discussion of 4 hour mandated continuing education courses (including Online Jurisprudence Course)

Action Taken: None at this time.

5.4.2 Discussion of CE hour tracking for licensees

Action Taken: None at this time.

5.4.3 Medicare Continuing Education Evaluation Summary

Action Taken: None at this time.

5.4.4 Approved Continuing Education Seminar Complaint – Follow-up

Action Taken: None at this time.

- 5.4.5 Review of and discussion about character recommendation forms located in the new licensee application

Action Taken: Staff will take the language related to “not addicted to intoxicants or drugs” off the recommendation form. Additionally staff will require three substantive letters of recommendation for applicants appearing before the Board.

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 amendments to Rule 71.15 regarding Recognition of Specialties to outline the requirements for approved chiropractic specialty of Acupuncture. The proposed amendment was published in the February 17, 2012, edition of the Texas Register. Multiple comments were received during the comment period.

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** that the proposed amendments to Rule 71.15 be withdrawn. After consideration, the Board **APPROVED** the motion to withdraw the proposed amendments to Rule 71.15.

- 6.1.2 Consideration to adopt amendments to Rule 75.2 regarding Proper Diligence and Efficient Practice of Chiropractic, to specify the standard upon which this rule is based and to specify that a licensee’s failure to refer a patient to an appropriate health care provider under certain circumstances constitutes a violation of this rule). The proposed amendment was published in the February 17, 2012, edition of the Texas Register. Two comments were received during the comment period.

Action Taken: The Rules Committee **MOVED** and Ms. Woodruff **SECONDED** that the proposed amendments to Rule 75.2 be adopted without changes. After consideration, the Board **APPROVED** the motion.

- 6.1.3 Consideration to adopt amendments to Rule 77.2 regarding Publicity to make more specific the rule regarding advertising. The proposed amendment was published in the February 10, 2012, edition of the Texas Register. No comments were received during the comment period.

Action Taken: The Rules Committee **MOVED** and Ms. Woodruff **SECONDED** that the proposed amendments to Rule 77.2 be adopted without changes. After consideration, the Board **APPROVED** the motion.

- 6.1.4 Consideration to adopt new Rule 79.3 regarding General Requirements for Licensure of Certain Military Spouses. This rule is necessary to implement Senate Bill (SB) 1733, 82nd Legislature, Regular Session (2011). SB 1733 amended Texas Occupations Code, Chapter 55, to require state agencies that issue occupational licenses to adopt rules to provide for the issuance of a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States. The proposed rule was published in the April 6, 2012, edition of the Texas Register. One comment was received during the comment period.

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** that the proposed Rule 79.3 be adopted without changes. After consideration, the Board **APPROVED** the motion.

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

- 6.2.1 Consideration to propose amendments to Rule 71.15 regarding Recognition of Specialties to outline the requirements for approved chiropractic specialties of Chiropractic Neurology and Nutrition.

Action Taken: The Rules Committee **MOVED** and Ms. Woodruff **SECONDED** that the proposed amendment to Rule 71.15 be published for comment. After consideration, the Board **APPROVED** the motion.

- 6.2.2 Consideration to propose an amendment to Rule 80.7 relating to Out of Facility Practice. Currently a DC is required to hold a facility registration in order to provide out-of-facility services. This amendment will require that such out-of-facility practice must be done by a DC who either holds the facility registration or works at a registered facility. Additionally, the amendment will outline exemptions from out-of-facility practice requirements for emergencies.

Action Taken: The Rules Committee **MOVED** and Dr. Montgomery **SECONDED** that the proposed amendment to Rule 80.7, with regards to facility registration and out-of-facility practice, be published for comment. After consideration, the Board **APPROVED** the motion. Ms. Woodruff abstained from this vote. The Board tabled the emergency out-of-facility practice discussion.

- 6.2.3 Discussion of and consideration to propose amendments to Rule 75.17 regarding Scope of Practice. The original 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. However, this original proposed amendment “died” due to non-action by the Board. Multiple “work sessions” have been held to discuss further amendments to the rule with the public, licensees, and stakeholders.

Action Taken: Dr. Montgomery **MOVED** and Dr. Kurban **SECONDED** that the proposed amendment to Rule 75.17 be published for comment. After consideration, the Board **APPROVED** the motion, with Dr. McCullough opposing the motion.

6.3 Discussion Items

- 6.3.1 Discussion of proposed amendment to Rule 75.7. Staff proposed an amendment to Rule 75.7, which was published in the April 27, 2012 edition of the Texas Register. The amendment first deletes the line item for the Newsletter Fee and adds a new column to the fee schedule to make clear which fees incorporate this newsletter fee. Second, the amendment incorporates an increase in the Texas Online subscription fee for facility renewals. Third, the amendment increases the DC License Reactivation from Inactive Status fee. These reactivations are treated as active renewals, so the reactivation fee was changed to mirror the renewal fee. Fourth, the term “license” was deleted from facility fee line items, and the term “registration” was substituted. No comments have been received to date. This amendment will be eligible for adoption at the next Board meeting.

Action Taken: No action.

- 6.3.2 Discussion of advertisement of “deals” using Group-on/Living Social/Amazon Deals and the different types of contractual agreements entered into by licensees. The Board should decide whether these types of “deals” involve kickbacks in violation of the Patient Solicitation Act.

Action Taken: No action at this time.

- 6.3.3 Discussion about emails from a Dr. John Schmidt, DC (DC Seminars) regarding chiropractor use of osteopathic manipulative treatment codes.

Action Taken: The Board directed staff to answer questions regarding these emails that coding must be done according to the rules of the insurance company or other billing entity.

- 6.3.4 Discussion about whether a DC can treat himself and then bill an insurance company for that treatment

Action Taken: The Board directed staff to answer no to this question.

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: The Board discussed the acupuncture roundtable meetings proposed with regards to Agenda Item 6.1.1. Dr. Tays appointed an Acupuncture Ad Hoc Committee composed of Dr. Kurban (Chair), Dr. Campion, Dr. Thomas, and Dr. Tays. Ms. Yarbrough will arrange for a meeting with the committee and stakeholders in July.

7. ENFORCEMENT COMMITTEE BUSINESS

Larry Montgomery, D.C.

7.1 Consideration of SOAH Dismissals - Board Orders

- 7.1.1 Case #109-091
- 7.1.2 Case #109-126
- 7.1.3 Case #108-237

Action Taken: The Enforcement Committee **MOVED** and Dr. Kurban **SECONDED** that the above Board Orders be approved. After consideration, the Board **APPROVED** the motion.

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 #109-128
- 7.2.2 Case #110-023
- 7.2.3 Case #110-237
- 7.2.4 Case #111-006
- 7.2.5 Case #111-018
- 7.2.6 Case #111-197
- 7.2.7 Case #111-297
- 7.2.8 Case #2012-005
- 7.2.9 Case #2012-010
- 7.2.10 Case #2012-031
- 7.2.11 Case #2012-044
- 7.2.12 Case #111-257
- 7.2.13 Case #111-275
- 7.2.14 Case #2012-007
- 7.2.15 Case #2012-045 & 046 & 047

- 7.2.16 Case #2012-057
- 7.2.17 Case #110-231
- 7.2.18 Case #2012-021

Action Taken: The Enforcement Committee **MOVED** and Dr. Kurban **SECONDED** that the above Agreed Orders contained in Agenda Items 7.2.1 through 7.2.11, 7.2.15, and 7.2.18 be approved. After consideration, the Board **APPROVED** the motion.

7.3 Recommendations to Approve or Deny Requests to Expunge Records

- 7.3.1 Case #100-214
- 7.3.2 Case #102-316
- 7.3.3 Case #104-223
- 7.3.4 Case #111-029
- 7.3.5 Case #109-050

Action Taken: The Enforcement Committee **MOVED** and Dr. Kurban **SECONDED** that the above Expunction Orders be approved. After consideration, the Board **APPROVED** the motion.

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

No cases for Statutory Suspensions or Revocations.

Action Taken: No action.

7.5 Comments from Enforcement Chair Dr. Larry Montgomery on any Committee business, activities or issues.

Action Taken: No action.

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, including possible appeal, 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 Eric VanderWerff, DC vs. TBCE – Lawsuit brought by Dr. VanderWerff challenging a Board Order issued in an enforcement case

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 3:37 PM and reconvened in public session at 4:09 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 Motions Related to Executive Session

Action Taken: Dr. Montgomery **MOVED** and Dr. Campion **SECONDED** that the Board not pursue further appeals, contingent upon no other party further appealing, regarding Agenda Item 8.1. The Board **APPROVED** this motion. Dr. Montgomery **MOVED** and Dr. Kurban **SECONDED** that the Board continue pursuing the appeal regarding Agenda Item 8.2. The Board **APPROVED** this motion.

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

Cynthia Tays, D.C.

Action Taken: None.

11. MEETING DATES & ADJOURNMENT

Cynthia Tays, D.C.

- 11.1 The planned Board meeting dates for the remainder of Calendar Years 2012 - 2015 are:

- | | |
|-----------------------|------------------------|
| (1) August 16, 2012 | (8) May 22, 2014 |
| (2) November 15, 2012 | (9) August 21, 2014 |
| (3) February 21, 2013 | (10) November 13, 2014 |
| (4) May 23, 2013 | (11) February 19, 2015 |
| (5) August 15, 2013 | (12) May 21, 2015 |
| (6) November 21, 2013 | (13) August 20, 2015 |

(7) February 20, 2014

(14) November 19, 2015

*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) July 10, 2012

(2) September 11, 2012

11.3 Adjournment at: _____ PM.

Note: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids, services, or special accommodations should contact Ms. Mary Feys at 512-305-6901 a minimum of two (2) working days prior to the meeting so that appropriate accommodations can be made.

Action Taken: Dr. Tays reminded members of the next board meeting date and adjourned the meeting at approximately 5:20 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 24, 2012, were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on August 16, 2012.

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners

August 16, 2012
Date