

**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
November 13, 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 1:03 PM and called the roll. All board members were present with the exception of Ms. Anne Boatright, and a quorum was announced.

Dr. Campion **MOVED** to excuse Ms. Boatright's absence, and Ms. Woodruff **SECONDED**. After consideration, the Board **APPROVED** the motion.

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 August 21, 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. Comments were received from Ms. Kathy Jones with NACA, Texas regarding the proposed continuing education rule and a possible change to the number of online hours approved by the Board. Comments were also received from Dr. Devin Pettiet with TCA.

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 Discussion of Possible Restructure of Enforcement Committee

Dr. Cynthia Tays will lead a discussion about a possible restructure of the Enforcement Committee.

Action Taken: None. Item was tabled.

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 1:56 PM and reconvened in Open Session at 2:21 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: None.

7. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

7.1 Request for Approval to Sit for the Texas Jurisprudence Exam

7.1.1 Charles Karam, New Applicant

Action Taken: Dr. Thomas **MOVED** and Dr. Tays **SECONDED** approval of the applicant to take the jurisprudence examination, with the condition that he successfully complete the EBAS examination before taking the jurisprudence examination and that his license after issuance will be suspended but probated for three (3) years. After consideration, the Board **APPROVED** the motion.

7.1.2 Phillip Oller, New Applicant

Action Taken: Dr. Thomas **MOVED** and Dr. Riggs **SECONDED** approval of the applicant to take the jurisprudence examination, with the condition that he successfully complete the EBAS examination before taking the jurisprudence examination and that his license after issuance will be suspended but probated for three (3) years, plus drug/alcohol monitoring for the first two (2) years during the probation period (testing quarterly). 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 Discussion and Consideration of Rules Modifications and Repeals

8.1.1 Discussion and consideration to propose an amendment to Rule 75.2 to require all DCs to take and record blood pressure prior to providing any services.

Action Taken: Dr. Montgomery **MOVED** and Ms. Woodruff **SECONDED** publication of the proposed rule amendment for comment. After consideration, the Board **APPROVED** the motion.

8.1.2 Discussion and consideration to propose the repeal of Rule 75.23.

Action Taken: None. Item tabled.

8.1.3 Discussion and consideration to adopt the comprehensive rule restructure and codification that was published on September 26, 2014.

Action Taken: The Rules Committee **MOVED** and Dr. Riggs **SECONDED** publication of the proposed rule amendment for comment. After consideration, the Board **APPROVED** the motion.

8.2 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 # 2012-077

9.1.2 Case # 2012-196

9.1.3 Case # 2013-010

9.1.4 Case # 2013-051

9.1.5 Case # 2013-088

9.1.6 Case # 2013-134

9.1.7 Case # 2013-159

9.1.8 Case # 2013-170

9.1.9 Case # 2013-386

9.1.10 Case # 2013-410

9.1.11 Case # 2014-012

9.1.12 Case # 2014-065

9.1.13 Case # 2014-147

9.1.14 Case # 2014-206

9.1.15 Case # 2015-000

9.1.16 Case # 2013-373

9.1.17 Case # 2013-388

9.1.18 Case # 2014-081

9.1.19 Case # 2014-121

- 9.1.20Case # 2013-387
- 9.1.21Case # 2012-179
- 9.1.22Case # 2013-260
- 9.1.23Case # 2013-304

Action Taken: Ms. Woodruff **MOVED** and Dr. Montgomery **SECONDED** acceptance of the Agreed Orders. After consideration, the Board **APPROVED** the motions to approve 9.1.1 - 9.1.23 and the Agreed Orders were accepted.

9.2 Consideration of Requests to Expunge Records

9.2.1 Case # 94-140

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

9.2.2 Case# 101-025

Action Taken: Dr. Riggs **MOVED** and Dr. Montgomery **SECONDED** denial of the expungement. After consideration, the Board **APPROVED** the motion.

9.2.3 Case# 101-588

Action Taken: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** approval of the expungement. After consideration, the Board **APPROVED** the motion.

9.2.4 Case# 102-150

Action Taken: Dr. Riggs **MOVED** and Dr. Thomas **SECONDED** denial of the expungement of Agenda Items 9.2.4 through 9.2.6. After consideration, the Board **APPROVED** the motion.

9.2.5 Case# 103-156

Action Taken: Dr. Riggs **MOVED** and Dr. Thomas **SECONDED** denial of the expungement of Agenda Items 9.2.4 through 9.2.6. After consideration, the Board **APPROVED** the motion.

9.2.6 Case# 104-128

Action Taken: Dr. Riggs **MOVED** and Dr. Thomas **SECONDED** denial of the expungement of Agenda Items 9.2.4 through 9.2.6. After consideration, the Board **APPROVED** the motion.

9.3 Consideration of Board Orders

9.3.1 Case# 111-086, 2012-127, 2013-253 and 2013-255

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

9.3.2 Case# 2012-087

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

9.3.3 Case# 110-220 and 2013-223

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

9.3.4 Case# 2012-218

Action Taken: Dr. Riggs **MOVED** and Dr. Thomas **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 Calendar Year 2015 are:

- (1) February 19, 2015
- (2) May 21, 2015
- (3) August 20, 2015
- (4) November 19, 2015

*Note: All planned board meeting dates after 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) January 13, 2015
- (2) February 18, 2015
- (3) April 14, 2015
- (4) May 20, 2015

Action Taken: None

10.3 Adjournment at: 3:08 PM.

Note: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids, services, or special accommodations should contact Jo Manning at 512-305-6906 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 November 13, 2014 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on February 19, 2015.



Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners

February 19, 2015
Date