

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

BOARD MEETING: 9:00 a.m. – Adjournment
Hobby Building, Tower 2, Room 225

Thursday, August 17, 2017

BOARD MEETING AGENDA

The Texas Board of Chiropractic Examiners met on August 17, 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.

1.0 Call to order, Roll call & Vote on absences.

Call to Order, Roll Call and Establishment of a Quorum. Voted as necessary on excusing any absent Board members.

Action Taken: Board President Mark Bronson, DC called the meeting to order at 9:30 a.m. and called the roll. A quorum was announced. The absent board member, John Riggs, was deemed excused.

Others present were:

Dr. Karen Campion, Vice President
Dr. Amy Gonzalez, Secretary
Kenya Woodruff, Public Member
Gus Ramirez, Public Member
Dr. Michael Henry, Member
John Steinberg, Public Member
Dr. Nick Baucum, Member
Patricia Gilbert, Executive Director
Courtney Ebeier, General Counsel
Scott Stalnaker, Legal Assistant
Jennifer Hertsenber, Operations Manager
Sarah Matthews, License & Permit Specialist
Norma Rodriguez, Investigator
Michael Campos, Investigator
Mary Feyes, Compliance Specialist

2.0 Approval of May 18, 2017, Minutes.

Action Taken: John Steinberg, public member **MOVED** and Gus Ramirez, DC **SECONDED** approval of the minutes from the February 16, 2017, Board Meeting. After consideration, the Board **APPROVED** the motion.

3.0 Public Comments.

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

Ray Hunt, Houston Police Department Union, spoke regarding a chiropractor's examination of an injured police officer on May 12, 2017, and subsequent decision to report to the City of Houston that the officer had obtained maximum medical improvement ("MMI") on March 21, 2017. Police Officer lost vacation time, is not currently receiving a paycheck and forced to seek appeal. Mr. Hunt complained that there was a lack of cooperation from Landmark Exams when seeking information on the chiropractor. Mr. Hunt provided letter from the officer's medical provider stating he was not at MMI as stated by the referenced chiropractor. Dr. Bronson commented that the rules governing Designated Doctors prohibit the parties from contacting the examining doctor after the initial exam. Mr. Hunt was advised how to initiate an official complaint and met briefly with Investigator Campos who will follow up on the matter.

William Lawson, DC, of the Texas Chiropractic Association ("TCA") read a statement regarding open and unlimited practice and chiropractors' continued use of acupuncture within their practice.

Franz Klein, DC, spoke to address the pending lawsuit against the Board regarding chiropractor's use of acupuncture and submitted a written statement. He stated a belief the litigation initiated by the Texas Association of Acupuncture and Oriental Medicine ("TAAOM") is anti-competitive and an antitrust violation. He did not want outside groups to influence the Board's rulemaking or continuing education hour requirements. He suggested if a requirement for acupuncture CE hours is imposed, they should not be in addition to the current requirement, but rather a component of the annual requirement. If rules are drafted to restrict a chiropractor's use of acupuncture, he request current practitioners currently using acupuncture be grandfathered in to allow their continued practice.

Action Taken: No action taken.

4.0 President's Report.

Dr. Mark Bronson made a brief oral report to the Board on matters of current interest to the profession regarding participation on May 19-21, 2017, at Parker University National Board Part IV. Patricia Gilbert and Jennifer Hertsenberg represented the Board at the Texas Chiropractic Association's ("TCA") Expo on June 9 – 10, 2017. Dr. Bronson participated in the Part IV test development meeting on June 9-10, 2017. A stake holder's meeting was held on June 28, 2017 regarding the deregulation of facilities, Sunset legislation and acupuncture. On July 13-15, 2017, the Board had a booth at the Texas Chiropractic College annual convention. On May 29, 2017, Governor Abbott signed SB 304 authorizing the continuation of the Board and added the word "diagnosis" to section 201.002(b) statute regarding the biomechanical

condition of the musculoskeletal system of the human body to the statute. SB 304 also instituted a requirement for Board members to receive annual Board member training and a manual. SB 304 prohibits the Board from accepting anonymous complaints, requires development of a peer review process and prohibits limitations on the number of attempts a new applicant can take the jurisprudence exam. Applicants are required by the Sunset legislation to submit finger prints and the Board must conduct background checks through national databases for discipline history. Rule SB 304 provides clarification of the use of the term "physician" in advertising and that licenses are good for one or two years, as determined by Board

Dr Bronson will attend NBCE workshop in Greeley, Colorado on August 19, 2017.

On October 6-8, 2017, Parker University seminar, TBCE will have a Booth, Dr. Bronson will attend. FCLB will conduct Part IV Exams on November 10-12, 2017, in Portland, Oregon. Dr. Bronson invited Board members who are chiropractors to apply to be examiner's September 22, 2017, and explained requirements and reimbursement procedures.

A stakeholder meeting will be held on August 26, 2017, to discuss the acupuncture rule; experts are invited to discuss and make suggestions to modify the rule in response to issues asserted by Texas Acupuncture Association (TAAOM).

Ms. Gilbert stated this will be the beginning of the process, no decisions to be made; Saturday meeting scheduled for convenience of the attendees and not to expect a rule proposal until the February 2018 Board meeting.

Dr. Bronson stated the Board is seeking improvement of services and inter-disciplinary cooperation.

Action Taken: No action taken.

5.0 Executive Director's Report.

The Executive Director presented written reports to the Board concerning matters relevant to each department. The Executive Director discussed the Financial Report. So far year is trending well, necessary purchases have been made. TBCE is subject to Governor's hiring freeze and return of unused funds. There is a 4% budget cut and a reduction in full time employees from 14 to 13.5. Facility registration will no longer be required as of September 1, 2017, which will reduce fees generation and workload. The staff's focus on educating chiropractors reduces complaints, generates less serious complaints, reduced complaint resolution times, and is generally more positive. Seeking to have licensees to have more positive involvement with the Board which is happy to participate in outreach efforts at seminars and expos.

Ms. Gilbert stated that Fiscal Year 2018 will be financially constrained. The move to two-year license will reduce postage and other costs. Beginning March 1, 2017, a two-year license will double in price and the Board will phase it in to allow time to conduct outreach and for the staff to adjust workload. Chiropractors will be required to maintain their Continuing Education ("CE") annually. Cost reduction and budget balancing efforts include: the use of Texas.gov to pay for licensed renewals, a reduction in travel and when travelling, the use of least cost option is required.

Dr. Bronson confirmed that new licensees will continue to receive the traditional license from the Board upon initial licensure, but the agency will be moving to online license printing options in order to save costs.

Sarah Matthews discussed background checks for those chiropractors licensed prior to 2004. 1084 have completed the required background check, 50% complete; 165 hits; 2030 reminders sent by email

Dr. Campion asked if any of the 165 hits have been turned over to the Enforcement Committee. Ms. Matthews state a small percentage had been. The program has been in place for eight months so not all renewals requiring a background check have been sent the renewal instructions for obtaining background checks.

Dr. Baucum inquired about using other state licenses background checks to meet the TBCE requirement. General Counsel, Ms. Ebeier stated that privacy concerns prohibit sharing background checks/reports even between state agencies.

Ms. Matthews discussed the Licensure Dashboard, comparing annual and quarterly results.

Ms. Gilbert commented that outreach to stakeholders that facility registration will no longer be required continues. The Board is still attending to cases which currently involve facility owners when authority to regulate will be removed effective September 1, 2017.

Ms. Hertsenberg discussed the Acupuncture Survey that was sent to 5500 licensees; 2046 have replied. 432 responded "yes" or about 17.6% stating that they practice acupuncture.

Ms. Hertsenberg discussed the CE audit results from January 17, 2017, to date. Of the 300 requested, 268 have complied, 89%. 23 are unresponsive.

Dr. Henry discussed the effect of a two-year license on CE audits; JH and PG advised the goal is to continue CE be an annual requirement and the applicable Rule and procedures are currently being reviewed.

Compliance and Investigation Dashboard Report was discussed. Currently, 105 complaints are opened and there is no backlog. Respondent's

history/background is examined as part of review. The staff is closing cases faster and using progressive discipline. Cease and Desist cases will be reduced due to loss of authority to regulate facilities. Staff is engaging in cross-training, policy and procedure review after Scott Parker's retirement.

Action Taken: No action taken.

Dr. Bronson announced that he, Ms. Ebeier and Ms. Gilbert will attend the Attorney General's Administrative Law Seminar on Sept 6-7, 2017.

6.0 Continuing Education.

Dr. Henry, CE Chair, stated he and the staff are reviewing applications from different sponsors to assure the propose CE is within the scope of practice. Ms. Gilbert discussed review of CE applications with sponsors, seeking feedback and the structure of required four hours. Correspondence with providers to communicate list of topics. Ms. Gilbert expressed wanting CE to be TBCE's vehicle for messaging on topics such as risk management and ethics. The staff will use email to reach out to stakeholders. Dr. Henry suggested creating a guideline document to be sent to providers. Providers have expressed appreciation of list of recommended topics.

Action Taken: No action taken.

7.0 Licensure and Educational Standards.

7.1.0 Request to Sit for the Texas Jurisprudence Examination.

7.1.1 Glen Wilkerson, New Applicant

Action Taken: Michael Henry, DC, **MOVED** and Amy Gonzalez, DC, **SECONDED** approval allow Glen Wilkerson to set for the Jurisprudence Exam. After consideration, the Board **APPROVED** the motion 8-0.

8.0 Rules.

8.1.0 Discussion and Consideration of Rule Amendments.

8.1.1 Discussion and consideration of proposed amendment of Rule 72.9, Reexaminations. The Board discussed the proposed amendment(s) to the Rule made in response to the change in statutory authority set forth in Senate Bill 304.

Action Taken: Gus Ramirez, Public Member **MOVED** and Kendra Woodruff, Public Member **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.1 and publish the proposed amendment in the

Texas Register. After consideration, the Board **APPROVED** the motion 8 to 0.

8.1.2 Discussion and consideration of proposed repeal of Chapter 73, Chiropractic Facilities. The Board discussed the proposed Rule Repeal of Chapter 73 of the Board Rules made in response the change in statutory authority set forth in Senate Bill 304.

Action Taken: Gus Ramirez, Public Member **MOVED** and Nicolas Baucum, DC **SECONDED** to approve the Rule Repeal listed in Agenda Item 8.1.2 and publish the proposed repeal in the Texas Register. After consideration, the Board **APPROVED** the motion 8 to 0.

8.1.3 Discussion and consideration of proposed amendment of Rule 75.2, Renewal of Chiropractic License. The Board discussed the proposed amendment to the Rule made in response the change in statutory authority set forth in Senate Bill 304.

Action Taken: Kendra Woodruff, Public Member **MOVED** and Gus Ramirez, Public Member **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.3 and publish the proposed amendment in the Texas Register. After consideration, the Board **APPROVED** the motion 8 to 0.

8.1.4 Discussion and consideration of proposed amendment of Rule 75.4, Inactive Chiropractic License Status. The Board discussed the proposed amendment(s) to the Rule made in response to the change in statutory authority set forth in Senate Bill 304.

Action Taken: Kendra Woodruff, Public Member **MOVED** and Gus Ramirez, Public Member **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.4 and publish the proposed amendment in the Texas Register. After consideration, the Board **APPROVED** the motion 8 to 0.

8.2.0 Discussion and consideration of Texas Chiropractic Association's comments regarding Rules §77.3, Disclosure of Charges and §77.8 Records and Documentation. The Board discussed a letter from Devin Pettiet, DC, TCA – Vice President, which commented on Board Rules 77.3 and 77.8. Dr. Bronson invited any TCA representative in attendance to speak regarding the letter and rules; none did.

8.2.1 Discussion and consideration of **Rule §77.3, Disclosure of Charges.** The Board discussed and considered adding language to Rule 77.3, which currently requires chiropractors to provide a hard copy receipt for services at the time of service. The suggested amended language is "upon request" by the patient.

Action Taken: Michael Henry, DC **MOVED** and Nicholas Baucum, DC **SECONDED** to draft an amended Rule to require chiropractors to provide a hard copy of receipt for services on the date of service upon request by the patient and directed the staff to draft an amendment to the rule to incorporate the changes for the Board's future consideration at the November board meeting. After consideration, the Board **APPROVED** the motion 8 to 0.

8.2.2 Discussion and consideration of **Rule 77.8, Records and Documentation.** The Board discussed and considered an amendment to the Rule specific to subsections "h" and "i" and noted to be sure it does not override CPT standards.

Action Taken: The Chair directed the staff to revise Rule 77.8, to incorporate the changes for the Board's future consideration at the November board meeting.

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

Dr. Campion stated the June 28, 2017, stakeholder meeting was productive and creative regarding top 10 tips, "TBCE TEN," when seeking employment and thanked the staff for its efforts.

Action Taken: No action taken.

9.0 Enforcement.

9.1.0 Consideration and Approval of Accepted Agreed Orders.

The Board received a report from the Enforcement Committee concerning Agreed Orders that had been recommended by the Enforcement Committee and accepted by the Respondents pursuant to the Chiropractic Act §201.554.

9.1.1 Consideration of Agreed Order for Case #2016-053.

9.1.2 Consideration of Agreed Order for Case ##2016-142 and 2017-004.

9.1.3 Consideration of Agreed Order for Case #2016-183.

9.1.4 Consideration of Agreed Order for Case #2017-006.

9.1.5 Consideration of Agreed Order for Case #2017-024.

9.1.6 Consideration of Agreed Order for Case #2017-104.

9.1.7 Consideration of Agreed Order for Case #2017-141.

- 9.1.8 Consideration of Agreed Order for Case #2017-201.
- 9.1.9 Consideration of Agreed Order for Case #2017-296.
- 9.1.10 Consideration of Agreed Order for Case #2017-297.
- 9.1.11 Consideration of Agreed Order for Case #2017-330.
- 9.1.12 Consideration of Agreed Order for Case #2017-364.
- 9.1.13 Consideration of Agreed Order for Case #2017-403.
- 9.1.14 Consideration of Agreed Order for Case #2017-409.
- 9.1.15 Consideration of Agreed Order for Case #2017-412.
- 9.1.16 Consideration of Agreed Order for Case #2017-425.

Action Taken: Gus Ramirez, public member, **MOVED** and Michael Henry, DC, **SECONDED** to approve the Agreed Orders listed in Agenda Items 9.1.1 - 9.1.16. After consideration, the Board **APPROVED** the motion.

9.2.0 Consideration and Approval of Requests to Expunge Records.

- 9.2.1 Consideration of Requests to Expunge Record for Case #110-151.

Action Taken: Nicolas Baucum, DC, **MOVED** and Michael Henry, public member, **SECONDED** to deny the Expungement of the Agreed Order listed in Agenda Items 9.2.1. After consideration, the Board **APPROVED** the motion 8-0.

- 9.2.2 Consideration of Requests to Expunge Record for Case #110-258.

Action Taken: Michael Henry, DC, **MOVED** and Nicolas Baucem, DC, **SECONDED** to approve the Expungement of the Agreed Order listed in Agenda Items 9.2.2. After consideration, the Board **APPROVED** the motion 8-0.

9.3.0 Consideration and approval of Accepted Cease and Desist Orders.

- 9.3.1 Consideration of Cease and Desist Order for Case #2016-274.
- 9.3.2 Consideration of Cease and Desist Order for Case #2017-270.
- 9.3.3 Consideration of Cease and Desist Order for Case #2017-271.

- 9.3.4 Consideration of Cease and Desist Order for Case #2017-314.
- 9.3.5 Consideration of Cease and Desist Order for Case #2017-327.
- 9.3.6 Consideration of Cease and Desist Order for Case #2017-331.

Action Taken: Michael Henry, DC, **MOVED** and Gus Ramirez, public member, **SECONDED** to approve the Cease and Desist Orders listed in Agenda Items 9.3.1-9.3.6. After consideration, the Board **APPROVED** the motion 8-0.

9.4.0 Comments from the Enforcement Chair

Action Taken: No action taken.

Dr. Bronson appointed Nicolas Baucum to the Enforcement Committee as his replacement.

Dr. Bronson announced a break at 11:20 a.m. and reconvened the meeting at 11:40 a.m.

10.0 EXECUTIVE SESSION.

At 11:46 a.m. the Board President closed the meeting to the public and the Board met in Executive Session for consultation with counsel pursuant to Section 551.071, Government Code, wherein the Board and essential staff received a briefing from the Board's 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 regarding Rule 78.13 Scope of Practice, authorizing certified chiropractors to perform Vestibular-Ocular-Nystagmus testing; and challenge to diagnosis and definitions of "musculoskeletal system" and "subluxation complex."

Texas Association of Acupuncture and Oriental Medicine lawsuit against the Board regarding Rule §78.14, authorizing certified and/or trained chiropractors to utilize the modality of acupuncture in practice.

The Board reconvened in open session after Executive Session at 12:52 p.m. to vote on items considered in Executive Session as necessary.

Action Taken: No action taken.

11.0 CONSIDERATION OF MOTIONS RELATED TO ITEMS DISCUSSED IN EXECUTIVE SESSION.

Board members offered motions related to items discussed in Executive Session.

Consideration of Motions Related to Executive Session.

Action Taken: Mark Bronson, DC, **MOVED** and John Steinberg, public member, **SECONDED** to authorize Ms. Gilbert and Ms. Ebier to coordinate a series of informal conferences with members of TCA, TAAOM, the Texas Board of Acupuncture Examiners for input and others to consider specific changes to Rule 78.14 pursuant to Texas Occupations Code, Section 201.1526, rather than engage in the specific procedures required under negotiated rulemaking in Texas Government Code Section 2008.052 as discussed in executive session. After consideration, the Board **APPROVED** the motion 8 to 0.

12.0 FINAL ITEMS.

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

Future Board meeting dates:

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

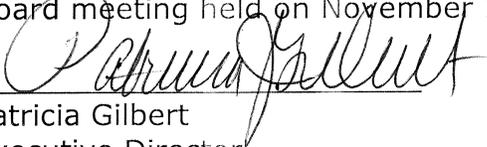
November 16, 2017
February 15, 2018
May 17, 2018

Future Enforcement Committee dates:

November 15, 2017
February 14, 2018
May 16, 2018

Adjournment at: 12:56 p.m.

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 August, 2017 were approved by the Texas Board of Chiropractic Examiners at its regularly scheduled Board Meeting held on November 16, 2017.



Patricia Gilbert
Executive Director
Texas Board of Chiropractic Examiners

Date

12/12/17