

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

BOARD MEETING: 1:00 p.m. – Adjournment
Committee Meetings: 9:00 a.m. – Noon
Hobby Building, Tower 2, Room 225

Thursday, February 16, 2017

BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners met on February 16, 2017, to consider and act, as necessary, on matters within the jurisdiction of the Board, which are listed on the agenda established for this 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 Mark Bronson, DC called the meeting to order at 1:06 pm and called roll. A quorum was announced. The absent board member, Kenya Woodruff, was deemed excused.

Absent:

Kenya Woodruff, Vice-President

Others present were:

Dr. Karen Champion, Member
Gus Ramirez, Public Member
Dr. Riggs, Member
Dr. Amy Gonzalez, Member
John Steinberg, Public Member
Dr. Nicolas Baucum, Member
Dr. Michael Henry, Member
Patricia Gilbert, Executive Director
Karen Watkins, Assistant Attorney General
Courtney Ebeier, General Counsel
Scott Stalnaker, Legal Assistant
Scott Parker, Director of Compliance & Investigations
Mary Feys, Compliance Specialist
Jennifer Hertsensberg, Operations Manager
Sarah Matthews, License & Permit Specialist
Norma Rodriguez, Investigator
Michael Campos, Investigator

Introduced newest board member, Dr. Henry; accolades, credentials.

2. APPROVAL OF MINUTES.

Dr. Bronson offered corrections to the minutes of November 17, 2016, and asked for a motion to approve.

Action Taken: Gus Ramirez **MOVED** and John Steinberg **SECONDED** approval of the minutes from the November 17, 2016, Board Meeting subject to the corrections offered by the Board President. After consideration, the Board **APPROVED** the motion 8 to 0.

3. PUBLIC COMMENTS.

Forum for licensees, the general public or other interested stakeholders to address the Board. Steve Minors, DC, introduced himself as TCA's Chair of State Affairs and offered to be a conduit of stakeholder input.

Action Taken: No action taken.

4. AGENCY & BOARD UPDATES.

4.1 President's Report.

President Bronson discussed the stakeholder meeting held on December 7, 2016. On December 8, 2016, he attended the Sunset Commission consolidation hearing and offered testimony; on December 9, 2017, met with staff regarding Enforcement and observed TMB Sunset hearing; On December 22, 2016, participated in telephone conference with Karen Watkins, Assistant Attorney General and staff regarding pending litigation. On January 6, 2017, the Rules Committee conducted a public hearing to consider rule request to strike 78.14. On January 20, 2017, he attended Texas Legal Summit at Parker College. On February 15, 2017 participated in Enforcement Committee meeting.

The President discussed Sunset Committee's recommendation to not recommend consolidation and other statutory changes to the Chiropractic Act. The Executive Director's salary change was approved and a review of her performance was conducted. Upcoming events include: April 7 and 8, 2017, National Board of Chiropractors Examiners, Part III, Dr. Campion to participate; May 4-6, 2017 Federation of Chiropractic Licensing Boards and NBCE joint annual meeting, Dr. Bronson will attend as delegate, Dr. Campion will serve as alternate delegate; May 17, 2017 Enforcement Meeting; May 19-21, 2017, National Boards Part IV exams at Parker College, Bronson to serve as Chief Examiner; June 9 and 10, National Board Part IV, Campion is alternate.

Discussion of a new Board meeting format for future meetings: The Rules and Licensure and Education Standards Committees meetings will be conducted with full Board; the committees would retain their respective chairs and do additional work as necessary on an ad hoc basis to promote more efficient use of Board time and resources; CRT registration process

is changing, registration is required, changes being considered following Sunset's review.

Action Taken: Michael Henry, DC **MOVED** and Nicholas Baucum, DC **SECONDED** to modify the Board meeting format to include the Rules Committee and Licensure Committee meetings; the committees will retain their chairs and meet on an ad hoc basis as necessary. The Board **APPROVED** the motion 8 to 0.

4.2 Executive Director's Report.

Patricia Gilbert reviewed her first year: delegation of authority, resulted in closing cases faster; email rule implemented, more efficient, less bounce back more electronic communication reduces costs; new phones, new computer servers in response to audit, more efficient; paperless; on-line JP exam and course now available through website, cut costs.

Sarah Matthews discussed Sunset' recommendation on applicant background check and finger print requirement as it applies to those licensed prior to 2004 when the requirement went into effect. Discussion of notification of requirement on a monthly basis coordinated with renewals notices and other notice to stakeholders.

Jennifer Hertsenberg discussed recommendation to use a random audit of continuing education compliance which was implemented on February 1, 2017, to replace review of every application for 100% compliance.

Patricia Gilbert introduced Arlethia Middleton to the board, discussed the cost of travel and means of cutting costs; otherwise the financial outlook for the agency is sound so far this year. She then turned to the other Directors for their quarterly reports.

Ms. Hertsenberg discussed in detail the Licensure and Education Standards Dashboard.

Scott Parker announced his retirement from the Board effective May 31, 2017 and discussed in detail the Compliance and Investigation Division's Dashboard.

Patricia Gilbert briefly discussed the Legal Division's Dashboard.

Action Taken: No action taken.

4.3 Administrative Procedures.

Consideration of revised Administrative Procedures prepared by the Staff.

Action Taken: No action taken.

4.4 Board Member & Committee Assignments.

Action Taken: No action taken.

5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS.

5.1 Request to Sit for the Texas Jurisprudence Examination.

5.1.1 Hector Reyes III, New Applicant.

Action Taken: Michael Henry, DC, **MOVED** and Gus Ramirez **SECONDED** to approve applicant's request to sit for jurisprudence. After consideration, the Board **APPROVED** the motion 8 to 0.

5.1.2 Danny Vannoy, New Applicant.

Action Taken: John Riggs, DC **MOVED** and Nicholas Baucum, DC **SECONDED** to approve applicant's request to sit for jurisprudence. After consideration, the Board **APPROVED** the motion 8 to 0.

5.1.3 Mona Abdalla, New Applicant.

Action Taken: John Steinberg **MOVED** and Michael Henry, DC **SECONDED** to approve applicant's request to sit for jurisprudence. After consideration, the Board **APPROVED** the motion 8 to 0.

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

Action Taken: No Action Taken

6. ENFORCEMENT COMMITTEE BUSINESS.

6.1 Consideration of Accepted Agreed Orders. The Board received 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.

6.1.1 Consideration of Agreed Order for Case #2014-171.

6.1.2 Consideration of Agreed Order for Case #2014-172.

6.1.3 Consideration of Agreed Order for Case #2016-159.

6.1.4 Consideration of Agreed Order for Case #2016-230.

6.1.5 Consideration of Agreed Order for Case #2016-248.

6.1.6 Consideration of Agreed Order for Case #2016-288.

- 6.1.7 Consideration of Agreed Order for Case #2016-299.
- 6.1.8 Consideration of Agreed Order for Case #2016-302.
- 6.1.9 Consideration of Agreed Order for Case #2017-005.
- 6.1.10 Consideration of Agreed Order for Case #2017-007.
- 6.1.11 Consideration of Agreed Order for Case #2017-008.
- 6.1.12 Consideration of Agreed Order for Case #2017-012 & 2017-013.
- 6.1.13 Consideration of Agreed Order for Case #2017-025.
- 6.1.14 Consideration of Agreed Order for Case #2017-026.
- 6.1.15 Consideration of Agreed Order for Case #2017-066.

Action Taken: Michael Henry, DC **MOVED** and Amy Gonzalez, DC **SECONDED** to approve the Agreed Orders listed in Agenda Items 6.1.1-6.1.15. After consideration, the Board **APPROVED** the motion.

6.2 Consideration of Requests to Expunge Records. The Board received a report from the Enforcement Committee concerning requests from individuals to remove annotations of disciplinary actions that have been recommended by the Enforcement Committee and accepted by the Respondents pursuant to the 22 TAC 78.11.

- 6.2.1 Consideration of Requests to Expunge Record for Case #104-212.
- 6.2.2 Consideration of Requests to Expunge Record for Case #110-205 & 210.
- 6.2.3 Consideration of Requests to Expunge Record for Case #110-263.
- 6.2.4 Consideration of Requests to Expunge Record for Case #2013-184.
- 6.2.5 Consideration of Requests to Expunge Record for Case #2014-078.
- 6.2.6 Consideration of Requests to Expunge Record for Case #2014-088.

Action Taken Michael Henry, DC, **MOVED** and Gus Ramirez **SECONDED** to approve the Expungements of Agreed Orders listed in Agenda Items 6.2.1-6.2.4. After consideration, the Board **APPROVED** the motion 8 to 0.

Action Taken: Amy Gonzalez, DC **MOVED** and Karen Champion, DC **SECONDED** to deny the Expungements of Agreed Orders listed in

Agenda Items 6.2.5 -6.2.6. After consideration, the Board **APPROVED** the motion 8 to 0.

6.3 Consideration of Cease and Desist Orders. The Board received a report from the Enforcement Committee concerning Cease and Desist Orders that have been recommended by the Enforcement Committee and accepted by the Respondents pursuant to the Chiropractic Act §201.554.

6.3.1 Consideration of Cease and Desist Order for Case #2017-027.

6.3.2 Consideration of Cease and Desist Order for Case #2017-029.

6.3.3 Consideration of Cease and Desist Order for Case #2017.031.

6.3.4 Consideration of Cease and Desist Order for Case #2017-032.

6.3.5 Consideration of Cease and Desist Order for Case #2017-041.

6.3.6 Consideration of Cease and Desist Order for Case #2017-043.

6.3.7 Consideration of Cease and Desist Order for Case #2017-047.

6.3.8 Consideration of Cease and Desist Order for Case #2017-055.

6.3.9 Consideration of Cease and Desist Order for Case #2017-089.

6.3.10 Consideration of Cease and Desist Order for Case #2017-095.

6.3.11 Consideration of Cease and Desist Order for Case #2017-109.

6.3.12 Consideration of Cease and Desist Order for Case #2017-113.

6.3.13 Consideration of Cease and Desist Order for Case #2017-118.

6.3.14 Consideration of Cease and Desist Order for Case #2017-119.

6.3.15 Consideration of Cease and Desist Order for Case #2017-126.

6.3.16 Consideration of Cease and Desist Order for Case #2017-157

6.3.17 Consideration of Cease and Desist Order for Case #2017-159.

6.3.18 Consideration of Cease and Desist Order for Case #2017-163.

6.3.19 Consideration of Cease and Desist Order for Case #2017-056.

Action Taken: Amy Gonzalez, DC **MOVED** and Gus Ramirez **SECONDED** to approve the Cease and Desist Orders listed in Agenda Items 6.3.1-6.3.19. After consideration, the Board **APPROVED** the motion 8 to 0.

6.4 Consideration of Final Orders to approve administrative penalties.

6.4.1 Consideration of license revocation pursuant to a Proposal for Decision by an administrative law judge for Case #2014-096.

Action Taken: No action taken.

6.4.2 Consideration of disciplinary action pursuant to a default order granted by an administrative law judge for Case #2015-190.

Action Taken: Gus Ramirez **MOVED** and Karen Campion, DC **SECONDED** to approve the Final Order listed in Agenda Item 6.4.2. After consideration, the Board **APPROVED** the motion.

6.4.3 Consideration of license revocation pursuant to a Proposal for Decision issued by an administrative law judge for Case #2016-031.

Action Taken: Gus Ramirez **MOVED** and Karen Campion, DC **SECONDED** to approve the Final Orders listed in Agenda Item 6.4.3. After consideration, the Board **APPROVED** the motion.

6.5 Consideration of request for extension of time to comply with a Board Order.

6.5.1 Consideration of request from Licensee to extend time to comply with Board Order No. 2016-298.

Action Taken: Michael Henry, DC **MOVED** and Gus Ramirez **SECONDED** to approve the request listed in Agenda Item 6.5.1 and extended the time for Respondent to comply with Board Order No. 2016-298 for three months. After consideration, the Board **APPROVED** the motion 8 to 0.

6.6 Comments from Enforcement Chair on any Committee business, activities or issues.

Action Taken: No Action Taken.

7. RULES COMMITTEE BUSINESS.

7.1 Discussion and Consideration of Rule Amendments.

7.1.1 Discussion and consideration to adopt amendment to Rule 78.1 (Grossly Unprofessional Conduct). The Board discussed non-substantive changes to the rule and directed the staff to amend draft of the rule to incorporate the changes.

Action Taken: Karen Campion, DC **MOVED** and Gus Ramirez **SECONDED** to approve the Rule Amendment listed in Agenda Item

7.1.1 with the non-substantive changes. After consideration, the Board **APPROVED** the motion 7 to 1 (Henry).

Action Taken: Michael Henry, DC **MOVED** and Amy Gonzalez, DC **SECONDED** to approve the Rule Amendment listed in Agenda Item 7.1.1 with an additional non-substantive change. After consideration, the Board **APPROVED** the motion 8 to 0.

7.1.2 Discussion and consideration to adopt amendment to Rule 78.10 (Schedule of Sanctions).

Action Taken: Michael Henry, DC **MOVED** and John Riggs, DC **SECONDED** to approve the Rule Amendment listed in Agenda Item 7.1.2 without changes. After consideration, the Board **APPROVED** the motion 8 to 0.

7.1.3 Discussion and consideration of rule petition regarding Rule 78.14 (Acupuncture).

Action Taken: Michael Henry, DC **MOVED** and John Riggs, DC **SECONDED** to deny the rule petition listed in Agenda Item 7.1.3. After consideration, the Board **APPROVED** the motion.

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

Action Taken: No action taken.

8. EXECUTIVE SESSION.

The Board met 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:

Appeal of the Texas Medical Association lawsuit against the Board challenging Rule 78.13 Scope of Practice, which authorizes certified D.C.'s to perform Vestibular-Ocular-Nystagmus testing; a chiropractor's authority to diagnose; and definitions of "musculoskeletal system" and "subluxation complex."

Texas Association of Acupuncture and Oriental Medicine lawsuit against the Board, and remand to trial court, regarding Board Rule 78.14 allowing certified and/or trained chiropractors to perform acupuncture.

The Board will reconvene in open session to vote on items considered during Executive Session as necessary.

The Board entered in Executive Session at 2:27 p.m.

The Board reconvened from Executive Session at 3:34 p.m., and announced a ten minute recess.

The Board reconvened from the recess at 3:46 p.m.

Action Taken: No action taken.

9. 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.

Consideration of Motions Related to Executive Session.

Action Taken: No action taken.

Action Taken: Dr. Bronson announced the revised Committee structure:

Enforcement Committee Chair Amy Gonzalez, Dr. Bronson and Mr. Steinburg

Licensing and Education Standards Committee Chair: Nicholas Baucum; Michael Henry, DC and Gus Ramirez, members

Rules Committee Chair Dr. Campion; Michael Henry, DC and Kenya Woodruff, members

Dr. Bronson nominated Dr. Campion and Dr. Gonzalez to serve as examiners based on their availability.

10. FINAL ITEMS.

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

Future meeting dates.

The planned Board meeting dates for calendar year 2017 are subject to change:

May 18, 2017
August 17, 2017
November 16, 2017

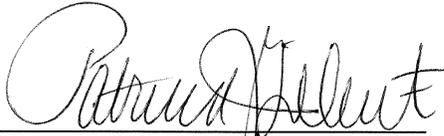
Note: All planned board meeting dates after this meeting may be found on the agency's website under "Calendar" at www.tbce.state.tx.us. All dates are tentative until posted in the Texas Register.

Future Enforcement Committee dates:

May 17, 2017
August 16, 2017
November 15, 2017

Adjournment at: 3:54 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 16, 2017 were approved by the Texas Board of Chiropractic Examiners at its regularly scheduled Board meeting held on May 18, 2017.



Patricia Gilbert
Executive Director
Texas Board of Chiropractic Examiners

5/25/17
Date