

**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**  
**Aug 15, 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 1:00 PM. All members were present, and a quorum was announced.

Others present were:

1. Joe Thrash, Assistant Attorney General
2. Bryan Snoddy, General Counsel
3. Jennifer Hertsenberg, Director of Licensure
4. Scott Parker, Director of Enforcement
5. Steve Franz, Investigator
6. Mary Feys, Admin Assistant for Enforcement
7. Sarah Matthews, Licensing Assistant
8. Barbara Perez, Legal Assistant
9. Arlethia Middleton, Chief Financial Officer
10. Nikell Williams, Programmer/Systems Analyst

**2. APPROVAL OF MINUTES**

Approval of Minutes from May 23, 2013 Board Meeting

**Action Taken:** Dr. Thomas **MOVED** and Dr. Champion **SECONDED** the motion to approve the minutes from the May 23, 2013, Board Meeting. After

consideration, the Board **APPROVED** without changes the minutes from the May 23, 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 – expressed opinion that documentation rule is adequate as is. However, the stakeholder meeting was good and he is less concerned about any amendments, although he still opposes them. Believes amendment regarding level of examinations and documentation would put burden on those DCs who do not use CPT codes. Requested clarification about what CE hours on ethics are supposed to cover, if the Board is discussing its own jurisprudence course. Also requested clarification on what Board wants taught in other required CE hours as well.*
- *James Welch, DC (TCA) – thanked TBCE for stakeholder meetings and stated that the contemplated documentation rule will give Enforcement Committee the teeth to go after those who need to be gone after without hampering the good guys. Hopes future stakeholder meetings go just as well.*

### 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:** Tabled as Executive Director was not present due to illness.

#### 4.3 Board Vice-President and Secretary/Treasurer Elections

Dr. Cynthia Tays will lead the Board in electing the new Vice-President and Secretary/Treasurer of the Board.

**Action Taken:** Dr. Tays opened the floor for nominations for Secretary/Treasurer. Dr. Thomas nominated Dr. Campion, and Dr. Montgomery seconded this nomination. Upon Board vote, Dr. Campion was elected Secretary/Treasurer.

Dr. Tays then opened the floor for nominations for Vice-President. Dr. Thomas nominated Ms. Woodruff, and Dr. McCullough seconded this nomination. Upon Board vote, Ms. Woodruff was elected Vice-President.

### 5. 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:

5.1 Texas Medical Association lawsuit against the Board, including appeal, concerning Diagnosis.

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

5.3 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 1:30 pm and reconvened in public session at 2:32 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:** None.

## 7. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

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

#### 7.1.1 Michael Johnsey, New Applicant

**Action Taken:** Ms. Woodruff **MOVED** and Dr. Montgomery **SECONDED** that Mr. Johnsey be denied the opportunity to take the jurisprudence examination on the grounds of a criminal conviction (Tex. Occ. Code § 201.502(a)(5)). Further, any application for consideration to take the jurisprudence examination will not be considered until one (1) year after the date of his sentencing hearing, which was held on March 11, 2013. 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:** Tabled.

### 7.3 Comments from Committee Chair concerning Committee business, activities or issues.

**Action Taken:** None.

## 8. RULES COMMITTEE BUSINESS

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

#### 8.1.1 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:** Oh behalf of the Rules Committee, Dr. Montgomery **MOVED** and Ms. Woodruff **SECONDED** that the rule be published for proposal and comment. After consideration, the Board **APPROVED** this motion.

### 8.2 Discussion of future possible rule changes to Rule 75.7, regarding Fees. The 82<sup>nd</sup> Legislature made certain appropriations to the agency contingent upon an increase in revenue generated by the agency. The Board should discuss the contingent revenue rider and requests for stakeholder input.

**Action Taken:** None.

### 8.3 Update on other issues under consideration by the Committee

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

**Action Taken:** None.

## 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 #109-222
- 9.1.2 Case #111-233
- 9.1.3 Case #2012-027
- 9.1.4 Case #2012-041
- 9.1.5 Case #2012-190
- 9.1.6 Case #2012-242
- 9.1.7 Case #2013-028
- 9.1.8 Case #2013-042
- 9.1.9 Case #2013-055
- 9.1.10 Case #2013-066
- 9.1.11 Case #2013-071
- 9.1.12 Case #2013-073
- 9.1.13 Case #2013-076
- 9.1.14 Case #2013-083
- 9.1.15 Case #2013-084
- 9.1.16 Case #2013-085
- 9.1.17 Case #2013-086
- 9.1.18 Case #2013-087
- 9.1.19 Case #2013-100
- 9.1.20 Case #2013-103
- 9.1.21 Case #2013-133
- 9.1.22 Case #2013-143
- 9.1.23 Case #2013-218
- 9.1.24 Case #2013-225
- 9.1.25 Case #2013-249
- 9.1.26 Case #2013-250
- 9.1.27 Case #2013-257
- 9.1.28 Case #2013-261
- 9.1.29 Case #2013-269
- 9.1.30 Case #2013-270
- 9.1.31 Case #2013-288
- 9.1.32 Case #2013-290
- 9.1.33 Case #2013-358
- 9.1.34 Case #111-250
- 9.1.35 Case #2013-030
- 9.1.36 Case #2013-115

- 9.1.37 Case #2013-082
- 9.1.38 Case #2013-259
- 9.1.39 Case #111-194
- 9.1.40 Case #2013-268
- 9.1.41 Case #2013-144

**Action Taken:** Dr. Montgomery **MOVED** and Dr. Thomas **SECONDED** that the above Agreed Orders contained in Agenda Items 9.1.1 through 9.1.41 be approved. After consideration, the Board **APPROVED** the motion.

#### 9.2 Consideration of Requests to Expunge Records

- 9.2.1 Case #104-197
- 9.2.2 Case #111-239

**Action Taken:** Dr. Montgomery **MOVED** and Dr. Thomas **SECONDED** that the Expunction Order in Agenda Items 9.2.1 and 9.2.2 be approved. After consideration, the Board **APPROVED** the motion.

#### 9.3 Consideration of Order to Accept Proposal for Decision in Case # 108-180 & 110-182, SOAH Docket # 508-13-1181

**Action Taken:** Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** that the Board accept the ALJ's PFD in this case. After consideration, the Board **APPROVED** the motion.

#### 9.4 Consideration of Order to Accept Default Judgment in Case # 110-162, SOAH Docket # 508-13-2336

**Action Taken:** Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** that the Board accept the default judgment and approve the recommended Board order (with a penalty of \$2,500) in this case. After consideration, the Board **APPROVED** the motion.

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

**Action Taken:** None.

##### 9.5.1 Discussion of Use of Affiliated Monitors Inc. for enforcement monitoring

**Action Taken:** The Board listed to a presentation by Affiliated Monitors, Inc. and discussed using their services in future enforcement cases.

## 10. MISCELLANEOUS

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

**Action Taken:** None, but the following action items are noted:

Dr. Tays briefed that Dr. Montgomery will not be able to be an examiner at the November 2013 Part IV exam, as he was previously approved to be. Dr. McCullough expressed interest in taking his place.

The Board will consider at the October 8, 2013 meeting approval of an Acting Executive Director in Ms. Yarbrough's absence (maternity leave) this fiscal year.

### 10.2 Future Meeting Dates:

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

- |                       |                       |
|-----------------------|-----------------------|
| (1) November 21, 2013 | (6) February 19, 2015 |
| (2) February 20, 2014 | (7) May 21, 2015      |
| (3) May 22, 2014      | (8) August 20, 2015   |
| (4) August 21, 2014   | (9) November 19, 2015 |
| (5) November 13, 2014 |                       |

\*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) October 8, 2013
- (2) November 20, 2013

**Action Taken:** The Board discussed the need to hold a special Board meeting on October 8, 2013 to discuss possible fee increases. Mr. Steinberg **MOVED** and Dr. Montgomery **SECONDED** that a meeting be held on October 8, 2013 at 1:00 pm. After consideration, the Board **APPROVED** the motion.

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

**Action Taken:** Dr. Tays reminded members of the next board meeting dates and then adjourned the meeting at approximately 4:06 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 August 15, 2013, were approved by the Texas Board of Chiropractic Examiners at its next scheduled board meeting held on October 8, 2013.

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

Oct 8, 2013  
Date