

**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, February 15, 2018

BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners met on February 15, 2018, 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 9:04 a.m. and called the roll. A quorum was announced. The absent board members were deemed excused.

Others present were:

Dr. Karen Campion, Vice-President
Kenya Woodruff, Public Member
Dr. Amy Gonzalez, Secretary/Treasurer
Michael Henry, DC, Member
John Steinberg, Public Member
Dr. Nicholas Baucum, Member
Scott M. Parker, Interim Executive Director
Courtney Ebeier, General Counsel
Scott Stalnaker, Legal Assistant
Jennifer Carriker, Compliance Specialist
Jennifer Hertsensberg, Operations Manager
Sarah Matthews, License & Permit Specialist
Norma Rodriguez, Investigator
Bob Lawson, Investigator
Lisa Agarwal, Executive Assistant
Dianna Offen-Anderson, Chief Financial Officer

Action Taken: The Board approved the excused absence of Gus Ramirez, Public Member and Dr. John Riggs, Member. After consideration, the Board **APPROVED** the motion 7-0 and greeted new employees Jennifer Carriker and Dianna Offen-Anderson.

2.0 Approval of Board Minutes

2.1.1 Approval of November 17, 2017 Minutes.

Action Taken: John Steinberg, public member **MOVED** and Amy Gonzalez, DC, **SECONDED** approval of the minutes from the November 17, 2017, Board Meeting. After consideration, the Board **APPROVED** the motion.

2.1.2 Approval of December 15, 2017 Minutes.

Action Taken: John Steinberg, public member **MOVED** and Amy Gonzalez, DC, **SECONDED** approval of the minutes from the December 15, 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.

Wally Doggett, President of Texas Association of Acupuncture and Oriental Medicine ("TAAOM"), spoke to reiterate its continuing commitment to the consensus rule making process to negotiate a rule regarding the use of acupuncture in the practice of chiropractic. A copy of Mr. Doggett's statement is attached to these minutes as Exhibit "A".

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 to the Board and the staff. On January 5, 2018, Dr. Bronson visited the Board's offices and spoke to the Scott M. Parker, Norma Rodriguez and Courtney Ebeier. Dr. Bronson conducted telephone conferences with staff every Thursday in January to orient himself on staff function. On January 20, 2018, stakeholders declined to attend an acupuncture meeting but Dr. Bronson, Mr. Parker, Dr. Campion, Patricia Gilbert and Ms. Ebeier met to discuss progress, areas of agreement and areas in need of discussion. On January 24, 2018, the application processing team met to interview candidates for the Executive Director position. The applications will be presented to the Board in Executive Session. February 14, 2018, Enforcement Committee meeting results were presented to the Board later in the meeting. On February 28, 2018, the Board will present oral arguments to the court in *TMA v. TCBE*. On May 2-6, 2018, FCLB's National Conference will take place in Dallas. Early registration deadline is March 6, 2018, and the Board may pay for participation if funds available. New Board members and key staff are urged to attend. On May 18-20, 2018, Dr. Bronson will serve as the Chief Examiner for the NBCE Part IV exam. He can recommend one to two Board members to also serve as examiners if done by March 1, 2018. In July there will be a NCLB Part IV workshop for chief examiners for digital diagnostic imaging into the testing

process. Dr. Bronson acknowledged the publication of John Rigg's article, *Are You Misusing Your Credentials*, in the *Dynamic Chiropractic Newspaper*. Dr. Bronson recognized Mary Feys for eleven and one-half years of service and presented her with plaque.

Action Taken: No action taken.

5.0 Interim Executive Director's Report.

The Interim Executive Director presented written reports to the Board concerning matters relevant to each department. The Interim Executive Director discussed new employees and their respective qualifications: Jennifer Carriker and Dianna Offen-Anderson. Mr. Parker discussed contact with Texas.gov. regarding two-year license renewals and programs with HPC. State Auditors assessing HPC needs audited TBCE programs with HPC. On January 12, 2018, the staff attended risk management training. TBCE Offices were closed all day on January 16 and for two hours on January 17, 2018, pursuant to TBCE policy due to local weather conditions. On January 19, 2018, Mr. Parker attended Health Care Task force meeting regarding fraud. On January 24, 2018, Norma Rodriguez and Mr. Parker attended a National Insurance Crime Bureau meeting in Austin. On January 25, 2018, Mr. Lawson was in court regarding the revoked probation discussed in Agenda Item 9.4.1. Mr. Lawson and Ms. Rodriguez both worked on another sexual misconduct charge against a licensee that resulted in criminal conviction and incarceration. Ms. Rodriguez is currently working on a task force investigating barratry, solicitation and kick-backs. On January 31, 2018, TBCE renewed a customer agreement with the State of Texas through by and through the Texas Department of Information Services to provide Texas.gov services which reflects the new two-year license effective March 1, 2018. TBCE received correspondence from NBCE regarding Part IV participation offering to assist with Board member participation. Mr. Parker discussed May 2019 meeting to be conducted in Tower III, Room 100, not Tower II, Room 225.

Ms. Matthews discussed Fourth Quarter Licensing Dashboard which compares the first quarter of FY 2017 to FY 2018. 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 decrease 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 addressed questions from Dr. Henry regarding the two-year license renewal, communication to stakeholders through Board communications, publications and constant contact. Ms. Matthews also discussed the finger print requirement for licensees granted a license prior to 2004.

Jennifer Hertsenberg discussed continuing education compliance monitoring which had a completion rate of 85 percent as of January 2017.

Mr. Parker discussed the Financial Report. He had no financial errors or concerns to report. The agency's bills are being paid, cell phone costs have been reduced due to a change in personnel.

Mr. Parker discussed the status of complaints, pending investigations, agreed orders, cease and desist orders. The February 14, 2018, Enforcement Committee meeting results were not included. Mr. Parker reported the geographical assignments of the agency's investigators.

6.0 Education.

Dr. Bronson discussed renaming the committee to "Education Committee" and renaming "Licensure and Educational Standards" to "Licensure Committee" and sought a consensus. Dr. Henry reported they continue to examine continuing education proposals to assure proposed content is within scope of practice of chiropractic in the State of Texas and comply with Board Rules. Reviewing other options to educate chiropractors who have compliance issues including a proposal on the use of outside audit of chiropractic offices. A copy of the proposal is attached to these minutes as Exhibit "B".

Action Taken: No action taken.

7.0 Licensure.

7.1.0 Request to Sit for the Texas Jurisprudence Examination.

7.1.1 Erika Lee, New Applicant

Action Taken: Michael Henry, DC, **MOVED** and Nicholas Baucum, DC, **SECONDED** approval of Lee to sit for the Jurisprudence Exam. Upon licensure, Lee is required to be placed on probation until June 9, 2020, and, not have any violations of her criminal probation and no violation the Board's rules during the probationary period. After consideration, the Board **APPROVED** the motion 7-0.

7.1.2 Lou Roz, New Applicant

Action Taken: Nicholas Baucum, DC, **MOVED** and Kendra Woodruff, Public Member. **SECONDED** approval to table consideration of Lou Roz to sit for the Jurisprudence Exam, the Board **APPROVED** the motion 7-0.

8.0 Rules.

8.1.0 Discussion and Consideration of Proposed Rule Amendments for Review and Adoption

8.1.1 Discussion and consideration of adoption of proposed repeal of Rule 72.8, Failure to Appear at Jurisprudence Examination.

Action Taken: Michael Henry, DC, **MOVED** and Nicholas 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 of adoption of proposed amendment of Rule 77.2, Publicity.

Action Taken: Michael Henry, DC, **MOVED** and Nicholas 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 of adoption of proposed amendment of Rule 77.3, Patient's Rights to Disclosure of Charges.

Action Taken: Michael Henry, DC, **MOVED** and Amy Gonzalez, 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 of adoption of proposed amendment of Rule 77.6, Default on Student Loans and Scholarship Agreements.

Action Taken: Michael Henry, DC, **MOVED** and Nicholas 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 77.7, Request for Information and Records from Covered Entities.

Action Taken: Nicholas Baucum, DC, **MOVED** and Amy Gonzalez, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.5 without changes. After consideration, the Board APPROVED the motion 7 to 0.

- 8.1.6 Discussion and consideration of adoption of proposed amendment of Rule 77.8, Records and Documentation.

Action Taken: Nicholas Baucum, DC, **MOVED** and Amy Gonzalez, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.6 without changes. After consideration, the Board APPROVED the motion 7 to 0.

- 8.1.7 Discussion and consideration of adoption of proposed amendment of Rule 78.6, Schedule of Fees.

Action Taken: Amy Gonzalez, DC, **MOVED** and Nicholas Baucum, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.7 without changes. After consideration, the Board APPROVED the motion 7 to 0.

- 8.1.8 Discussion and consideration of adoption of proposed repeal and replacement of Rule 78.12, Peer Review Committee.

Action Taken: Michael Henry, DC, **MOVED** and Nicholas Baucum, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.8 without changes. After consideration, the Board APPROVED the motion 7 to 0.

- 8.1.9 Discussion and consideration of proposed amendment of Rule 78.3, Individuals with Criminal Background.

Action Taken: Michael Henry, DC, **MOVED** and Nicholas Baucum, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.9 without changes. After consideration, the Board APPROVED the motion 7 to 0.

- 8.1.10 Discussion and consideration of proposed amendment of Rule 78.5, Duty to Respond to Complaint and Request for Information or Records.

Action Taken: Michael Henry, DC, **MOVED** and Nicholas Baucum, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.10 without changes. After consideration, the Board APPROVED the motion 7 to 0.

- 8.1.11 Discussion and consideration of proposed amendment of Rule 78.7, Public Interest Information.

Action Taken: Kenya Woodruff, Public Member, **MOVED** and Amy Gonzalez, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.11 without changes. After consideration, the Board APPROVED the motion 7 to 0.

- 8.1.12 Discussion and consideration of proposed amendment of Rule 78.8, Complaint Procedures.

Action Taken: Amy Gonzalez, DC, **MOVED** and Nicholas Baucum, DC, **SECONDED** to approve the Rule Amendment listed in Agenda Item 8.1.12 without changes. After consideration, the Board APPROVED the motion 7 to 0.

- 8.1.13 Discussion and consideration of Rule 78.14, Acupuncture.

Ms. Ebeier summarized the topics discussed during the consensus rule making process: required hours, certification, advertising, traditional Chinese medicine, dry needling and

informed consent. Dr. Campion discussed continuing outreach, and input from chiropractic schools. Dr. Campion also discussed the use of informed consent. Dr. Bronson discussed the need for a clear rule devoid of redundancy and a future stake holder meeting.

Action Taken: No action taken.

8.2.0 Discussion and Comments from the Chair.

Dr. Campion did not have additional comments

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 #2016-196.

9.1.2 Consideration of Agreed Order for Case #2017-278.

9.1.3 Consideration of Agreed Order for Case #2017-294.

9.1.4 Consideration of Agreed Order for Case #2017-444.

9.1.5 Consideration of Agreed Order for Case #2017-454.

9.1.6 Consideration of Agreed Order for Case #2017-502.

9.1.7 Consideration of Agreed Order for Case #2018-066.

9.1.8 Consideration of Agreed Order for Case #2018-067.

9.1.9 Consideration of Agreed Order for Case #2018-069.

9.1.10 Consideration of Agreed Order for Case #2016-187.

Action Taken: Michael Henry, DC, **MOVED** and Karen Campion, DC, **SECONDED** to approve the Agreed Orders listed in Agenda Items 9.1.1 - 9.1.10. After consideration, the Board **APPROVED** the motion 7-0.

9.2.0 Consideration and Approval of Accepted Cease and Desist Orders.

9.2.1 Consideration of Cease and Desist Order for Case #2017-265.

Action Taken: Karen Campion, DC, **MOVED** and Nicholas Baucum, DC, **SECONDED** to approve the Cease and Desist Order listed in Agenda Item 9.2.1. After consideration, the Board **APPROVED** the motion 7-0.

9.3.0 Consideration of Order of Revocation.

9.3.1 Consideration of Order of Revocation for Case #2018-074.

Action Taken: Karen Woodruff, Public Member, **MOVED** and Nicholas Baucum, **SECONDED** to approve the Cease and Desist Order listed in Agenda Item 9.3.1. After consideration, the Board **APPROVED** the motion 7-0.

Mr. Parker commented to the Board that this is the second revocation for Respondent and recommended the Board not allow re-licensure in the future.

9.4.0 Consideration of Board Orders to Approve Administrative Penalties.

9.4.1 Consideration of administrative penalty pursuant to a Proposal for Decision granted by an administrative law judge for Case #2017-279.

Action Taken: Nicholas Baucum, DC, **MOVED** and Karen Campion, DC, **SECONDED** to approve the Final Order listed in Agenda Items 9.4.1. After consideration, the Board **APPROVED** the motion 6-0, Amy Gonzalez, DC, abstained.

9.5.0 Consideration and Approval of Requests to Expunge Records.

9.5.1 Consideration of Requests to Expunge Record for Case #102-608.

Action Taken: Karen Campion, DC, **MOVED** and Nicholas Baucum, DC, **SECONDED** to approve the Expungements of Agreed Orders listed in Agenda Item 9.5.1. After consideration, the Board **APPROVED** the motion 7-0.

9.6.0 Discussion and Comments from the Chair.

Dr. Gonzalez did not have additional comments.

Action Taken: No action taken.

10.0 EXECUTIVE SESSION.

At 10:55 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 will

receive 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.

Consideration of applicants for the Executive Director position and other personnel decisions.

The Board reconvened in open session after Executive Session at 12:58 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: Michael Henry, DC, **MOVED** and John Steinberg, Public Member, **SECONDED** to approve the employment of an Executive Director of the Board. Dr. Henry instructed the Interim Executive Director to offer the position to the top three candidates to be identified as Candidate's "A", "B" and "C" to preserve their privacy, starting with Candidate "A". If Candidate "A" declines the position it is to be offered to Candidate "B". If Candidate "B" declines the position is to be offered to Candidate "C".

12.0 FINAL ITEMS.

The Board called for future items for discussion and/or consideration by the Board. Dr. Campion directed Mr. Parker to secure Board meeting locations as far into future as possible.

Future Board meeting dates:

The Board planned Board meeting dates for calendar year 2018 are subject to change:

May 17, 2018
August 16, 2018
November 15, 2018
February 21, 2019

Future Enforcement Committee dates:

May 16, 2018
August 15, 2018
November 14, 2018
February 20, 2019

Adjournment at: 1:03 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 February 15, 2018 were approved by the Texas Board of Chiropractic Examiners at its regularly scheduled Board meeting held on May 17, 2018.



Patrick Fortner
Executive Director
Texas Board of Chiropractic Examiners

5-17-18

Date

EXHIBIT A

**Statement of Wally Doggett, President, Texas Association of Acupuncture and Oriental Medicine
before the February 15, 2018 meeting of the Texas Board of Chiropractic Examiners**

On behalf of the leadership of the Texas Association of Acupuncture and Oriental Medicine, I come before you today to reiterate acupuncture stakeholders' continuing commitment to the consensus rulemaking process that began with this Board's vote on May 18, 2017, to jointly abate pending litigation to allow the parties an opportunity to negotiate a mutually-agreeable path forward.

It remains TAAOM's goal to support a consensus solution that not only addresses current and future litigation exposure for the state, but also provides clear and uniform standards for the safe and legal use of an acupuncture needle by chiropractic licensees consistent with the existing scope of practice of chiropractic. As we have stated before, TAAOM strongly believes that such a legal framework is lacking today and that our work together should seek to produce much-needed guidance that will benefit practitioners, consumers and regulators alike.

Regarding TAAOM's perspective on negotiations to date, we believe the parties have made legitimate progress toward identifying key issues important to their respective constituencies. For TAAOM's part, it has been a priority to provide all negotiators with a comprehensive document summarizing our positions on identified issues, as well as the relevant statutory foundation underpinning those positions. We look forward to a more in-depth discussion on these topics at our next meeting. As you know, we are dealing with difficult issues that have complex histories, so TAAOM respectfully urges the Board to allow the process to work in a deliberate and thoughtful manner and to resist the temptation to impose arbitrary time constraints.

It would be premature today to get ahead of the negotiations process and my fellow negotiators by bringing up specific issues that are part of a larger discussion that is underway. To reiterate, my purpose in coming before you this morning is simply to communicate TAAOM's steadfast desire for this process to be successful. Toward that end, we look forward to reaching consensus on proposed rule changes that can resolve pending litigation, provide greater regulatory clarity and oversight, and serve as an agreed-upon basis for statutory changes we can mutually support in the upcoming legislative session.

EXHIBIT B



NACATexas
PO Box 2144
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830-669-2594 fax
www.nacatexas.com

Board Requested In-House Audit

Before the Audit is Scheduled:

- A. The Board contacts the Auditor with details of the Board Order requiring the Audit.
 - a. This is for the Auditor's knowledge of what to expect.
- B. The Auditor contacts the Doctor to schedule an In-House Audit date and discuss cost.
 - a. Kathy Jones, as an Auditor will charge \$1,000.00 per day, plus expenses if the office is more than 2 hours travel time from Fredericksburg, TX.
 - i. Expenses include \$200.00 (One overnight hotel and gas).
 - ii. Total cost will be paid to the Auditor before the audit.

Arrival at the Audit:

- A. Upon arrival at the In-House Audit, the Auditor must meet with the Doctor, the Owner of the Clinic and the Billing Department head.
 - a. At this meeting the days schedule will be outlined and agreed upon.
 - i. The Auditor will pick ten (10) patient files to review.
 - 1. This MUST be done by the Auditor, not the Doctor, Owner of the Clinic or the Billing Department head.
 - 2. If the files are in electronic format, the files shall be printed by the Billing Department for the Auditor.
 - 3. Claims and EOBs will also be included in this retrieval.
 - 4. Files will be dated around the time of incident and forward.
 - ii. While the files are being gathered, the Auditor will review other clinical requirements.
 - 1. HIPAA is posted, and manual is available to view.
 - 2. Compliance manual is available to view.
 - 3. Doctor's License is posted and current.
 - 4. Public Information place card is in sight of public.
 - 5. If x-rays are utilized, registration is up to date and displayed.
 - 6. Patient intake/informational forms shall be examined.

- iii. The Auditor will accompany the doctor with two (2) or three (3) patients.
 1. During this, the Auditor will observe what services the doctor preforms.
 - a. The service, time, and documentation noted will be documented by the Auditor. This sets the bar for the files the Auditor will be auditing.

Audit:

- A. With ten (10) files in hand.
 - a. The Auditor will be in a quiet place to read the files.
 - b. The Auditor will follow an audit form. *(example attached to this outline)*
 - c. The Billing Department head will be available to the Auditor for questions, clarification, or additional documentation.
- B. Should the office utilize Pre-Payment Plans.
 - a. A copy shall be given to the Auditor.
 - b. One of the ten (10) files to audit, shall include a Pre-Payment Agreement.
 - c. A meeting with the Doctor, Billing Department head, and the Auditor is mandatory, this is to go over the form and rules for Pre-Payment Plans set out by the board.

Completion of Audit:

- A. When the Audit is complete, the Auditor will have a meeting with the Doctor, the Owner, and Billing Department head. This is Mandatory.
 - a. Discussion will be over what was found during the audit.
 - b. Feedback from the group will be documented by the Auditor.

Preparing the Report:

- A. The Auditor will prepare a Report outlining what was discovered during the audit. *(example attached)*
- B. A Billing Compliance Section for the clinic's Compliance Manual will be sent by email to the clinic. *(example attached)*
- C. A Report of Findings will be sent to the Clinic, the Doctor's Attorney, and the Board.

Follow-Up:

- A. The Clinic will be required to respond to the Report with their own report of Intent to Correct. The Intent to Correct is due within 30 days after receiving the Auditor's Report of Findings. The Intent to Correct will be sent to the Doctor's Attorney (if represented), the Board, and a copy placed in the office's compliance manual with the Report of Findings.