

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
February 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

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 1:03 PM. All members were present with the exception of Dr. Janette Kurban, Dr. Patrick Thomas, Ms. Kenya Woodruff and Mr. Armando Elizarde. Dr. Kurban's, Dr. Thomas', and Ms. Woodruff's absences were 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 Dec 4, 2012 Board Meeting

Action Taken: Dr. Montgomery **MOVED** and Dr. Campion **SECONDED** the motion to approve the minutes from the Dec 4, 2012, Board Meeting. After consideration, the Board **APPROVED** without changes the minutes from the Dec 4, 2012 meeting.

3. EXECUTIVE COMMITTEE BUSINESS

Cynthia Tays, D.C.

3.1 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: Dr. Tays briefed that she is removing Mr. Elizarde from the Licensure & Education Committee. No other action was taken.

3.2 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 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.

3.3 NBCE Part IV Examiners and Part IV Test Committee Representative Selection (*Cynthia Tays, D.C.*)

The NBCE will administer Part IV Practical Examinations on May 17-19, 2013, and November 8-10, 2013. Two Board members (licensed DCs) are requested to participate as examiners at each testing administration. Therefore, the Board must select two members for May and two members for November to act as examiners. Additionally, the NBCE will hold the Part IV Test Committee meeting June 7-8, 2013. Traditionally, the President of the Board has attended this meeting.

Action Taken: Dr. Tays **MOVED** and Dr. McCullough **SECONDED** that Dr. Tays, Dr. Kurban, and Dr. Thomas be considered for the May examination. After consideration, the Board **APPROVED** the motion. Dr. Tays **MOVED** and Dr. McCullough **SECONDED** that Dr. Campion, Dr. Montgomery, and Dr. Thomas be considered for the November examination. After consideration, the Board **APPROVED** the motion. Dr. Tays **MOVED** and Dr. Montgomery **SECONDED** that Dr. Tays attend the Part IV Test Committee meeting. After consideration, the Board **APPROVED** the motion.

3.4 NBCE Delegate and Alternate Delegate Selection (*Cynthia Tays, D.C.*)

The NBCE Annual Business Meeting of NBCE State Delegates will be held on Friday, May 3, 2013, in San Francisco. The NBCE requires the Board to select a delegate and an alternate by March 4, 2013, to serve a one-year term.

Action Taken: Dr. Tays **MOVED** and Ms. Boatright **SECONDED** that Dr. Thomas be the primary delegate and Ms. Yarbrough be the alternate delegate. After consideration, the Board **APPROVED** the motion. (After the meeting, it was discovered that the delegates must be Doctors of Chiropractic. Dr. Tays will be appointed alternate in the place of Ms. Yarbrough.)

3.5 FCLB Delegate and Alternate Delegate Selection (*Cynthia Tays, D.C.*)

The FCLB Annual Business Meeting will be held during the FCLB 87th Annual Educational Congress held May 1-5, 2013, in San Francisco. The FCLB requires the Board to select a delegate and an alternate by April 4, 2013, to serve a one-year term.

Action Taken: Dr. Tays **MOVED** and Ms. Boatright **SECONDED** that Dr. Tays be the primary delegate and Ms. Yarbrough be the alternate delegate. After consideration, 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, including possible appeal, 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 Eric VanderWerff, DC vs. TBCE – Lawsuit and appeal 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 1:37 PM and reconvened in public session at 2:10 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: None.

6. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

Patrick Thomas, D.C.

6.1 Request for Late Renewal with Good Cause:

6.1.1 Amara Tea, Non-Renewable, Previously held Texas license 8424

Action Taken: Dr. McCullough **MOVED** and Dr. Campion **SECONDED** that license of Amara Tea be renewed late for good cause. After consideration, the Board **APPROVED**.

6.2 Request for Reinstatement with a Disciplinary Action in Another State:

6.2.1 Mariska Visser, Non-Renewable, Previously held Texas license 8190

Action Taken: Dr. McCullough **MOVED** and Dr. Campion **SECONDED** that license of Mariska Visser be reinstated. After consideration, the Board **APPROVED**.

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

Action Taken: None.

7. RULES COMMITTEE BUSINESS

Janette Kurban, D.C.

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

- 7.1.1 Consideration to adopt with or without changes, withdraw, re-propose with changes, or table proposed amendments to Rule 73.7, regarding CE course approval criteria. The proposed amendment was published in the December 21, 2012 edition of the Texas Register. One comment has been received to date.

Action Taken: Dr. Tays **MOVED** and Dr. Montgomery **SECONDED** that consideration of this agenda item be tabled. After consideration, the Board **APPROVED** the motion.

- 7.1.2 Consideration to adopt with or without changes, withdraw, re-propose with changes, or table proposed amendments to Rule 75.21, regarding Acupuncture. The proposed amendment was published in the December 28, 2012 edition of the Texas Register. One comment has been received to date.

Action Taken: Dr. Tays **MOVED** and Ms. Boatright **SECONDED** that the proposed amendment to Rule 75.21 be adopted. After consideration, the Board **DISAPPROVED** the motion. Dr. Tays then **MOVED** and Dr. Montgomery **SECONDED** that consideration of this agenda item be tabled. After consideration, the Board **APPROVED** the motion.

- 7.1.3 Consideration to adopt with or without changes, withdraw, re-propose with changes, or table proposed amendments to Rule 80.1, regarding Delegation of Authority. The proposed amendment was published in the December 28, 2012 edition of the Texas Register. One comment has been received to date.

Action Taken: Dr. Tays **MOVED** and Dr. Campion **SECONDED** that consideration of this agenda item be tabled. After consideration, the Board **APPROVED** the motion.

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

- 7.2.1 Discussion of and consideration to propose amendments to Rule 80.5, regarding Maintenance of Chiropractic Records, to clarify what information, at minimum, is required to be in all chiropractic records.

Action Taken: None taken.

7.3 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 taken.

8. ENFORCEMENT COMMITTEE BUSINESS

Larry Montgomery, D.C.

8.1 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.

- 8.1.1 Case #108-276
- 8.1.2 Case #111-055
- 8.1.3 Case #2012-017
- 8.1.4 Case #2012-042
- 8.1.5 Case #2012-049
- 8.1.6 Case #2012-130/2012-131
- 8.1.7 Case #2012-136
- 8.1.8 Case #2012-156
- 8.1.9 Case #2012-157
- 8.1.10 Case #2012-165
- 8.1.11 Case #2012-176
- 8.1.12 Case #2012-183
- 8.1.13 Case #2012-185
- 8.1.14 Case #2012-206
- 8.1.15 Case #2012-213
- 8.1.16 Case #2012-221
- 8.1.17 Case #2012-225
- 8.1.18 Case #2012-226
- 8.1.19 Case #2012-227
- 8.1.20 Case #2012-231
- 8.1.21 Case #2013-114
- 8.1.22 Case #2012-211

Action Taken: The Enforcement Committee **MOVED** and Dr. McCullough **SECONDED** that the above Agreed Orders contained in Agenda Items 8.1.1 through 8.1.22 be approved. After consideration, the Board **APPROVED** the motion.

8.2 Recommendations to Approve or Deny Requests to Expunge Records

- 8.2.1 Case #93-53

Action Taken: The Enforcement Committee **MOVED** and Dr. Campion **SECONDED** that the Expunction Order in Agenda Item 7.2.1 be approved. After consideration, the Board **APPROVED** the motion.

8.3 Recommendation to Approve Final Board Order (SOAH default)

- 8.3.1 Case #2012-039, SOAH Docket # 508-13-0742

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

8.3.2 Case # 2012-233, SOAH Docket # 508-13-2151

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

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

Action Taken: None taken.

9. 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:

- *N.D. Victor Carsrud, DC – regarding the proposed amendment to Rule 73.7 and opposition to limiting continuing education topics to scope of practice; inquiring why the Board requires national examinations (which cover broad spectrum of knowledge) for admission to licensure when continuing education will be limited; also regarding support of proposed staff merit pay increases requested during the 2014-15 biennium appropriations process*
- *Thomas Hollingsworth, DC (TCA) – expressing concern that proposed preambles included in Rules Committee agenda items were already drafted before the Board met; Staff discussed the fact that these are only drafts and are usually changed based on the discussions held in the Committee and Board meetings.*
- *Devin Pettiet, DC (TCA) – regarding the proposed amendment to Rule 73.7; continuing education should be a continuance of chiropractic education; also discussed need for more stakeholder input into board actions as evidenced by confusing among DCs.*

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) May 23, 2013 | (7) November 13, 2014 |
| (2) August 15, 2013 | (8) February 19, 2015 |
| (3) November 21, 2013 | (9) May 21, 2015 |
| (4) February 20, 2014 | (10) August 20, 2015 |
| (5) May 22, 2014 | (11) November 19, 2015 |
| (6) August 21, 2014 | (12) |

*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.

Discussion of possible scheduling of Board meeting dates beyond November 2015.

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

- (1) February 20, 2013
- (2) April 9, 2013
- (3) May 22, 2013
- (4) July 9, 2013
- (5) August 14, 2013
- (6) October 8, 2013
- (7) November 20, 2013

11.3 Adjournment at: _____ PM.

Action Taken: Dr. Tays reminded members of the next board meeting dates and then adjourned the meeting at approximately 3:04 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 February 21, 2013, were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on May 23, 2013.

 Yvette Yarbrough
 Executive Director
 Texas Board of Chiropractic Examiners

May 23, 2013
 Date