

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 23, 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 1:02 PM. All members were present, and a quorum was announced.

Others present were:

1. Nancy Fuller, 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. Steve Franz, Investigator
7. Mary Feys, Admin Assistant for Enforcement
8. Sarah Matthews, Licensing Assistant
9. Arlethia Middleton, Chief Financial Officer
10. Nikell Williams, Programmer/Systems Analyst

2. APPROVAL OF MINUTES

Approval of Minutes from Feb 21, 2013 Board Meeting

Action Taken: Dr. Thomas **MOVED** and Dr. Campion **SECONDED** the motion to approve the minutes from the Feb 21, 2013, Board Meeting. After

consideration, the Board **APPROVED** without changes the minutes from the Feb 21, 2013 meeting.

3. EXECUTIVE COMMITTEE BUSINESS

Cynthia Tays, D.C.

3.1 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.

3.2 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.

3.3 Committee Appointments

Dr. Tays will make appointments to committees and name chairs.

Action Taken: Dr. Tays announced that members of the Rules Committee are Dr. Montgomery (Chair), Dr. Tays, Ms. Boatright, and Ms. Woodruff. The members of the Enforcement Committee are Dr. Campion (Chair), Dr. Riggs, and Mr. Steinberg. The members of the Licensure & Education Committee are Ms. Woodruff (Chair), Dr. Thomas, and Dr. McCullough.

4. EXECUTIVE SESSION

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 appeal, concerning Diagnosis.

4.2 Texas Medical Association lawsuit against the Board, including appeal, regarding Rule 75.17 Scope allowing DCs to perform Vestibular-Ocular-Nystagmus testing.

4.3 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 2:24pm PM and reconvened in public session at 2:39pm 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

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

6.1 Request for Approval to Sit for the Texas Jurisprudence Examination:

6.1.1 Bryan Harrison, Non-Renewable, Previously held Texas license 9014

Action Taken: Ms. Woodruff **MOVED** and Dr. Montgomery **SECONDED** that Mr. Harrison be allowed to take the jurisprudence exam, with the condition that before he can sit for the jurisprudence exam, he must take and pass the NBCE Ethics & Boundaries Examination, as well as attend Alcoholics Anonymous or a similar counseling service or counselor one (1) time per week for ten (10) weeks. After Mr. Harrison passes the jurisprudence exam, his license will be issued in a probated status for two (2) years. If at any time during that probation status, he is convicted of any offense, his license will be automatically revoked. After consideration, the Board **APPROVED**.

6.1.2 John Glade, New Applicant

Action Taken: Ms. Woodruff **MOVED** and Mr. Steinberg **SECONDED** that Mr. Glade be allowed to take the

jurisprudence exam, with the condition that before he can sit for the jurisprudence exam, he must take and pass the NBCE Ethics & Boundaries Examination, as well as provide a letter from Mr. Aragon stating his fitness for licensure. After Mr. Glade passes the jurisprudence exam, his license will be issued in a probated status for two (2) years. If at any time during that probation status, he is convicted of any offense, his license will be automatically revoked. After consideration, the Board **APPROVED**.

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

Action Taken: None.

7. RULES COMMITTEE BUSINESS

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. Five comments were received.

Action Taken: The Rules Committee **MOVED** and Mr. Steinberg **SECONDED** that the proposed amendment be adopted, with an addition to the preamble to make clear what types of courses are being considered for approval. After discussion, Dr. Thomas **MOVED** and Dr. CAMPION **SECONDED** that the previous motion be amended to remove "chiropractic" from subsection (h)(4)(V) in response to comments received. After consideration, the Board **APPROVED** the amended 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. Five comments were been received, and two speakers presented oral comments at a public hearing.

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** that the proposed amendment be adopted. 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 was received.

Action Taken: The Rules Committee **MOVED** and Dr. Thomas **SECONDED** that the proposed amendment be adopted, with changes made in response to comments received. Specifically, the definition of “recent graduate” will be extended to twelve (12) months, instead of six (6) months. Additionally, the definition of “recent graduate” will not include the reference to a postceptorship. After consideration, the Board **APPROVED** the motion.

7.2 Update on other issues under consideration by the Committee

Comments from Committee chair concerning Committee business, activities or issues.

Action Taken: None.

8. ENFORCEMENT COMMITTEE BUSINESS

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 #110-070
- 8.1.2 Case #2012-020
- 8.1.3 Case #2012-052
- 8.1.4 Case #2012-084
- 8.1.5 Case #2012-089
- 8.1.6 Case #2012-173
- 8.1.7 Case #2012-182
- 8.1.8 Case #2012-186
- 8.1.9 Case #2012-194
- 8.1.10 Case #2012-198
- 8.1.11 Case #2012-199
- 8.1.12 Case #2012-215
- 8.1.13 Case #2012-220
- 8.1.14 Case #2012-230
- 8.1.15 Case #2012-245
- 8.1.16 Case #2013-026
- 8.1.17 Case #2013-034
- 8.1.18 Case #2013-036
- 8.1.19 Case #2013-043
- 8.1.20 Case #2013-045
- 8.1.21 Case #2013-053
- 8.1.22 Case #2013-056
- 8.1.23 Case #2013-057
- 8.1.24 Case #2013-060

- 8.1.25 Case #2013-061
- 8.1.26 Case #2013-062
- 8.1.27 Case #2013-063
- 8.1.28 Case #2013-068
- 8.1.29 Case #2013-080
- 8.1.30 Case #2013-104
- 8.1.31 Case #2013-108
- 8.1.32 Case #2013-110
- 8.1.33 Case #2013-112
- 8.1.34 Case #2013-121
- 8.1.35 Case #2013-122
- 8.1.36 Case #2013-185
- 8.1.37 Case #2013-204
- 8.1.38 Case #2013-209
- 8.1.39 Case #2013-210
- 8.1.40 Case #2013-081
- 8.1.41 Case #2013-089
- 8.1.42 Case #2012-096
- 8.1.43 Case #2013-025
- 8.1.44 Case #2013-092
- 8.1.45 Case #2013-179
- 8.1.46 Case #2013-012
- 8.1.47 Case #2013-014
- 8.1.48 Case #2013-096
- 8.1.49 Case #2013-099
- 8.1.50 Case #2013-244
- 8.1.51 Case #2013-141
- 8.1.52 Case #2013-142
- 8.1.53 Case #108-185
- 8.1.54 Case #2013-224
- 8.1.55 Case # 110-071, 110-164, & 110-213

Action Taken: The Enforcement Committee **MOVED** and Ms. Woodruff **SECONDED** that the above Agreed Orders contained in Agenda Items 8.1.1 through 8.1.55 be approved. After consideration, the Board **APPROVED** the motion.

8.2 Consideration of Requests to Expunge Records

- 8.2.1 Case #102-144
- 8.2.2 Case #108-86
- 8.2.3 Case #110-197
- 8.2.4 Case #106-082
- 8.2.5 Case #106-056

Action Taken: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** that the Expunction Order in Agenda Items 8.2.1, 8.2.4, and 8.2.5 be approved. After consideration, the Board **APPROVED** the motion. Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** that the Expunction Order in Agenda Items 8.2.2 and 8.2.3 be denied. After consideration, the Board **APPROVED** the motion.

8.3 Consideration of Final Board Order to accept Proposal for Decision

8.3.1 Case #109-113, SOAH Docket # 508-12-4495

Action Taken: Dr. Campion **MOVED** and Dr. McCullough **SECONDED** that the above Board Order be approved (no disciplinary action). After consideration, the Board **APPROVED** the motion.

8.4 Consideration of Final Board Order for Statutory Suspension

8.4.1 Case #2013-236

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

8.5 Consideration of Final Board Order for Automatic Revocation

8.5.1 Case #2012-043

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

8.6 Comments from Enforcement Chair on any Committee business, activities or issues.

Action Taken: None.

9. 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 – regarding rulemaking - thanked Board for consideration in rulemaking process and suggested putting in rule the language added to the preamble in Agenda Item 7.1.1.*
- *Thomas Smith (manufacturing rep for nutrition company) – regarding continuing education courses concerning nutrition.*
- *Lance Durrett, DC – asked for public comment to be moved back to the beginning of the meeting.*
- *N.D. Victor Carsrud, DC – asked for public comment to be moved back to the beginning of the meeting.*
- *Devin Pettiet, DC – regarding communication – clarified that information to be disseminated to the Board should be sent to the Board’s Executive Director and not to individual Board members.*

- *James Welch, DC (TCA) – clarified that individual TCA members' comments do not always represent TCA; requested that TCA and TBCE work together*

10. MISCELLANEOUS

- 10.1 Update on chiropractic legislative agenda (*Texas Chiropractic Association*)

Action Taken: None.

- 10.2 Call for future items for discussion and/or consideration by the Board

Action Taken: None.

- 10.3 Future Meeting Dates:

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.

Action Taken: Dr. Thomas **MOVED** and Dr. McCullough **SECONDED** that the Board schedule meetings beyond November 2015 into 2016 and 2017 on the 3rd Thursday of the month where possible. After consideration, the motion carried.

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

- (1) July 9, 2013
- (2) August 14, 2013
- (3) October 8, 2013
- (4) November 20, 2013

11.4 Adjournment at: _____ PM.

Action Taken: Dr. Tays reminded members of the next board meeting dates and then adjourned the meeting at approximately 4:00 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 May 23, 2013, were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on August 15, 2013.

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners

Aug 15, 2013
Date