

**TEXAS BOARD OF CHIROPRACTIC EXAMINERS**  
**William P. Hobby Building**  
**333 Guadalupe, Suite 3-825**  
**Austin, Texas 78701**

BOARD MEETING: 1:00 p.m. – Adjournment  
Hobby Building, Tower 2, Room 225

**MINUTES FROM THE**  
**August 20, 2015**  
**BOARD MEETING**

**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 Cynthia Tays, DC 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:

Joe Thrash, Assistant Attorney General  
Yvette Yarbrough, Executive Director  
Jo Manning, Executive Assistant  
Bryan Snoddy, General Counsel  
Scott Parker, Director of Enforcement  
Jennifer Hertsenberg, Director of Licensure  
Sarah Matthews, Licensure Assistant

**2. APPROVAL OF MINUTES**

Approval of Minutes from the May 21, 2015 Board Meeting

**Action Taken:** Dr. Thomas **MOVED** and Dr. Champion **SECONDED** approval of the minutes from the May 21, 2015 Board Meeting. After consideration, the Board **APPROVED** the motion.

**3. PUBLIC COMMENTS**

Forum for licensees, the general public or other interested stakeholders to address the Board

**Action Taken:** Dr. Devin Pettiet (TCA) made public comments regarding the proposed rule amendment on delegation of authority and the appropriateness of the term "chiropractic tasks."

#### 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:** Dr. Tays announced the selection of members of the Executive Director Search Committee – Dr. Tays, Dr. Montgomery, Dr. Campion, and Ms. Boatright. Also, Dr. Tays discussed the FCLB District Meeting in October and her appointment of Dr. Campion to attend the meeting on behalf of the TBCE.

##### 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:** No action taken.

##### 4.3 Discussion of Sunset Self-Evaluation Report

The Board will discuss the agency's Sunset Self-Evaluation Report.

**Action Taken:** No action taken.

##### 4.4 Approval of Contracts

The Board will discuss and vote to approve any contracts and/or contract extensions for which Board approval is needed.

**Action Taken:** Ms. Woodruff **MOVED** approval of the contract extension with the OAG reimbursement contract. Dr. Campion **SECONDED**. After consideration, the motion was approved.

##### 4.5 Approval of Draft FY 16 Budget

The Board will discuss and vote to approve the draft FY 16 budget.

**Action Taken:** No action taken.

#### 4.6 Outstanding Board Member Discussion

The Board will discuss appointments (if any) of future Board members. Outgoing Board members Dr. Larry Montgomery, Dr. Patrick Thomas, and Ms. Anne Boatright terms all expired in February.

**Action Taken:** No action taken.

### 5. EXECUTIVE SESSION

#### 5.1 The Board may meet in 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 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 Texas Association of Acupuncture and Oriental Medicine lawsuit against the Board, including appeal, regarding the Board allowing certain chiropractors to perform acupuncture within scope of practice.

#### 5.2 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 1:32 PM and reconvened in Open Session at 2:14 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** to delegate to the search committee authority to hire the new Executive Director. Dr. Vavra **SECONDED**. After consideration, the motion was approved.

Ms. Woodruff **MOVED** to appoint Bryan Snoddy as Interim ED effective 8/24/15. Dr. Riggs **SECONDED**. After consideration, the motion was approved.

Ms. Woodruff **MOVED** to increase the salary of Mr. Snoddy, while acting as Interim ED, to the level of the current Executive Director salary. Dr. Campion **SECONDED**. After consideration, the motion was approved.

## 7. **LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS**

### 7.1 Request for Late Renewal with Good Cause

#### 7.1.1 Mary Beth Meier, License #4099, Non-Renewable

**Action Taken:** Dr. Thomas **MOVED** to approve Ms. Meier's application for late renewal with good cause. Dr. Campion **SECONDED**. After consideration, the motion was approved. (Dr. Tays abstained from voting.)

### 7.2 Request to Sit for the Texas Jurisprudence Examination for License Reinstatement from a Non-Renewable Status

#### 7.2.1 Lisa Pray, License #9883, Non-Renewable

**Action Taken:** Ms. Pray was not present to answer questions from the Board. Dr. Thomas **MOVED** to deny Ms. Pray's application based on questions related to her current compliance and her willingness to comply with rules after licensure. Dr. Vavra **SECONDED**. After consideration, the motion was approved.

### 7.3 Request to Sit for the Texas Jurisprudence Examination for License Reinstatement from a Revoked Status

7.3.1 Tom Pham, License #7878, Revoked

**Action Taken:** Dr. Riggs **MOVED** to approve Mr. Pham's application to sit for the Texas Jurisprudence examination, subject to the requirement that Mr. Pham successfully complete the EBAS examination within six months (with a maximum of two attempts). After licensure, Mr. Pham's license will be suspended, probated in whole, for two years. Dr. Thomas **SECONDED**. After consideration, the motion was approved.

7.4 Presentation and Review of General Licensure Matters

7.4.1 Discussion of Chapter 55 of the Texas Occupations Code (recently amended in the 84<sup>th</sup> Legislative Session by SB 807 and SB 1307) and recommendation to Rules Committee regarding amendments to Chapters 72, 75 and 76 of Board Rules (dealing with licensure of military service members, military veterans, and military spouses)

**Action Taken:** None. The L&E Committee recommended the amendments to the Rules Committee. See Board meeting agency item 8.1.13.

7.5 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 Rule Amendments and Repeals

8.1.1 Discussion and consideration to adopt Rule 71.2 (Petition for Adoption of Rules).

**Action Taken:** The Rules Committee **MOVED** to adopt the amendment. Ms. Woodruff **SECONDED**. The motion carried.

8.1.2 Discussion and consideration to adopt Rule 72.2 (Application for Licensure).

**Action Taken:** The Rules Committee **MOVED** to adopt the amendment. Dr. Riggs **SECONDED**. The motion carried.

8.1.3 Discussion and consideration to adopt the amendment of Rule 78.13 (Scope of Practice).

**Action Taken:** The Rules Committee **MOVED** to adopt the amendment. Dr. Riggs **SECONDED**. The motion carried.

8.1.4 Discussion and consideration to adopt the amendment of Rule 78.17 (Spinal Screenings).

**Action Taken:** One comment from TMA received; Discussion of TMA comments received May 18, 2015 (page 10 of comment). Subsection (c) was added to the proposed rule amendment in response to the TMA comments

The Rules Committee **MOVED** to adopt the amendment with changes. Dr. Thomas **SECONDED**. The motion carried.

8.1.5 Discussion and consideration to adopt new rule pursuant to Texas Government Code Chapter 574 (Dual Office Holding).

**Action Taken:** The Rules Committee **MOVED** to adopt the amendment. Dr. Riggs **SECONDED**. The motion carried.

8.1.6 Discussion and consideration to adopt new rule pursuant to Texas Government Code Chapter 655 (Merit Selection Principles).

**Action Taken:** The Rules Committee **MOVED** to adopt the amendment. Dr. Riggs **SECONDED**. The motion carried.

8.1.7 Discussion and consideration to adopt new rule pursuant to Texas Government Code Chapter 661 (Sick Leave Pool).

**Action Taken:** The Rules Committee **MOVED** to adopt the amendment. Dr. Riggs **SECONDED**. The motion carried.

8.1.8 Discussion and consideration to adopt new rule pursuant to Texas Government Code Chapter 441.006 (Private Donors).

**Action Taken:** The Rules Committee **MOVED** to adopt the amendment. Dr. Riggs **SECONDED**. The motion carried.

8.1.9 Discussion and consideration to adopt new rule pursuant to Texas Government Code Chapter 2261.202 (Contract Monitoring).

**Action Taken:** The Rules Committee **MOVED** to adopt the amendment. Dr. Riggs **SECONDED**. The motion carried.

8.1.10 Discussion and consideration to adopt the amendment of Rule 77.5 (Delegation of Authority).

**Action Taken:** One comment from TMA received; Discussion of TMA comments received May 18, 2015. The Rules Committee **MOVED** to adopt the amendment with changes. Dr. Campion **SECONDED**. The motion carried.

8.1.11 Discussion and consideration to propose amendment to Rule 78.8, 79.2, and 79.10 to permit service by electronic-mail upon agreement by the licensee/facility owner/respondent.

**Action Taken:** The Rules Committee **MOVED** to publish the amendment for proposal. Dr. Campion **SECONDED**. The motion carried.

8.1.12 Discussion and consideration to propose amendment to Rule 78.6(a) (Required Fees and Charges) and associated amendments to Rules 72.2, 73.3, and 74.2.

**Action Taken:** Ms. Woodruff **MOVED** to publish the rule amendment for proposal (with change of the Continuing Education Course Annual Approval from \$80 as written in the agenda item materials to \$100). Dr. Vavra **SECONDED**. The motion carried.

8.1.13 Review proposals from Licensure and Education Committee concerning newly enacted legislation to modify Occupations Code Chapter 55. Discussion and consideration to propose new or amended rules pursuant to statutory provisions concerning Licensing of Military Service Member, Military Veterans, and Military Spouses.

**Action Taken:** The Rules Committee **MOVED** to adopt the amendment with changes. Dr. Campion **SECONDED**. The motion carried.

8.1.14 Discussion and consideration to propose amendment to Rule 77.10 (Rules to Prevent Fraud).

**Action Taken:** The Rules Committee **MOVED** to direct staff to draft language for submission to the Board at the next meeting. Dr. Campion **SECONDED**. The motion carried.

8.1.15 Discussion and consideration to propose amendment to Rule 78.8 (Complaint Procedures) and associated rule 78.16.

**Action Taken:** The Rules Committee **MOVED** to publish the amendment for proposal. Dr. Steinberg **SECONDED**. The motion carried.

8.1.16 Discussion and consideration to propose amendment to Rule 78.10(b) (Schedule of Sanctions).

**Action Taken:** The Rules Committee **MOVED** to publish the amendment for proposal. Dr. Campion **SECONDED**. The motion carried.

8.1.17 Discussion and consideration to propose amendment to Rule 77.7 (Request for Information and Records from Licensees).

**Action Taken:** The Rules Committee **MOVED** to propose the amendment for proposal. Dr. Riggs **SECONDED**. The motion carried.

8.1.18 Discussion and consideration to propose new rule to Chapter 80, concerning General Regulatory Provisions – Job Notices and Training, as required by House Bill 3337.

**Action Taken:** The Rules Committee **MOVED** to propose the new rule for proposal. Dr. Campion **SECONDED**. The motion carried.

8.1.19 Discussion and consideration to propose amendment to Rule to Chapter 80.5, concerning General Regulatory Provisions – Contract Monitoring, as required by Senate Bill 20.

**Action Taken:** The Rules Committee **MOVED** to propose the amendment for proposal. Dr. Champion **SECONDED**. The motion carried.

8.1.20 Discussion and consideration to propose add a new rule to Chapter 75, concerning Licenses and Renewals, as required by Occupations Code 112.051.

**Action Taken:** It was discussed that a definition in subsection (a) for "retired" should be included. Also, it should be included that a retired chiropractor should not have had a revoked or suspended license. The Rules Committee **MOVED** to publish the amendment for proposal. Dr. Vavra **SECONDED**. The motion carried.

8.1.21 Discussion and consideration to propose add a new rule to Chapter 77, concerning obstruction of Board proceedings.

**Action Taken:** The Rules Committee **MOVED** to publish the amendment for proposal. Dr. Champion **SECONDED**. The motion carried.

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

**Action Taken:** No action.

## **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 #2013-398

9.1.2 Case #2014-082

9.1.3 Case #2014-179

9.1.4 Case #2014-251

9.1.5 Case #2014-255

9.1.6 Case #2015-026

9.1.7 Case #2015-034

9.1.8 Case #2015-048

9.1.9 Case #2015-050

9.1.10 Case #2015-079

9.1.11 Case #2015-083

9.1.12 Case #2015-102

- 9.1.13 Case #2015-108
- 9.1.14 Case #2015-123
- 9.1.15 Case #2015-134
- 9.1.16 Case #2015-135
- 9.1.17 Case #2015-139
- 9.1.18 Case #2015-148
- 9.1.19 Case #2015-167
- 9.1.20 Case #2015-178
- 9.1.21 Case #2015-182
- 9.1.22 Case #2015-186
- 9.1.23 Case #2105-253
- 9.1.24 Case #2015-180

**Action Taken:** Ms. Woodruff **MOVED** and Dr. Riggs **SECONDED** to approve the Agreed Orders listed in Agenda Items 9.1.1-9.1.24. After consideration, the Board **APPROVED** the motion.

9.2 Consideration of Requests to Expunge Records

**Action Taken:** No action.

9.3 Consideration of Board Orders

- 9.3.1 Case #2013-296

**Action Taken:** Dr. Montgomery **MOVED** and Dr. Riggs **SECONDED** to approve this Board Order. After consideration, the Board **APPROVED** the motion.

- 9.3.2 Case #2014-053

**Action Taken:** Dr. Montgomery **MOVED** and Dr. Riggs **SECONDED** to approve this Board Order. After consideration, the Board **APPROVED** the motion.

9.4 Consideration of Cease and Desist Orders

- 9.4.1 Case #2014-168
- 9.4.2 Case #2014-169
- 9.4.3 Case #2015-039
- 9.4.4 Case #2015-080
- 9.4.5 Case #2015-100
- 9.4.6 Case #2015-107
- 9.4.7 Case #2015-111
- 9.4.8 Case #2015-127
- 9.4.9 Case #2015-137
- 9.4.10 Case #2015-138

- 9.4.11 Case #2015-140
- 9.4.12 Case #2015-151
- 9.4.13 Case #2015-156
- 9.4.14 Case #2015-160
- 9.4.15 Case #2015-162
- 9.4.16 Case #2015-170

**Action Taken:** Dr. Riggs **MOVED** and Dr. Montgomery **SECONDED** to approve the Cease and Desist Orders in Agenda Items 9.4.1-9.4.16. After consideration, the Board **APPROVED** the motion.

9.5 Consideration of Revocation Orders

- 9.5.1 Case #2014-241

**Action Taken:** Ms. Woodruff **MOVED** and Dr. Riggs **SECONDED** to approve the Revocation Order. After consideration, the Board **APPROVED** the motion.

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

**Action Taken:** No action.

**10. MISCELLANEOUS**

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

**Action Taken:** No action.

10.2 Future Meeting Dates

The planned Board meeting dates for Calendar Years 2015 and 2016 are:

- November 19, 2015 (Possibly modify to October 14, 2015)
- February 18, 2016
- May 16, 2016 (TUESDAY)
- August 18, 2016
- November 17, 2016

**\*Discussion may be held regarding holding a special Board meeting in October 2015.\***

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

October 13, 2015  
November 18, 2015

**Action Taken:** The Board changed the November 19, 2015, Board meeting date to October 14, 2015. The Enforcement Committee Chair also announced that the November 18, 2015 is TBD.

10.3 Adjournment at: 3:22 PM.

**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 20, 2015 were approved by the Texas Board of Chiropractic Examiners at its next regularly scheduled board meeting held on October 14, 2015.

Bryan Snoddy: \_\_\_\_\_  
Interim Executive Director  
Texas Board of Chiropractic Examiners

Date: \_\_\_\_\_