

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, November 16, 2017

BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners met on November 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.

1.0 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 9:00 a.m. and called the roll. A quorum was announced. The absent board members, Gus Ramirez and John Riggs, were deemed excused by unanimous vote.

Others present were:

Dr. Karen Campion, Vice President
Dr. Amy Gonzalez, Secretary
Kenya Woodruff, Public Member
Dr. Michael Henry, Member
John Steinberg, Public Member
Dr. Nick Baucum, Member
Patricia Gilbert, Executive Director
Lisa Agarwal, Administrative Assistant
Courtney Ebeier, General Counsel
Scott Stalnaker, Legal Assistant
Jennifer Hertsensberg, Operations Manager
Sarah Matthews, License & Permit Specialist
Norma Rodriguez, Investigator
Robert Lawson, Investigator
Mary Feyes, Compliance Specialist
Nikell Williams, Programmer Analyst

2.0 Approval of August 17, 2017 Minutes.

Action Taken: Nick Baucum, DC **MOVED** and Michael Henry, DC **SECONDED** approval of the minutes from the August 17, 2017, Board Meeting. After consideration and suggested corrections from Dr. Bronson, the Board **APPROVED** the motion.

3.0 Public Comments.

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

Action Taken: No action taken. William Lawson, TCA, spoke to be sure the Board was in receipt of their proposed language to amend Rules 77.3 and 77.8.

4.0 President's Report.

Dr. Mark Bronson made a brief oral report to the Board on matters of current interest to the profession. President Bronson, Ms. Gilbert and Ms. Ebeier attended the OAG Government Law and Liability Conference on September 6, and 7, 2017. The Parker Seminar in Dallas was held on October 6-8, 2017, at Parker University was attended by Lisa Agarwal and Jennifer Hertsenberg. Dr. Bronson attended the Federation of Chiropractors Licensing Board's District conference in Portland Oregon held on October 6-8, 2017. Topics included: the profession's response to the opioid epidemic, dry needling, distribution of continuing educational certificates, non-governmental licensing organization such as the *Pastoral Medical Association*, international regulations for mobility, *North Carolina Board of Dental Examiners v. FTC*, paper v. electronic licenses, jurisprudence exams, Board member training, settlement agreements, dual relationships such as Board members also serving as leaders of state associations, and Chiropractic Assistants supervision requirements. Dr. Bronson also visited the University of Western State's chiropractic school where President Brimhall advised consideration of rule changes regarding CCE standards, consider trend towards competency-based education compared to traditional classroom hours, website compliance with *Gil v. Winn Dixey* as it applies the visually impaired. On October 17, 2017, meeting with TAAOM, Acupuncture Board, TCA, interested chiropractors who perform acupuncture and acupuncture professionals to begin rule making process to settle the pending lawsuit filed by TAAOM. A second team meeting to discuss revisions to the acupuncture rule was held on November 3, 2017. Dr. Bronson served as Chief Examiner at the Nation Board Part IV Exam held on November 10, 2017, at Parker University. The Enforcement Committee met on November 15, 2017. Dr. Bronson thanked the Board's staff, Dr. Henry and Massage Therapy Board for insight regarding the distribution of an article entitled *Message Therapy Risks in Chiropractic Practice*.

Action Taken: No action taken.

5.0 Executive Director's Report.

The Executive Director, Patricia Gilbert, presented written reports to the Board concerning matters relevant to each department.

The November 3, 2017, acupuncture meeting went well. However, to accommodate holidays the third meeting has not been scheduled as agreed to by the participants. There was further agreement to draft white papers and do research regarding areas of concern. The third meeting will be scheduled for early January after this work is finished.

Ms. Gilbert discussed personnel matters regarding a new chief investigator, the compliance specialist, Mary Feyes' impending retirement, and CFO, Arlethia Middleton's resignation, the possible re-distribution of employee responsibilities and possibly posting for the position of Chief Financial Officer.

Ms. Gilbert discussed Financial Report through August 31, 2017, the year-end balance return of money to the State's general revenue at the end of the fiscal year and purchases.

Jennifer Hertsenberg discussed the issuance of Continuing Education Audits, responses received and compliance rate.

Sarah Matthews discussed Fourth Quarter Licensing Dashboard which compares the fourth quarter of FY 2016 to FY 2017. She compared the issuance of new licenses and the decrease in renewals for chiropractic licenses, radiologic technician licenses and facilities. Ms. Matthews explained the effect of SB 304's cessation of authority to regulate and register facilities on the information provided to the Board. She noted the increase in CE application and monitoring for content related to the Texas scope of practice. The Dashboard compared the total number of active licenses, inactive and suspended licenses from 2016 to 2017.

Ms. Matthews also discussed the rate of completion of the on-going background check requirement.

Ms. Gilbert discussed the reaction of stakeholders to this requirement.

Ms. Gilbert discussed Compliance and Investigation, open and pending complaints, closed complaints, the effect of increased closure rates due to no longer regulating non-DC owned facilities. She discussed Board actions which resulted in revocation, suspension, probation of licenses, as well as matters which require Respondents to take the Jurisprudence Exam and other tests to resolve a complaint.

Ms. Gilbert discussed the shift of emphasis to chiropractic licensees rather than facilities as a result of the new SB304 requirements, the guidelines for TBCE Top Ten tips for employment with non-DC (and DC) owned facilities. She anticipates the need for future rule changes and a stakeholder meeting with non-DC facility owners to discuss the changes and effect on chiropractors they employ.

6.0 Continuing Education.

Dr. Henry discussed the efficiency of procedures to review the CE applications. Dr. Bronson discussed a request received from a CE provider that she be able to produce CE programs, that participants could download, rather than conducting live webinars. Ms. Ebeier stated it could be taken under consideration.

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 Emeka Aludogbu, New Applicant

Action Taken: John Steinberg, Public Member **MOVED** and Michael Henry, DC, **SECONDED** approval to approve of Emeka Aludogbu to sit for the Jurisprudence Exam. After consideration, the Board **APPROVED** the motion 7 to 0.

7.1.2 Jayson Morton, New Applicant

Action Taken: Michael Henry, DC, **MOVED** and John Steinberg, Public Member. **SECONDED** approval of Jayson Morton to sit for the Jurisprudence Exam. After consideration, the Board **APPROVED** the motion 7-0.

7.1.3 Terrence Tubio, New Applicant

Action Taken: Michael Henry, DC, **MOVED** and Nick Baucum, DC, **SECONDED** approval of Terrence Tubio to sit for the Jurisprudence Exam. Upon licensure, Tubio is required to be placed on probation until March 22, 2021, be subject to random drug testing at the discretion of the Board, not have any violations of his criminal probation and no violation the Board's rules during the probationary period. After consideration, the Board **APPROVED** the motion 7 to 0.

7.1.4 Guang Chen, New Applicant

Action Taken: Amy Gonzalez, DC, **MOVED** and John Steinberg, Public Member, **SECONDED** approval for Guang Chen to sit for the Jurisprudence Exam thirty (30) days after passing the Special Purposes Examination for Chiropractic. Upon successfully passing the Board's Jurisprudence Exam, Guang Chen be granted a license that is probated four (4) years, be subject to 100% Continuing Education audits annually, not allow his license to lapse or have any sustained complaints during the probationary period. After consideration, the Board **APPROVED** the motion 6-1.

The Board recessed at 11:00 a.m. and reconvened at 11:08 a.m.

7.1.5 Marios Michael, New Applicant

Action Taken: Michael Henry DC, **MOVED** and Nick Baucum, DC. **SECONDED** approval of Marios Michael to sit for the Jurisprudence Exam. Upon successfully passing the Board's Jurisprudence Exam, be granted a license that is probated until October 2, 2021. Michael shall not allow the license lapse, or be subject to sustained complaint. After consideration, the Board **APPROVED** the motion 7 to 0.

7.2.0 Request for Criminal History Evaluation.

7.2.1 David Haskell, Prospective Chiropractic College Applicant.

Action Taken: Nick Baucum, DC, **MOVED** and John Steinberg, Public Member, **SECONDED** approval of David Haskell's request for a criminal history evaluation prior to entering chiropractic college. The Board has approved the request to enroll in a chiropractic college and once a degree is obtained, to be eligible to apply and sit for the Texas Jurisprudence examination, so long as Haskell does not have any future criminal convictions or arrests. After consideration, the Board **APPROVED** the motion 7-0.

8.0 Rules.

8.1.0 Discussion and Consideration of Rule Amendments.

- 8.1.1 Discussion and consideration to adopt amendment of Rule 72.9, Reexaminations.

Action Taken: Michael Henry, DC, **MOVED** and Nick Baucum, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.1 without changes. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.2 Discussion and consideration to adopt Repeal of Chapter 73, Chiropractic Facilities.

Action Taken: Michael Henry, DC, **MOVED** and Nick Baucum, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.2 without changes. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.3 Discussion and consideration to adopt amendment of Rule 75.2, Renewal of Chiropractic License.

Action Taken: Kendra Woodruff, Public Member, **MOVED** and Michael Henry, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.3 without changes. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.4 Discussion and consideration to adopt amendment of Rule 75.4, Inactive Chiropractic License Status.

Action Taken: Michael Henry, DC, **MOVED** and Nick Baucum, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.4 without changes. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.5 Discussion and consideration of adoption of proposed amendment of Rule 77.2, Publicity. 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: Nick Baucum, DC, **MOVED** and Amy Gonzalez, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.5 and publish the proposed amendment in the Texas Register. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.6 Discussion and consideration of adoption of proposed amendment of Rule 77.3, Patient's Rights to Disclosure of Charges. The Board discussed the proposed amendment(s) to the Rule to reflect changes requested by the Texas Chiropractic Association ("TCA") to ensure clarity regarding a patient's right to obtain a receipt for services received on the date of service.

Action Taken: Michael Henry, DC, **MOVED** and Nick Baucum, DC, to approve the Rule Amendment listed in Agenda Item 8.1.6 and publish the proposed amendment in the Texas Register. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.7 Discussion and consideration of adoption of proposed amendment of Rule 77.6, Default on Student Loans and Scholarship Agreements. 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: Michael Henry, DC, **MOVED** and Kendra Woodruff, Public Member, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.7 and publish the proposed amendment in the Texas Register. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.8 Discussion and consideration of adoption of proposed amendment of Rule 77.7, Request for Information and Records from Covered Entities. 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: Amy Gonzalez, DC, **MOVED** and Nick Baucum, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.8 and publish the proposed amendment in the Texas Register. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.9 Discussion and consideration of adoption of proposed amendment of Rule 77.8, Records and Documentation. The Board discussed the proposed amendment(s) to the Rule to reflect changes requested by the Texas Chiropractic Association ("TCA") to provide clarity regarding the notes that are required in patient treatment records, depending on whether for initial or subsequent visits.

Action Taken: John Steinberg, Public Member, **MOVED** and Michael Henry, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.9 and publish the proposed amendment in the Texas Register. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.10 Discussion and consideration of adoption of proposed amendment of Rule 78.6, Schedule of Fees. 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. The Board also discussed adjusting the \$150.00 fee to reactivate a license to \$300.00 to comport with a two-year licensing cycle.

Action Taken: Michael Henry, DC, **MOVED** and Nick Baucum, DC, **SECONDED** to modify the Schedule of Fees regarding reactivation of fees to approve the Rule Amendment listed in Agenda Item 8.1.10 and publish the proposed amendment, as modified, in the Texas Register. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.11 Discussion and consideration of adoption of proposed repeal of Rule 78.12, Peer Review Committee. The Board discussed the proposed repeal and replacement of the Rule made in response to the change in statutory authority set forth in Senate Bill 304.

Action Taken: John Steinberg, Public Member **MOVED** and Nick Baucum, DC, Public Member **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.11 and publish the proposed amendment in the Texas Register. After consideration, the Board **APPROVED** the motion 7 to 0.

- 8.1.12 Discussion and consideration of adoption of proposed repeal of Rule 72.8, Failure to Appear at Jurisprudence Examination. The Board discussed to reflect the Board's updated use of an online testing system, which vitiates the need for a rule regarding a candidate's failure to appear for the exam at a physical location

the proposed repeal of the Rule made in response to the change in statutory authority set forth in Senate Bill 304.

Action Taken: Michael Henry, DC, **MOVED** and Nick Baucum, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.12 and publish the proposed amendment in the Texas Register. After consideration, the Board **APPROVED** the motion 7 to 0.

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

No discussion.

Action Taken: No action taken.

The Board recessed at 12:23 and reconvened at 12:33.

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 #2016-246.
- 9.1.2 Consideration of Agreed Order for Case #2016-289.
- 9.1.3 Consideration of Agreed Order for Case #2016-290.
- 9.1.4 Consideration of Agreed Order for Case #2016-292.
- 9.1.5 Consideration of Agreed Order for Case #2017-009.
- 9.1.6 Consideration of Agreed Order for Case #2017-073.
- 9.1.7 Consideration of Agreed Order for Case #2017-136.
- 9.1.8 Consideration of Agreed Order for Case #2017-263.
- 9.1.9 Consideration of Agreed Order for Case #2017-275.
- 9.1.10 Consideration of Agreed Order for Case #2017-276.
- 9.1.11 Consideration of Agreed Order for Case #2017-278.
- 9.1.12 Consideration of Agreed Order for Case #2017-298.

9.1.13 Consideration of Agreed Order for Case #2017-284.

9.1.14 Consideration of Agreed Order for Case #2017-333 & 2017-376.

9.1.15 Consideration of Agreed Order for Case #2017-445.

9.1.16 Consideration of Agreed Order for Case #2017-469.

Action Taken: Kendra Woodruff, Public Member, **MOVED** and Nick Baucum, DC, **SECONDED** to approve the Agreed Orders listed in Agenda Items 9.1.1-9.1.16. After consideration, the Board **APPROVED** the motion 7 to 0.

9.2.0 Consideration and approval of Accepted Cease and Desist Orders.

9.2.1 Consideration of Cease and Desist Order for Case #2017-250.

Action Taken: Kendra Woodruff, Public Member, **MOVED** and Nick Baucum, DC, **SECONDED** to approve the Cease and Desist Orders listed in Agenda Items 9.2.1. After consideration, the Board **APPROVED** the motion 7-0.

9.3.0 Consideration of Order of Suspension.

9.3.1 Consideration of statutory suspension for Case #2017-495.

Action Taken: Kendra Woodruff, Public Member, **MOVED** and Nick Baucum, DC, **SECONDED** to approve the Final Order listed in Agenda Items 9.3.1. After consideration, the Board **APPROVED** the motion 7-0.

9.4.0 Consideration of Order of Revocation.

9.4.1 Consideration of Order of Revocation for Case #2018-015.

Action Taken: Nick Baucum, DC, **MOVED** and Kendra Woodruff, Public Member, **SECONDED** to approve the Orders of Revocation listed in Agenda Items 9.4.1. After consideration, the Board **APPROVED** the motion 7-0.

9.5.0 Consideration and Approval of Requests to Expunge Records.

9.5.1 Consideration of Requests to Expunge Record for Case #109-084.

9.5.2 Consideration of Requests to Expunge Record for Case #110-115.

9.5.3 Consideration of Requests to Expunge Record for Case #110-121.

9.5.4 Consideration of Requests to Expunge Record for Case #111-151

9.5.5 Consideration of Requests to Expunge Record for Case #2014-014.

Action Taken: Nick Baucum, DC, **MOVED** and Kendra Woodruff, Public Member, **SECONDED** to **DENY** the Expungement of Agreed Order listed in Agenda Item 9.5.1. After consideration, the Board **APPROVED** the motion 7 to 0.

Action Taken: Nick Baucum, DC, **MOVED** and John Steinberg, public member, **SECONDED** to **APPROVE** the Expungements of Agreed Orders listed in Agenda Items 9.5.2 - 9.5.5. After consideration, the Board **APPROVED** the motion 7 to 0.

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

The Committee Chair discussed the delegation of authority by the EC to the staff. Mr. Steinberg requested brief case summaries of cases closed by Staff in a report format in order to maintain a checks and balances on Staff action taken on behalf of the EC. The Board considered the delegation to the staff authority to review cases of billing for services not rendered, wherein fraudulent intent is not at issue in an investigation.

Action Taken: Kendra Woodruff, Public Member, **MOVED** and Nick Baucum, DC, **SECONDED** to **APPROVE** the delegation to the staff authority to review cases of billing of services not rendered wherein fraudulent intent is not at issue in an investigation. After consideration, the Board **APPROVED** the motion 7 to 0.

10.0 EXECUTIVE SESSION.

At 12:47 p.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 litigation including but not limited to:

Status of the Appeal of Texas Medical Association (TMA) 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;" and

Texas Association of Acupuncture and Oriental Medicine lawsuit (currently abated by agreed motion) against the Board regarding Rule §78.14, authorizing certified and/or trained chiropractors to utilize the modality of acupuncture in practice; and

Discussion of agency personnel matters.

The Board reconvened in open session after Executive Session at approximately p.m. 3:30 p.m. There was no 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.

No motions related to items discussed in Executive Session were offered.

Action Taken: No action taken.

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:

February 15, 2018

May 17, 2018

August 16, 2018

Future Enforcement Committee dates:

February 14, 2018

May 16, 2018

August 15, 2018

Adjournment at approximately: 3:35 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 November 15, 2017 were approved by the Texas Board of Chiropractic Examiners at its regularly scheduled Board meeting held on February 15, 2018.


Scott M. Parker
Interim Executive Director
Texas Board of Chiropractic Examiners


Date