

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
February 18, 2016
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 with the exception of Dr. Montgomery and John Steinberg and a quorum was announced. The absent board members were deemed excused.

Others present were:

Veena Mehan, Assistant Attorney General
Bryan Snoddy, General Counsel
Patricia Gilbert, Executive Director
Scott Stalnaker, Legal Assistant
Jo Manning, Executive Assistant
Scott Parker, Director of Compliance and Investigations
Mary Feys, Compliance and Investigation Administrative Assistant
Jennifer Hertsensberg, Director of Licensure
Sarah Matthews, Licensure Assistant
Dr. Karen Campion, Member
Anne Boatright, Public Member
Dr. Amy Vavra, Member
Kenya Woodruff, Vice-President
James Cogburn, CFO

2. APPROVAL OF MINUTES

Approval of Minutes from the October 14, 2015 Board Meeting

Action Taken: Mr. Thomas **MOVED** and Dr. Campion **SECONDED** approval of the minutes from the October 14, 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: No action taken.

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 new Board appointees and committee assignments.

Action Taken: Dr. Tays discussed the reasons for new committee assignments.

4.2. Executive Director

4.2.1. Executive Director's Report

Executive Director Patricia Gilbert shared recent agency activities which included discussion of education and outreach to the stake holders including development of an on-line Jurisprudence course and exam. Discussion also of sunset preparations, improvements to the rules, a new phone system, staffing issues, establishment of an employee sick leave pool, compliance following execution of Agreed Final Orders; on-line payment for all agency fees and penalties; quicker response time to telephone calls; peer review; and new compliance procedures delegated to the Executive Director and the staff for improved efficiencies.

Ms. Gilbert and the Directors answered questions from the Board members concerning the on-line Jurisprudence course and exam, PACE and other matters of concern to the Board.

4.2.2 Chief Financial Officer's Report

Chief Financial Officer, James Cogburn, stated there are no exceptional problems regarding agency finances and discussed other matters of financial importance to the

Board which included collections, revenues, deposits and fund balance.

4.2.3 Director of Licensure and Education's Report

Director of Licensure and Education, Jennifer Hertsenberg, presented written and oral reports to the Board concerning disruption of radiological technician license renewals after the recent legislative change, an overview of the metrics the first quarter of the current fiscal year and of the annual metrics in comparison to the previous year.

4.2.4 Director of Compliance and Investigations Report

Director of Compliance and Investigations, Scott Parker, presented written and oral reports to the Board concerning metrics on the compliance actions taken during the first quarter of 2016 and an overview of the annual metrics in comparison to the previous year.

Action Taken: No action taken.

4.3 Board Member & Committee Assignments

The Board will discuss appointments (if any) of future Board members and new committee chairs and rotation. Outgoing Board members Dr. Larry Montgomery, Dr. Patrick Thomas and Ms. Anne Boatright all had terms that expired in February of 2015.

Action Taken: Dr. Champion has been assigned to the Rules Committee. Dr. Vavra has moved to the Licensing Committee, Dr. Thomas and Dr. Riggs (chair) have been assigned to the Enforcement Committee.

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 1:43 PM and reconvened in Open Session at 2:18 PM. The Board recessed for ten minutes and reconvened at 2:28 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: No action taken.

7. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

7.1 Request for Late License Renewal with Good Cause.

7.1.1 Tony Sappington, License #4134, Non-Renewable

Action Taken: Dr. Thomas MOVED to renew, Dr. Campion SECONDED. The motion carried.

7.2 Request to Sit for the Texas Jurisprudence Examination

7.2.1 Travis S. Fahey, New Applicant

Action Taken: Dr. Riggs **MOVED** to approve, Dr. Thomas **SECONDED**. The motion carried.

7.2.2 Kristin M. Weikel, New Applicant

Action Taken: Dr. Vavra **MOVED** to approve upon certain conditions precedent, Dr. Riggs **SECONDED**. The motion carried.

8. RULES COMMITTEE BUSINESS

8.1 Discussion and Consideration of Rule Amendments and Repeals

8.1.1 Discussion and consideration to adopt amendment to Rules 73.4 (Rules of Conduct for Facility Owners).

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

8.1.2 Discussion and consideration to adopt amendment to Rules 75.1 (Notification and Change of Address).

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

8.1.3 Discussion and consideration to proposed amendment to Rule 77.10 (Rules to Prevent Fraud).

Action Taken: Dr. Riggs **Moved** to table the amendment. Dr. Campion **SECONDED**.

8.1.4 Discussion and consideration to proposed amendment to Rule 78.6 (Required Fees and Charges).

Action Taken: Dr. Thomas **MOVED** to propose the amendment. Dr. Riggs **SECONDED**. The motion carried.

8.1.5 Discussion and consideration of Rule Review for Chapter 73.

Action Taken: Dr. Campion **MOVED** to re-adopt Chapter 73 as proposed. Ms. Woodruff **SECONDED**. The motion carried.

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

Action Taken: No action taken.

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 #2013-334, 403, 404, 406, 2014-006, 007
- 9.1.2 Case #2014-165
- 9.1.3 Case #2014-216
- 9.1.4 Case #2014-233
- 9.1.5 Case #2015-031
- 9.1.6 Case #2015-047
- 9.1.7 Case #2015-051
- 9.1.8 Case #2015-052
- 9.1.9 Case #2015-103
- 9.1.10 Case #2015-147
- 9.1.11 Case #2015-198
- 9.1.12 Case #2015-261
- 9.1.13 Case #2015-264
- 9.1.14 Case #2015-289
- 9.1.15 Case #2015-296
- 9.1.16 Case #2015-084
- 9.1.17 Case #2016-047
- 9.1.18 Case #2016-049

Action Taken: Ms. Woodruff **MOVED** and Dr. Thomas **SECONDED** to approve the Agreed Orders listed in Agenda Items 9.1.1-9.1.18. After consideration, the Board **APPROVED** the motion.

- 9.2 Consideration of Requests to Expunge Records

- 9.2.1 Case #101-149
- 9.2.2 Case #103-295
- 9.2.3 Case #2014-106

Action Taken: Ms. Woodruff **MOVED** and Dr. Campion **SECONDED** to grant expungement based on meeting the criteria. After consideration, the Board **APPROVED** the motion.

9.3 Consideration of Board Orders

- 9.3.1 Case #2014-197
- 9.3.2 Case #2014-218
- 9.3.3 Case #2014-231
- 9.3.4 Case #2015-030

Action Taken: Dr. Woodruff **MOVED** and Dr. Campion **SECONDED** to approve this Board Orders in Agenda Items 9.3.1-9.3.4. After consideration, the Board **APPROVED** the motion.

9.4 Consideration of Cease and Desist Orders

- 9.4.1 Case #2015-017
- 9.4.2 Case #2015-161
- 9.4.3 Case #2015-176
- 9.4.4 Case #2015-222
- 9.4.5 Case #2015-223
- 9.4.6 Case #2015-247
- 9.4.7 Case #2015-266
- 9.4.8 Case #2015-278
- 9.4.9 Case #2016-001
- 9.4.10 Case #2016-068
- 9.4.11 Case #2016-091

Action Taken: Ms. Woodruff **MOVED** and Dr. Campion **SECONDED** to approve the Cease and Desist Orders in Agenda Items 9.4.1-9.4.11. After consideration, the Board **APPROVED** the motion.

9.5 Consideration of Order of Revocation

- 9.5.1 Case #2016-118
- Case #2016-119
- Case #2016-120
- Case #2016-121

Action Taken: Ms. Woodruff **MOVED** and Dr. Campion **SECONDED** to approve the order of statutory revocation in Agenda Items 9.5.1. 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 taken.

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 2016 are

May 17, 2016 (TUESDAY)
August 18, 2016
November 17, 2016

**Note: All planned board meeting dates after November 2016 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 date, apart from the Board meetings, are scheduled for:
April 12, 2016

Action Taken: No action taken.

- 10.3 Adjournment at: 3:20 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. The minutes from the Board meeting held on February 18, 2016 were approved by the Texas Board of Chiropractic Examiners at its regularly scheduled Board meeting held on May 17, 2016.


Patricia Gilbert

5/17/2016
Date

Executive Director
Texas Board of Chiropractic Examiners