

**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
August 21, 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 1:01 PM and called the roll. All board members were present and a quorum was announced.

Others present were:

Joe Thrash, Assistant Attorney General
Yvette Yarbrough, Executive Director
Bryan Snoddy, General Counsel
Scott Parker, Director of Enforcement
Steve Franz, Investigator
Jennifer Hertsenberg, Director of Licensure
Jo Manning, Executive Assistant
Arlethia Middleton, Chief Fiscal Officer
Mary Feys, Administrative Assistant for Enforcement

2. APPROVAL OF MINUTES

Approval of Minutes from the May 22, 2014 Board Meeting

Action Taken: Mr. Steinberg **MOVED** and Dr. Thomas **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. No comments were made.

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. Dr. Tays briefed that Dr. Riggs was no longer on the Enforcement Committee, but instead was now on the Licensure & Education Committee. Dr. Vavra was assigned to the Enforcement Committee.

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 Mission Statement Update

Executive Director Yvette Yarbrough will present the Board with an updated mission statement for formal approval.

Action Taken: Dr. Montgomery **MOVED** approval of the proposed mission statement and Mr. Steinberg **SECONDED**. After

discussion, Dr. Montgomery and Mr. Steinberg **WITHDREW** their motion and second, respectively.

Dr. Champion **MOVED** approval of the amended mission statement "The mission of the Texas Board of Chiropractic Examiners is to execute the statutory authority of the Texas Chiropractic Act (Texas Occupations Code, Chapter 201) and to promote, preserve, and protect the health, safety, and welfare of the people of Texas by licensing skilled professionals and enforcing standards of practice." Dr. Thomas **SECONDED** the motion. After discussion, the motion was **APPROVED**.

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 2013 through August 2014. This agenda item may be taken up during Executive Session under Agenda Item #5.2.

Action Taken: This item was tabled until Executive Session – Agenda Item #5.2.

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.

- 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 1:33 PM and reconvened in Open Session at 2:46 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. Campion **SECONDED** that the salary of the Executive Director be increased to the amount listed in the 2014-15 General Appropriations Act (GAA) - \$76,584. 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 Lazaro Olivares, Revoked Licensee Seeking New License

Action Taken: Dr. Thomas **MOVED** and Mr. Steinberg **SECONDED** approval of the applicant to take the Jurisprudence examination, with the condition that his license after issuance will be suspended but probated for two (2) years, plus drug/alcohol monitoring (testing twice a year). After discussion, the motion was **AMENDED** by Dr. Campion to increase the amount of probated suspension to three (3) years. Dr. Riggs **SECONDED**. After consideration, the Board **APPROVED** the motion.

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

Action Taken: None.

8. RULES COMMITTEE BUSINESS

8.1 Recommendation to Publish Proposed Rule Amendments or Rule Repeals

8.1.1 Recommendation to publish proposed rule concerning a modification to conform rule 75.9 to the Chiropractic Act §201.507.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

8.1.2 Recommendation to publish proposed rule 73.2(a) concerning probationary CE to harmonize the rule with rule 73.5.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

8.1.3 Recommendation to publish proposed rule 80.7 to exempt designated doctors from compliance with that section.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

8.1.4 Recommendation to publish proposed rule 74.3 to provide additional regulation of non-DC owners.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

- 8.1.5 Recommendation to publish proposed rule 75.3 to provide the Board with notification upon receiving deferred adjudication and change the title of chapter 75.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

- 8.1.6 Recommendation to publish proposed rule modifying rule 75.8 to clarify that a licensee and facility owner are equally responsible for posting public information and current annual registration certificate.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

- 8.1.7 Recommendation to publish proposed rule modifying rule 80.1 to clarify the requirements on providing Board notice of hiring recent graduates.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

- 8.1.8 Recommendation to publish proposed rule modifying rule 73.3 to clarify the requirements for continuing education regarding coding and documentation in ethics and further clarifying qualifying exemptions.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

- 8.1.9 Recommendation to publish proposed modifications to rule 73.4 to provide additional opportunities to maintain an inactive license before the Board and establish a defined limit of the status as required by the Chiropractic Act.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

8.1.10 Recommendation to publish proposed modification to rule 73.3 to alter the nature of the required hours and expand the qualifications to increase the number of qualified instructors.

Action Taken: Dr. Campion **MOVED** and Dr. Thomas **SECONDED** publication of the proposed rule amendments in Agenda Item 8.1.10 with the addition to subsection (b)(2)(A)(i) and (ii) the phrase “or individuals with substantial knowledge, skills and abilities of chiropractic practice” at the end of the sentence beginning with “In addition to the requirements in § 73.7...” After consideration, the Board **APPROVED** the motion.

8.1.11 Recommendation to publish proposed modifications to rule 75.17 and newly proposed rules 78.13 through 78.15 to clarify nature of referral and provide easier readability to the proposed rules by separating the topics of scope of practice and scope of prohibition.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

8.1.12 Recommendation to publish proposed modification to rule 75.6(c) to clarify the 15 day requirement for a doctor to respond to a Board complaint includes the requirement to provide documents.

Action Taken: Dr. Woodruff **MOVED** and Dr. Campion **SECONDED** publication of the proposed rule amendments in Agenda Item 8.1.12 with the addition of “to the complaint” after the words “The response” in subsection (b). After discussion, the motion was **WITHDRAWN**. Dr. Woodruff then **MOVED** and Dr. Campion **SECONDED** publication of the proposed rule amendments in Agenda Item 8.1.12 with the addition of “to the complaint and to” after the words “The response” in subsection (b). After consideration, the Board **APPROVED** the motion.

8.1.13 Recommendation to delete rule 71.15.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

8.1.14 Recommendation to publish proposed modification to rule 75.13.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed rule amendments in Agenda Items 8.1.1 – 8.1.9, 8.1.11, 8.1.13 and 8.1.14 for comment. After consideration, the Board **APPROVED** the motion.

8.2 Discussion and comments from Committee Chair concerning Draft Comprehensive Rule restructure.

8.2.1 Discussion and recommendation to publish proposed Draft Comprehensive Rule restructure.

Action Taken: The Rules Committee **MOVED** and Dr. Vavra **SECONDED** publication of the proposed Draft Comprehensive Rule restructure. After consideration, the Board **APPROVED** the motion.

8.3 Discussion and 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 receive a report from the Enforcement Committee concerning Agreed Orders that have been recommended by the Enforcement Committee and accepted by the Respondents pursuant to the Chiropractic Act §201.554.

9.1.1 Case # 111-238

9.1.2 Case # 2012-032

9.1.3 Case # 2012-081

9.1.4 Case # 2012-108

9.1.5 Case # 2012-232

9.1.6 Case # 2012-246

- 9.1.7 Case # 2013-054
- 9.1.8 Case # 2013-064
- 9.1.9 Case # 2013-079
- 9.1.10 Case # 2013-128
- 9.1.11 Case # 2013-258
- 9.1.12 Case # 2013-275
- 9.1.13 Case # 2013-299
- 9.1.14 Case # 2013-332
- 9.1.15 Case # 2014-008
- 9.1.16 Case # 2014-014
- 9.1.17 Case # 2014-017
- 9.1.18 Case # 2014-043
- 9.1.19 Case # 2014-044
- 9.1.20 Case # 2014-068
- 9.1.21 Case # 2014-078
- 9.1.22 Case # 2014-083
- 9.1.23 Case # 2014-088
- 9.1.24 Case # 2014-103
- 9.1.25 Case # 2014-105
- 9.1.26 Case # 2014-106
- 9.1.27 Case # 2014-110
- 9.1.28 Case # 2014-111
- 9.1.29 Case # 2014-113
- 9.1.30 Case # 2014-124
- 9.1.31 Case # 2014-131
- 9.1.32 Case # 2014-140
- 9.1.33 Case # 2014-141
- 9.1.34 Case # 2014-154
- 9.1.35 Case # 2014-161
- 9.1.36 Case # 2014-178
- 9.1.37 Case # 2014-037
- 9.1.38 Case # 2013-380
- 9.1.39 Case # 2013-048
- 9.1.40 Case # 2014-156
- 9.1.41 Case # 111-052
- 9.1.42 Case # 2013-097
- 9.1.43 Case # 2014-143
- 9.1.44 Case # 2014-155
- 9.1.45 Case # 111-269

Action Taken: Dr. Montgomery **MOVED** and Dr. Riggs **SECONDED** acceptance of the Agreed Orders. After consideration, the Board **APPROVED** the motions to approve 9.1.1-9.1.45 and the Agreed Orders were accepted.

9.2 Consideration of Requests to Expunge Records

- 9.2.1 Case # 102-964
- 9.2.2 Case # 110-280
- 9.2.3 Case # 2013-204

Action Taken: Dr. Montgomery **MOVED** and Dr. Thomas **SECONDED** approval of the expungement of Agenda Items 9.2.1 through 9.2.3. After consideration, the Board **APPROVED** the motion.

9.3 Consideration of Board Orders

- 9.3.1 Case # 2014-219 (Statutory Revocation)

Action Taken: Dr. Thomas **MOVED** and Dr. Riggs **SECONDED** approval of the order. After consideration, the Board **APPROVED** the motion.

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: Board members directed staff to place certain issues on the future agenda.

- 10.2 Future Meeting Dates:

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

- (1) November 13, 2014
- (2) February 19, 2015
- (3) May 21, 2015
- (4) August 20, 2015
- (5) 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) October 14, 2014
- (2) November 12, 2014

- (3) January 13, 2015
- (4) February 18, 2015

Action Taken: None

10.3 Adjournment at: **3:35 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 21, 2014 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on November 13, 2014.



Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners

November 13, 2014
Date