

**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**  
**Nov 21, 2013**  
**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**

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 Dr. Patrick Thomas, and a quorum was announced.

Others present were:

1. Joe Thrash, Assistant Attorney General
2. Nancy Fuller, Assistant Attorney General
3. Yvette Yarbrough, Executive Director
4. Bryan Snoddy, General Counsel
5. Jennifer Hertsenberg, Director of Licensure
6. Scott Parker, Director of Enforcement
7. Steve Franz, Investigator
8. Mary Feys, Admin Assistant for Enforcement
9. Sarah Matthews, Licensing Assistant

Dr. McCullough **MOVED** and Dr. Riggs **SECONDED** excusal of Dr. Thomas' absence. After consideration, the Board **APPROVED** the motion.

## 2. APPROVAL OF MINUTES

Approval of Minutes from October 8, 2013 Board Meeting

**Action Taken:** Mr. Steinberg **MOVED** and Dr. Campion **SECONDED** the motion to approve the minutes from the October 8, 2013, Board Meeting. After consideration, the Board **APPROVED** without changes the minutes from the October 8, 2013 meeting.

## 3. PUBLIC COMMENTS

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:

- *Thomas Hollingsworth, DC – testified in opposition to the pending proposed amendment to Rule 80.5 and expressed opinion that documentation rule is adequate as is.*

## 4. EXECUTIVE COMMITTEE BUSINESS

*Cynthia Tays, D.C.*

### 4.1 President's Report

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

**Action Taken:** No action was taken. This item was for informational purposes only.

### 4.2 Executive Director's Report

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 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:** No action was taken. This item was for informational purposes only.

### 4.3 Board Policy on Facility Requirements for Designated Doctors

The Board will affirm its policy on facility requirements for chiropractors performing Designated Doctor exams.

**Action Taken:** No action was taken. Board staff will research this matter further.

#### 4.4 Performance Evaluation of Executive Director

Dr. Cynthia Tays will lead the Executive Committee in making a recommendation to the Board an evaluation of the performance of Executive Director Yvette Yarbrough for the time period of September 1, 2012 through August 31, 2013.

**Action Taken:** This item was considered in Executive Session (Agenda Item 5.2). After Executive Session, the Board discussed Ms. Yarbrough's evaluation during Agenda Item 6.

### 5. EXECUTIVE SESSION

- 5.1 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 including but not limited to:
  - 5.1.1 Texas Medical Association lawsuit against the Board, including remand, concerning Diagnosis.
  - 5.1.2 Texas Medical Association lawsuit against the Board regarding Rule 75.17 Scope allowing DCs to perform Vestibular-Ocular-Nystagmus testing and challenge to diagnosis, as well as TMA challenge to definitions of "musculoskeletal system" and "subluxation complex."
  - 5.1.3 Eric VanderWerff, DC vs. TBCE – Lawsuit and appeal brought by Dr. VanderWerff challenging a Board Order issued in an enforcement case
- 5.2 Additionally, the Board may meet in Executive Session for deliberation on the appointment, employment, evaluation, or duties of the Executive Director, pursuant to Section 551.074, Government Code.

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 1:53 pm and reconvened in public session at 3:23 pm. The above listed agenda items were discussed in Executive Session. No action was taken on the agenda items while in Executive Session.

## 6. CONSIDERATION OF MOTIONS RELATED TO ITEMS DISCUSSED IN EXECUTIVE SESSION

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

### 6.1 Consideration of Motions Related to Executive Session

**Action Taken:** The Board discussed the employee evaluation of Ms. Yarbrough.

## 7. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

### 7.1 Request for Approval to Sit for the Texas Jurisprudence Exam

#### 7.1.1 Steven Horowitz, New Applicant

**Action Taken:** Mr. Steinberg **MOVED** and Dr. Campion **SECONDED** that the licensure of Steven Horowitz be allowed to proceed. After consideration, the Board **APPROVED** this motion.

#### 7.1.2 Lakesha Braxton, New Applicant

**Action Taken:** Dr. Riggs **MOVED** and Mr. Steinberg **SECONDED** that Lakesha Braxton be allowed to sit for the jurisprudence examination. After consideration, the Board **APPROVED** this motion.

#### 7.1.3 Robert Burgett, New Applicant

**Action Taken:** Dr. Montgomery **MOVED** and Dr. Campion **SECONDED** that Robert Burgett be allowed to sit for the jurisprudence examination. After consideration, the Board **APPROVED** this motion.

### 7.2 Request for Approval to Own and Operate a Facility as Non-DC Owner

#### 7.2.1 Jay Scurlock, Applicant

**Action Taken:** Mr. Steinberg **MOVED** and Dr. Montgomery **SECONDED** that the application of Mr. Scurlock be denied, due to his criminal felony conviction and concerns surrounding the ongoing operations at the facility (improper usage of a Nurse Practitioner and unlicensed practice of massage therapy). After consideration, the Board **APPROVED** this motion. Mr. Scurlock was informed of his right to reapply once the concerns surrounding the facility operations were remedied.

7.3 Discussion and comments from Committee Chair concerning Committee business, activities or issues, and possible Board action.

7.3.1 Continuing Education

7.3.1.1 CE course complaint – Course sponsor: TCA; Instructor – On Wong, DC

**Action Taken:** No action was taken.

7.3.1.2 Possible changes to course sponsor responsibilities re: attendance, vetting of course content and speakers

**Action Taken:** No action was taken.

7.3.1.3 Definition of board policy regarding online CE hours vs. webinars, and the requirements of each

**Action Taken:** Tabled.

7.3.1.4 Possible change to number of hours allowed online

**Action Taken:** Tabled.

7.3.1.5 Allowable course instructors/sponsors, especially members of other professions

**Action Taken:** Tabled.

7.3.2 Rule on advertising as specialist/recognition of specialties

**Action Taken:** Tabled.

7.3.3 Inactive licensee requirement to reactivate every five years

**Action Taken:** Tabled.

7.3.4 Disability license status

**Action Taken:** Tabled.

7.3.5 Mobility of licenses

**Action Taken:** Tabled.

## 8. RULES COMMITTEE BUSINESS

### 8.1 Consideration of Proposals for New Rules or Rule Amendments

- 8.1.1 Consideration to adopt proposed amendments to Rule 75.7, regarding Fees. The 83rd Legislature made certain appropriations to the agency contingent upon an increase in revenue generated by the agency. The proposal was published in the October 18, 2013 edition of the *Texas Register*. One comment was received during the comment period.

**Action Taken:** Ms. Woodruff **MOVED** and Mr. Steinberg **SECONDED** that the proposed amendment be adopted. After consideration, the Board **APPROVED** this motion.

- 8.1.2 Consideration to adopt proposed 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. It was published in the September 13, 2013 edition of the *Texas Register*. No comments were received during the comment period.

**Action Taken:** Ms. Woodruff **MOVED** and Mr. Steinberg **SECONDED** that the proposed amendment be adopted. After consideration, the Board **APPROVED** this motion.

### 8.2 Consideration to Propose Rule Amendments

- 8.2.1 Consideration to propose amendments to Rule 73.7, regarding Approved Continuing Education Courses. The proposed amendment requires sponsors to include a copy of proposed advertising for the course in the application. The proposed amendment also requires the sponsor to certify that advertising is consistent with approved course content. Stakeholder input was requested on September 3, 2013. Responses are included in this agenda item.

**Action Taken:** Ms. Woodruff **MOVED** and Mr. Steinberg **SECONDED** that the proposed amendment be published for comment. After consideration, the Board **APPROVED** this motion.

- 8.2.2 Consideration to propose amendments to Rule 80.5, regarding Documentation. The proposed amendment details minimum documentation requirements. Stakeholder input is attached to this agenda item.

**Action Taken:** The Board discussed adding the phrase “but are not limited to” in subsection (g) after the words “Accepted guidelines include.” The Board also discussed adding the

following subsection (j): “All licensed chiropractors shall observe and comply with all documentation laws pertaining to health care providers under state and federal law. Nothing within this rule should be construed to constrain or limit the obligation of chiropractors to meet duly authorized law, rules and regulations.” On behalf of the Committee, Dr. Montgomery **MOVED** to publish the amendment for comment. Ms. Woodruff **AMENDED** the motion to include the changes to subsection (g) and inclusion of subsection (j). Dr. Campion **SECONDED** the amended motion. After consideration, the Board **APPROVED** the amended motion.

- 8.2.3 Discussion and consideration to propose new rule regarding Specialties. The proposed new rule will detail when a licensee can hold himself out as a specialist or as specializing in an area. (L&E Committee to possibly provide recommendation.)

**Action Taken:** Tabled.

- 8.3 Discussion and comments from Committee Chair concerning Committee business, activities or issues.

- 8.3.1 Discussion regarding planned rule review

**Action Taken:** No action taken.

- 8.3.2 Discussion regarding defining 4 required Board CE hours in Rule 73.3

**Action Taken:** No action taken.

## 9. ENFORCEMENT COMMITTEE BUSINESS

- 9.1 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.

- 9.1.1 Case #110-017
  - 9.1.2 Case #2012-104
  - 9.1.3 Case #2013-017
  - 9.1.4 Case #2013-058
  - 9.1.5 Case #2013-075
  - 9.1.6 Case #2013-095
  - 9.1.7 Case #2013-102
  - 9.1.8 Case #2013-150
  - 9.1.9 Case #2013-152
  - 9.1.10 Case #2013-153
  - 9.1.11 Case #2013-154
  - 9.1.12 Case #2013-162
  - 9.1.13 Case #2013-163

- 9.1.14 Case #2013-172
- 9.1.15 Case #2013-174
- 9.1.16 Case #2013-175
- 9.1.17 Case #2013-178
- 9.1.18 Case #2013-180
- 9.1.19 Case #2013-181
- 9.1.20 Case #2013-182
- 9.1.21 Case #2013-183
- 9.1.22 Case #2013-184
- 9.1.23 Case #2013-205
- 9.1.24 Case #2013-235
- 9.1.25 Case #2013-237
- 9.1.26 Case #2013-238
- 9.1.27 Case #2013-239
- 9.1.28 Case #2013-240
- 9.1.29 Case #2013-246
- 9.1.30 Case #2013-272
- 9.1.31 Case #2013-312
- 9.1.32 Case #2013-328
- 9.1.33 Case #2013-329
- 9.1.34 Case #2013-352
- 9.1.35 Case #2013-357
- 9.1.36 Case #111-082
- 9.1.37 Case #2012-248
- 9.1.38 Case #2013-348
- 9.1.39 Case #2013-065
- 9.1.40 Case #2013-234
- 9.1.41 Case #2013-378

**Actions Taken:**

Mr. Steinberg **MOVED** and Ms. Boatright **SECONDED** that the Agreed Order contained in Agenda Item 9.1.1 be approved. Dr. Tays, Dr. Montgomery, and Ms. Woodruff abstained from voting. After consideration, the Board **APPROVED** the motion.

Mr. Steinberg **MOVED** and Dr. Riggs **SECONDED** that the Agreed Orders contained in Agenda Items 9.1.3, 9.1.11, 9.1.37, and 9.1.39 be approved. Dr. Montgomery and Dr. Campion abstained from voting. After consideration, the Board **APPROVED** the motion.

Mr. Steinberg **MOVED** and Dr. Riggs **SECONDED** that the Agreed Orders contained in Agenda Items 9.1.4, 9.1.24, 9.1.27, 9.1.29, 9.1.30, and 9.1.36 be approved. Dr. Montgomery, Dr. Campion, and Ms. Woodruff abstained from voting. After consideration, the Board **APPROVED** the motion.

Dr. Riggs **MOVED** and Ms. Boatright **SECONDED** that the Agreed Order contained in Agenda Item 9.1.7 be approved. Dr. Montgomery, Dr. Campion, Ms. Woodruff, and Mr. Steinberg abstained from voting. After consideration, the Board **APPROVED** the motion.

Mr. Steinberg **MOVED** and Ms. Boatright **SECONDED** that the Agreed Order contained in Agenda Item 9.1.23 be approved. Dr. Montgomery, Dr. Campion, and Dr. Riggs abstained from voting. After consideration, the Board **APPROVED** the motion.

Dr. Montgomery **MOVED** and Ms. Woodruff **SECONDED** that the Agreed Orders contained in Agenda Items 9.1.5, 9.1.6, 9.1.8 - 9.1.10, 9.1.12 - 9.1.22, 9.1.25, 9.1.26, 9.1.28, 9.1.31 - 9.1.34, 9.1.38, 9.1.40, and 9.1.41 be approved. Dr. Campion, Dr. Riggs, and Mr. Steinberg abstained from voting. After consideration, the Board **APPROVED** the motion.

Mr. Steinberg **MOVED** and Dr. Riggs **SECONDED** that the Agreed Order contained in Agenda Item 9.1.35 be approved. After consideration, the Board **APPROVED** the motion.

## 9.2 Consideration of Requests to Expunge Records

### 9.2.1 Case #110-285

**Action Taken:** Dr. Montgomery **MOVED** and Dr. McCullough **SECONDED** that the request to expunge be denied. After consideration, the Board **APPROVED** the motion.

### 9.2.2 Case #105-121

**Action Taken:** Dr. Montgomery **MOVED** and Ms. Woodruff **SECONDED** that the request to expunge be approved. After consideration, the Board **APPROVED** the motion.

## 9.3 Consideration of Order to Accept Proposal for Decision in Case #110-007, SOAH Docket # 508-12-6235

**Action Taken:** Mr. Steinberg **MOVED** and Dr. Riggs **SECONDED** that the Board accept the ALJ's PFD in this case. Dr. Tays, Dr. Montgomery, and Ms. Woodruff abstained from voting. After consideration, the Board **APPROVED** the motion.

## 9.4 Discussion and comments from Committee Chair concerning Committee business, activities or issues

**Action Taken:** No action taken.

## 10. MISCELLANEOUS

### 10.1 Call for future items for discussion and/or consideration by the Board

**Action Taken:** No action taken.

10.2 Future Meeting Dates:

The planned Board meeting dates for the remainder of Calendar Years 2013 - 2015 are:

- |                       |                       |
|-----------------------|-----------------------|
| (1) February 20, 2014 | (5) February 19, 2015 |
| (2) May 22, 2014      | (6) May 21, 2015      |
| (3) August 21, 2014   | (7) August 20, 2015   |
| (4) November 13, 2014 | (8) 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](http://www.tbce.state.tx.us). All dates are tentative until posted in the Texas Register.

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

- |                       |                       |
|-----------------------|-----------------------|
| (1) January 14, 2014  | (5) July 8, 2014      |
| (2) February 19, 2014 | (6) August 20, 2014   |
| (3) April 8, 2014     | (7) October 14, 2014  |
| (4) May 21, 2014      | (8) November 12, 2014 |

**Action Taken:** No action taken

11.4 Adjournment at: \_\_\_\_\_ PM.

**Action Taken:** Dr. Tays reminded members of the next board meeting dates and then adjourned the meeting at approximately 4:26 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.*

**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 November 21, 2013, were approved by the Texas Board of Chiropractic Examiners at its next scheduled board meeting held on February 20, 2014.

\_\_\_\_\_  
Yvette Yarbrough  
Executive Director  
Texas Board of Chiropractic Examiners

\_\_\_\_\_  
Feb 20, 2014  
Date