

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
February 20, 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 1:04 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. Glenn Parker, Acting Executive Director
4. Bryan Snoddy, General Counsel
5. Jennifer Hertsenberg, Director of Licensure
6. Scott Parker, Director of Enforcement
7. Steve Franz, Investigator
8. Mary Feys, Administrative Assistant for Enforcement
9. Sarah Matthews, Licensing Assistant
10. Arlethia Middleton, Chief Fiscal Officer

2. APPROVAL OF MINUTES

Approval of Minutes from the November 21, 2013 Board Meeting

Action Taken: Consideration of the minutes was deferred until after the Executive Session. Dr. Thomas **MOVED** and Ms. Woodruff **SECONDED** approval. After consideration and minor corrections from Ms. Woodruff, 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 regarding chiropractors providing nutritional advice, chiropractic specialties, the recent lawsuit against the board brought by the Texas Association of Accupuncture and Oriental Medicine, continuing education and other topics.

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

Acting Executive Director Glenn Parker 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. Mr. Parker 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 Designation of a delegate and an alternate delegate to the National Board of Chiropractic Examiners for 2014. The delegate and alternate must be members of the board and doctors of chiropractic. The delegate for 2013 is Dr. Thomas, who does not wish to be reappointed. The alternate delegate is Dr. Tays.

Action Taken: The Board approved Dr. Campion as the NBCE delegate and Dr. Tays as the alternate delegate. (Dr. Campion later withdrew as the delegate and Dr. Riggs was named in her place.)

4.4 Designation of two board members to serve as examiners for NBCE practical examiners for the Spring 2014 exam (May 16-18) and one board member to participate in the NBCE Part IV Test Committee meeting on June 6-7, 2014.

Action Taken: Drs. Thomas and Montgomery volunteered to serve as examiners for the May Exam. Dr. Riggs volunteered to serve as a participant for the Part IV Test Committee in June.

4.5 Designation of two people to serve as the delegate and alternate delegate to the Federation of Chiropractic Licensing Boards (FCLB) for 2014.

Action Taken: Dr. Tays and Dr. Champion were named as the FCLB delegate and alternate delegate. Dr. Champion later had to withdraw because of a schedule conflict and Dr. Riggs was named as the alternate.

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 1:37 PM and reconvened in Open Session at 2:42 PM. A recess was taken until 2:59 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 Tedra Erickson, New Applicant

Action Taken: Dr. Montgomery **MOVED** and Dr. Campion **SECONDED** approval of the applicant to take 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: Dr. Montgomery **MOVED** and Dr. McCullough **SECONDED** that the application be tabled pending additional information from the applicant. 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** that the applicant's request be denied. After consideration, the Board **APPROVED** the motion.

7.3 Discussion of possible revision of Rule 73.3 (b) (2) regarding 4 hours of TBCE required CE courses and topics.

Action Taken: The L&E Committee made a recommendation to the Rules Committee to remove the 4 hours of required topics.

7.4 Discussion of possible rule to regulate use of the terms "specialist" or "specializing in" by chiropractors.

Action Taken: The L&E Committee reported that it voted to table until issue of specialty recognition is resolved.

7.5 Discussion and comments from Committee Chair concerning Committee business, activities or issues, including report on L&E Committee meeting held on January 9, 2014 and recommendations for rules changes.

Action Taken: None

8. RULES COMMITTEE BUSINESS

8.1 Consideration to Adopt Previously Proposed Rule Amendments

- 8.1.1 Consideration to adopt proposed amendments to Rule 73.7, regarding Approved Continuing Education Courses. The amendment requires sponsors to include a copy of proposed advertising for the course in the application. The amendment also requires the sponsor to certify that advertising is consistent with approved course content. Stakeholder input was requested on September 3, 2013. Responses were included in the November 21, 2013 board meeting materials (Agenda Item 8.2.1). The proposal was published in the December 20, 2013 edition of the *Texas Register*. Comments were received during the comment period and are included in this agenda item.

Action Taken: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** adoption of the proposed amendment. After consideration, the Board **APPROVED** the motion and the proposed rule amendment was adopted.

- 8.1.2 Consideration to adopt proposed amendments to Rule 80.5, regarding Documentation. The amendment details minimum documentation requirements. Stakeholder input was requested, and responses were included in the November 21, 2013 board meeting materials (Agenda Item 8.2.2). The proposal was published in the December 20, 2013 edition of the *Texas Register*. Comments were received during the comment period and are included in this agenda item.

Action Taken: Ms. Boatright **MOVED** and Mr. Steinberg **SECONDED** adoption of the proposed amendment. After consideration, the Board **APPROVED** the motion and the proposed rule amendment was adopted.

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

- 8.2.1 Discussion and Consideration to propose to amend Rule 73.3 Continuing Education to allow up to 8 hours of required continuing education credits each year that may be taken online or by webinar, and to remove a prohibition against video courses found in 73.3 (b) (4), and to allow medical doctors to be instructors in approved CE courses, and to make minor edits to the rule.

Action Taken: Directed staff to seek stakeholder input on possible changes to Rule 73.3 regarding allowing up to 12 hours of CE to be taken online and other changes and bring this item back to the Rules Committee at the next board meeting.

- 8.2.2 Discussion and Consideration to propose to amend Rule 73.4 to increase the time a licensee may remain on Inactive Status from 5 years to 20 years.

Action Taken: Directed staff to seek stakeholder input on amending Rule 73.4 and bring this agenda back to the Rules Committee at the next board meeting.

- 8.2.3 Discussion and Consideration to propose to repeal Rule 71.15 Recognized Specialties concerning the recognition of chiropractic specialties.

Action Taken: Directed staff to publish intent to repeal Rule 71.15 and seek stakeholder input.

- 8.2.4 Discussion regarding defining 4 required Board CE hours in Rule 73.3

Action Taken: L&E Committee recommended reduction of the ethics requirement to one hour and elimination of the risk management requirement. The Board directed staff to seek input from stakeholders and bring back a recommendation for the next board meeting.

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

- 8.3.1 Discussion regarding planned rule review

Action Taken: General Counsel Bryan Snoddy confirmed that he will conduct a staff-level public hearing on March 27 to discuss recommendations he receives regarding suggest rules revisions.

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 #110-198
- 9.1.2 Case #110-263
- 9.1.3 Case #2013-029
- 9.1.4 Case #2013-031
- 9.1.5 Case #2013-033
- 9.1.6 Case #2013-107
- 9.1.7 Case #2013-130
- 9.1.8 Case #2013-147
- 9.1.9 Case #2013-208
- 9.1.10 Case #2013-230
- 9.1.11 Case #2013-287
- 9.1.12 Case #2013-293
- 9.1.13 Case #2013-306
- 9.1.14 Case #2013-307
- 9.1.15 Case #2013-343

- 9.1.16 Case #2013-347
- 9.1.17 Case #2013-389
- 9.1.18 Case #2013-391
- 9.1.19 Case #2013-392
- 9.1.20 Case #2013-409
- 9.1.21 Case #2014-003
- 9.1.22 Case #2014-009 & 2014-010
- 9.1.23 Case #2014-019
- 9.1.24 Case #2014-020
- 9.1.25 Case #2014-021
- 9.1.26 Case #2014-024
- 9.1.27 Case #2014-029
- 9.1.28 Case #2014-036
- 9.1.29 Case #2014-042

Action Taken: After a motion, second and consideration, the Board **APPROVED** the motion to approve and the Agreed Orders were accepted.

9.2 Consideration of Requests to Expunge Records

- 9.2.1 Case #101-068

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

- 9.2.2 Case #104-140

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

- 9.2.3 Case #110-205/210

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

9.3 Consideration of Order to Accept Proposal for Decision from SOAH

There are no PFDs for consideration at this meeting.

Action Taken: None

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

Action Taken: None

