

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

Board Meeting: 1:00 p.m. – Adjournment
Hobby Building, Tower 3, Room 100

MINUTES FROM THE
January 6, 2012
BOARD MEETING

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 1:08 PM. All members were present with the exception of Mr. Thomas Turner. 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

2. RULES COMMITTEE BUSINESS

Janette Kurban, D.C.

2.1 Consideration of Previously Proposed New Rules or Rule Amendments Eligible for Adoption

- 2.1.1 Consideration to adopt amendments to Rule 75.7 regarding fee increases for licensure and facility registration. The proposed amendment was published in the October 21, 2011, edition of the Texas Register. No comments were received during the comment period.

Action Taken: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** to adopt the proposed rule amendment to Rule 75.7 with changes. The changes made were to change the "Total Fee"

column, which was not changed in the published rule. The increased fees were detailed with enough specificity that a new proposal was not necessary. The Board **APPROVED** the motion.

2.2 Discussion of Amendments to Rules 75.2 and 75.17

2.2.1 Discussion of proposed amendments to Rule 75.2 Proper Diligence and Efficient Practice of Chiropractic. Multiple “work sessions” have been held to discuss further amendments to the rule with the public, licensees, and stakeholders.

Action Taken: The Board discussed proposed amendments and received public comment. Dr. Tays **MOVED** and Dr. Montgomery **SECONDED** to publish the rule amendment to Rule 75.2 for comment. The Board **APPROVED** the motion to publish Rule 75.2 for proposal in the Texas Register for comment.

2.2.2 Discussion of proposed amendments to Rule 75.17 Scope of Practice. Multiple “work sessions” have been held to discuss further amendments to the rule with the public, licensees, and stakeholders.

Action Taken: The Board discussed proposed amendments and received public comment. The Board directed staff to continue drafting amendments to Rule 75.17.

2.3 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.

3. ENFORCEMENT COMMITTEE BUSINESS

Larry Montgomery, D.C.

3.1. Consideration of Accepted Agreed Order

The Board will consider approval of the Agreed Order for case # 2012-043, 2012-061 and 2012-062 that has been recommended for acceptance by the Enforcement Committee and accepted by the Respondent.

Action Taken: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** to approve the Agreed Order. The Board **APPROVED** the motion.

4. 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:

- 4.1 Texas Medical Association lawsuit against the Board, including Board's appeal, concerning MUA, Needle EMG and Diagnosis.
- 4.2 Texas Medical Association lawsuit against the Board regarding Rule 75.17 Scope allowing DCs to perform Vestibular-Ocular-Nystagmus testing.
- 4.3 TBCE vs. Abbott regarding disclosure of some contents of Board investigative files
- 4.4 Michael Maddox vs. TBCE and Board Members – Lawsuit brought by Mr. Maddox challenging the Board's decision to dismiss his case at SOAH regarding his re-licensure

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 1:10 PM and reconvened in public session at 2:15 PM. The above listed agenda items were discussed in Executive Session. No action was taken on the agenda items while in Executive Session.

5. 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.

5.1 Consideration of Motions Related to Executive Session

Action Taken: Ms. Woodruff **MOVED** and Dr. Montgomery **SECONDED** to direct Mr. Thrash to file a Motion for New Trial in the VONT litigation (Agenda Item 4.2). The Board **APPROVED** the motion. Additionally, Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** to accept the settlement offer received by Mr. Michael Maddox (Agenda Item 4.4). The Board **APPROVED** the motion. No action was taken on Agenda Items 4.1 and 4.3.

6. MEETING DATES & ADJOURNMENT

Cynthia Tays, D.C.

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

(1) February 23, 2012

(5) February 21, 2013

- (2) May 24, 2012
- (3) August 16, 2012
- (4) November 15, 2012

- (6) May 23, 2013
- (7) August 15, 2013
- (8) November 21, 2013

*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.

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

- (1) March 13, 2012
- (2) July 10, 2012
- (3) September 11, 2012

6.3 Adjournment at: 3:45 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 3:45 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 January 6, 2012 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on February 23, 2012.

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners

February 23, 2012
Date