

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
December 4, 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 1:15 PM. All members were present with the exception of Ms. Kenya Woodruff and Dr. Tim McCullough. Both Ms. Woodruff's and Dr. McCullough's absences were approved as excused.

Others present were:

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

2. APPROVAL OF MINUTES

Cynthia Tays, D.C.

Approval of Minutes from Aug 16, 2012 Board Meeting

Action Taken: Dr. Thomas **MOVED** and Mr. Elizarde **SECONDED** the motion to approve the minutes from the Aug 16, 2012, Board Meeting. After consideration, the Board **APPROVED** without changes the minutes from the Aug 16, 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:

- Lance Durrett, DC – regarding the proposed amendment to Rule 75.17 and opposition to inclusion of the definition of “subluxation”
- Juanee Surprise, DC – regarding the proposed amendment to Rule 75.17 and opposition to inclusion of the definition of “subluxation”; and regarding request for Board to move forward on specialty recognition
- Michelle Martz, DC – regarding the proposed amendment to Rule 75.17 and opposition to inclusion of the definitions of “subluxation,” “biomechanics,” and “cosmetic treatment”; and regarding proposed amendment to Rule 80.1 in support of extending length of time in definition of “recent graduate” to one year
- N.D. Victor Carsrud, DC – regarding the proposed amendment to Rule 75.17 and opposition to inclusion of the definitions of “subluxation,” and “cosmetic treatment”; and regarding request for Board to move forward on specialty recognition
- Devin Pettiet, DC (TCA) – regarding the proposed amendment to Rule 75.17
- Thomas Hollingsworth, DC (TCA) – regarding the proposed amendment to Rule 75.17 and expressing concern with some proposed definitions; and regarding concern with the Board’s restriction of continuing education to the chiropractic scope of practice
- Lawrence Stoler, DC – regarding insurance fraud and chiropractic
- Glen Keikel and Kurt Hamilton (Standard Process) – regarding the role of visceral somatic reflex in chiropractic and how this should factor into scope of practice and continuing education

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 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.

5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

Patrick Thomas, D.C.

5.1 Request for Approval of Facility Application

5.1.1 Panhandle Chiropractic, Owner Tom Clark

Action Taken: The L&E Committee **MOVED** and Dr. Kurban **SECONDED** that the facility application of Mr. Clark be approved, subject to the stipulation that Mr. Clark must employ a licensed DC to be at the facility at least three (3) days per week. After consideration, the Board **APPROVED**.

5.2 Discussion of Chiropractic Specialties

Action Taken: None at this time.

5.3 Discussion and clarification of whether a licensee who teaches a Continuing Education course can receive credit for attending that course

Action Taken: Dr. Kurban **MOVED** and Dr. Montgomery **SECONDED** that the Board allow licensees who teach a CE course to receive credit for those hours actually spent teaching the course (in addition to credit for time attending other speakers' presentations during the same course). After consideration, the Board **APPROVED** the motion.

5.4 Discussion of recommendation of changes to Continuing Education course approval criteria and Rule 73.7

Action Taken: The Board heard testimony from Ken Thomas, DC (Parker University), Tom Hollingsworth, DC (TCA), Glen Keikel and Kurt Hamilton (Standard Process), and Kathy Jones (NACA). Dr. Kurban **MOVED** and Dr. Montgomery **SECONDED** that the proposed amendment to Rule 73.7 be published for proposal, making some administrative/stylistic changes to the rule, along with making clear that CE must be limited to the chiropractic scope of practice and any topics necessary for DCs to comply with Rule 75.2. After consideration, the Board **APPROVED** the motion.

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

5.5.1 Medicare Continuing Education Evaluation Summary

Action 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 repeal Rule 71.13, regarding Chiropractic Specialties. The proposed repeal was published in the September 28, 2012 edition of the Texas Register. One comment has been received to date.

Action Taken: The Rules Committee **MOVED** and Dr. Campion **SECONDED** that the proposed repeal of Rule 71.13 be adopted. After consideration, the Board **APPROVED** the motion.

6.1.2 Consideration to adopt with or without changes, withdraw, re-propose with changes, or table proposed amendments to Rule 75.7, regarding fees. The proposed amendment was published in the November 2, 2012 edition of the Texas Register. No comments have been received to date.

Action Taken: The Rules Committee **MOVED** and Dr. Campion **SECONDED** that the proposed amendments to Rule 75.7 be adopted without changes. After consideration, the Board **APPROVED** the motion.

6.1.3 Consideration to adopt with or without changes, withdraw, re-propose with changes, or table proposed amendments to Rule 75.17, regarding scope of practice. The proposed amendment was published in the September 28, 2012 edition of the Texas Register. Multiple comments have been received to date.

Action Taken: The Rules Committee **MOVED** and Dr. Montgomery **SECONDED** that the proposed amendments to Rule 75.17 be adopted with changes (exclusion of the definition of "biomechanics"). Dr. Campion **MOVED** and Dr. Thomas **SECONDED** that the original motion be modified to also exclude the definition of "subluxation" from the adoption. The motion to amend the original motion **FAILED**. After consideration, the Board **APPROVED** the original motion (to adopt the rule amendment with changes – the exclusion of the definition of "biomechanics") with two dissenting votes (Mr. Elizarde and Dr. Campion).

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

- 6.2.1 Consideration to propose amendments to Rule 73.7, regarding CE course approval criteria. The L & E Committee will recommend changes to the Rules Committee regarding CE course approval criteria.

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** that the proposed amendment to Rule 73.7 be published for comment. After consideration, the Board **APPROVED** the motion.

- 6.2.2 Consideration to propose amendments to Rule 75.17(e), regarding Scope of Practice. The proposed amendment makes explicitly clear that all therapeutic modalities must comply with the legislatively defined scope of practice for chiropractic in Texas.

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** that the proposed amendment to Rule 75.17(e) be published for comment. After consideration, the Board **APPROVED** the motion.

- 6.2.3 Consideration to propose amendments to Rule 75.21(a), regarding Acupuncture. The proposed amendment makes explicitly clear that all therapeutic modalities, including acupuncture, acupressure and meridian therapy, must comply with the legislatively defined scope of practice for chiropractic in Texas.

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** that the proposed amendment to Rule 75.21(a) be published for comment. After consideration, the Board **APPROVED** the motion.

- 6.2.4 Discussion of and consideration to propose amendments to Rule 80.1, regarding Delegation of Authority. The proposed amendment will clarify under what circumstances a recent graduate of chiropractic college can adjust or manipulate.

Action Taken: The Rules Committee **MOVED** and Dr. Montgomery **SECONDED** that the proposed amendment to Rule 80.1 be published for comment, with the inclusion of enrollment in a postceptorship program offered by a CCE-accredited chiropractic college in the definition of “recent graduate.” After consideration, the Board **APPROVED** the motion.

- 6.2.5 Consideration to propose amendments to Rule 80.5, regarding Maintenance of Chiropractic Records. The proposed amendment clarifies what information, at minimum, is required to be in all chiropractic records.

Action Taken: None at this time. The Board directed staff to gather input from stakeholders.

- 6.2.6 Consideration to propose new Rule 75.18, regarding Musculoskeletal Manipulation Performed on Nonhuman Animals or “Animal Chiropractic.” The proposed new rule makes clear that chiropractic in Texas is limited to the human body. Any musculoskeletal manipulation done on animals must comply with rules of the Texas Board of Veterinary Medical Examiners. Any advertisement of “animal chiropractic” by a licensed DC using his DC credentials or referring to himself as “Chiropractor,” “Doctor” or “Dr. ” will be considered advertisement of services exceeding the chiropractic scope of practice. Any performance of “animal chiropractic” by a licensed DC using his DC credentials or referring to himself as “Chiropractor,” “Doctor” or “Dr. ” will be considered rendering of services exceeding the chiropractic scope of practice.

Action Taken: None at this time. The Board directed staff to gather further input from the Texas Board of Veterinary Medical Examiners.

6.3 Discussion Items

- 6.3.1 Consideration of question regarding whether chiropractors can perform certain procedures to treat balance disorders.

Action Taken: The Board directed staff to respond that the requestor should reference Rule 75.17 for questions about VONT. The Board also directed staff to research CAPS testing.

- 6.3.2 Consideration of question regarding whether chiropractors can assist in any way during an MUA.

Action Taken: The Board discussed this issue and agreed with the Rules Committee that chiropractors cannot assist during an MUA using a chiropractic license.

- 6.3.3 Consideration of question regarding the ordering of MRI with Contrast by DCs.

Action Taken: The Board discussed this issue and agreed with the Rules Committee that chiropractors can order MRIs with Contrast.

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

Larry Montgomery, D.C.

- 7.1 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.

- 7.1.1 Case #108-276
- 7.1.2 Case #109-093
- 7.1.3 Case #110-002
- 7.1.4 Case #110-105
- 7.1.5 Case #110-231
- 7.1.6 Case #111-040
- 7.1.7 Case #2012-003
- 7.1.8 Case #2012-068
- 7.1.9 Case #2012-086
- 7.1.10 Case #2012-133
- 7.1.11 Case #2012-135
- 7.1.12 Case #2012-149
- 7.1.13 Case #2012-153
- 7.1.14 Case #2012-154
- 7.1.15 Case #2012-162
- 7.1.16 Case #2012-193
- 7.1.17 Case #2012-168

Action Taken: The Enforcement Committee **MOVED** and Dr. Kurban **SECONDED** that the above Agreed Orders contained in Agenda Items 7.2.1 through 7.2.17 be approved. After consideration, the Board **APPROVED** the motion.

- 7.2 Recommendations to Approve or Deny Requests to Expunge Records

- 7.2.1 Case #100-90
- 7.2.2 Case #101-218
- 7.2.3 Case #103-118
- 7.2.4 Case #93-53

Action Taken: The Enforcement Committee **MOVED** and Dr. Kurban **SECONDED** that the Expunction Orders in Agenda Items 7.2.1 through 7.2.3 be approved. After consideration, the Board **APPROVED** the motion. (Note – it was an oversight that the Board did not vote on Agenda Item 7.2.4. This item will be placed on the February Board meeting agenda for approval.)

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

7.3.1 Case #2012-018

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

7.3.2 Case #2012-204

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

7.4 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, 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 3:05 PM and reconvened in public session at 3:57 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: None.

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 2013 - 2015 are:

- | | |
|-----------------------|------------------------|
| (1) February 21, 2013 | (7) May 22, 2014 |
| (2) May 23, 2013 | (7) August 21, 2014 |
| (3) August 15, 2013 | (8) November 13, 2014 |
| (4) November 21, 2013 | (9) February 19, 2015 |
| (5) February 20, 2014 | (10) May 21, 2015 |
| (6) May 22, 2014 | (11) August 20, 2015 |
| | (12) 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) December 5, 2012
- (2) January 8, 2013
- (3) February 20, 2013
- (4) April 9, 2013
- (5) May 22, 2013
- (6) July 9, 2013
- (7) August 14, 2013
- (8) October 8, 2013

(9) November 20, 2013

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 dates and then adjourned the meeting at approximately 4:41 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 December 4, 2012, were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on February 21, 2013.

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners

February 21, 2013

Date