

**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 22, 2014
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 and called the roll. All board members were present and a quorum was announced.

Others present were:

1. Joe Thrash, Assistant Attorney General
2. Yvette Yarbrough, Executive Director
3. Bryan Snoddy, General Counsel
4. Jennifer Hertsenbergl, Director of Licensure
5. Scott Parker, Director of Enforcement
6. Steve Franz, Investigator
7. Mary Feys, Administrative Assistant for Enforcement
8. Arlethia Middleton, Chief Fiscal Officer

2. APPROVAL OF MINUTES

Approval of Minutes from the February 20, 2014 Board Meeting

Action Taken: Dr. Montgomery **MOVED** and Dr. Champion **SECONDED** approval. After consideration, the minutes were **APPROVED**.

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 comments from the public. Comments were received from the following individuals:

- 1) *Devin Pettiet, DC (TCA)* – TCA position on specialties has not changed. TCA is open-minded regarding number of online CE hours that Board will allow.
- 2) *Larry Laurent, JD* – Representing Mr. Vo (applicant for relicensure). Board should allow him to take SPEC exam to show clinical competency instead of outright denying his application.

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, including committee assignments.

Action Taken: None. 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: None. This item was for informational purposes only.

4.3 Strategic Plan

Executive Director Yvette Yarbrough will ask for input for the agency's Strategic Plan, due in late June.

Action Taken: Board members discussed ideas for the Strategic Plan, including videoconferencing, converting remaining licensing files to digital format, replacing aging computer equipment, etc.

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

5.1.4 Texas Association of Acupuncture and Oriental Medicine lawsuit against the Board, regarding the Board allowing certain chiropractors to perform acupuncture within scope of practice.

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 1:32 PM and reconvened in Open Session at 2:44 PM.

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: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** that the Board appeal the denial of its Plea to the Jurisdiction in the TMA litigation involving VONT and diagnosis. After consideration, the Board **APPROVED** the motion.

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** approval of the applicant to take the Jurisprudence examination, with the condition that his license after issuance will have the same stipulations on it as in Louisiana (suspended but probated until 2016), plus quarterly monitoring. Additionally, Mr. Johnsey must successfully complete the NBCE Ethics & Boundaries examination at his expense before sitting for the Jurisprudence examination. After consideration, the Board **APPROVED** the motion.

7.2 Request for Approval to Sit for the Texas Jurisprudence Exam

7.2.1 Thientuan Vo, Revoked Licensee Seeking New License

Action Taken: Ms. Woodruff **MOVED** and Dr. Riggs **SECONDED** approval of the applicant to take the Jurisprudence examination, with the conditions that the applicant must first successfully complete the NBCE Ethics & Boundaries examination and SPEC examination (at his own expense) before sitting for the Jurisprudence examination. Additionally, after issuance, his license will be suspended but probated for 2 years, with automatic revocation if he is found in violation of any Board rule or law. After consideration, the Board **APPROVED** the motion.

7.2.2 Tom Pham, Revoked Licensee Seeking New License

Action Taken: Dr. Montgomery **MOVED** and Dr. Thomas **SECONDED** denial of the applicant's application to take the Jurisprudence examination until such time as the applicant has successfully completed his criminal probation. After consideration, the Board **APPROVED** the motion.

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

7.3.1 Discussion of possible recommendation to Rules Committee to regulate use of the terms "specialist" or "specializing in" by chiropractors.

Action Taken: None.

8. RULES COMMITTEE BUSINESS

8.1 Consideration to Propose Rule Amendments or Repeal Rules as Recommended by the Licensure and Educational Standards Committee

8.1.1 Discussion and consideration to propose an amendment to Rule 73.3 Continuing Education, including (1) changing the number of hours of required continuing education credits each year that may be taken online or by webinar, (2) changing how many hours are Board-required and/or the topics covered, (3) removing a prohibition against video courses found in 73.3(b)(4), (4) allowing other professionals to be instructors in Board-required CE courses, and (5) allowing other professional organizations (i.e. medical schools) to sponsor CE courses, and (6) making minor edits to the rule.

Action Taken: None – tabled until future meeting on June 24, 2014.

8.1.2 Discussion and consideration to propose an amendment to Rule 73.4 to increase the time a licensee may remain on Inactive Status.

Action Taken: None – tabled until future meeting on June 24, 2014.

8.1.3 Discussion and consideration to propose to repeal Rule 71.15 Recognized Specialties concerning the recognition of chiropractic specialties.

Action Taken: None – tabled until future meeting on June 24, 2014.

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

8.2.1 Discussion regarding rule review

Action Taken: None.

8.2.2 Discussion regarding the use of Groupon, Living Social, and other social media marketing by D.C.s

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 # 2012-151
- 9.1.2 Case # 2012-177
- 9.1.3 Case # 2013-035
- 9.1.4 Case # 2013-238
- 9.1.5 Case # 2013-284
- 9.1.6 Case # 2013-335
- 9.1.7 Case # 2013-369
- 9.1.8 Case # 2013-371
- 9.1.9 Case # 2013-372
- 9.1.10 Case # 2013-395
- 9.1.11 Case # 2014-011
- 9.1.12 Case # 2014-013
- 9.1.13 Case # 2014-025
- 9.1.14 Case # 2014-026
- 9.1.15 Case # 2014-046, 2014-047, 2014-048, & 2014-049
- 9.1.16 Case # 2014-051
- 9.1.17 Case # 2014-055 & 2014-056
- 9.1.18 Case # 2014-057
- 9.1.19 Case # 2014-059
- 9.1.20 Case # 2014-064
- 9.1.21 Case # 2014-067
- 9.1.22 Case # 2014-079
- 9.1.23 Case # 2014-100
- 9.1.24 Case # 2014-102

Action Taken: After motions, seconds and consideration, the Board **APPROVED** the motions to approve 9.1.1-9.1.21 and 9.1.23-9.1.24 and the Agreed Orders were accepted. Agenda Item 9.1.22 was tabled until a later date due to a clerical error in the publishing of the agenda item.

9.2 Consideration of Requests to Expunge Records

- 9.2.1 Case # 104-205
- 9.2.2 Case # 108-236
- 9.2.3 Case # 109-028
- 9.2.4 Case # 109-220
- 9.2.5 Case # 111-240
- 9.2.6 Case# 2012-215

Action Taken: Ms. Woodruff **MOVED** and Ms. Boatright **SECONDED** approval of the expungement of Agenda Items 9.2.1 through 9.2.6. After consideration, the Board **APPROVED** the motion.

- 9.2.7 Case# 110-205

Action Taken: Ms. Woodruff **MOVED** and Dr. Montgomery **SECONDED** denial of the expungement due to failure to meet requirements. After consideration, the Board **APPROVED** the motion.

9.3 Consideration of Board Orders

- 9.3.1 Case # 2013-356

Action Taken: Dr. Montgomery **MOVED** and Ms. Boatright **SECONDED** approval of the order. After consideration, the Board **APPROVED** the motion.

- 9.3.2 Case# 2013-236

Action Taken: A board member **MOVED** and another board member **SECONDED** approval of the statutory revocation. After consideration, the Board **APPROVED** the motion. (The voices on the recording were not intelligible.)

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

Action Taken: None

10. MISCELLANEOUS

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

Action Taken: None

10.2 Future Meeting Dates:

The planned Board meeting dates for the remainder of Calendar Years 2014 - 2015 are:

- | | |
|-----------------------|-----------------------|
| (1) August 21, 2014 | (4) May 21, 2015 |
| (2) November 13, 2014 | (5) August 20, 2015 |
| (3) February 19, 2015 | (6) 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. All dates are tentative until posted in the Texas Register.

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

- | | |
|---------------------|-----------------------|
| (1) July 8, 2014 | (3) October 14, |
| 2014 | |
| (2) August 20, 2014 | (4) November 12, 2014 |

Action Taken: None

10.3 Adjournment at: **3:37 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 22, 2014 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on August 21, 2014.



Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners

August 21, 2014
Date