

Texas Board of Chiropractic Examiners

Thursday, November 8, 2018
BOARD MEETING: 9:00 a.m. – Final Adjournment

William P. Hobby Building
333 Guadalupe, Tower II, Room 225
Austin, Texas 78701

BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners met on November 8, 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 Dr. Mark Bronson, DC called the meeting to order at **9:02 A.M.** and called the roll. A quorum was announced.

Six Board Members were present.

Board Members Absent:

Gustavo Ramirez, Public Member
Kenya Woodruff, Public Member

Board Members present were:

Dr. Michael Henry, DC, Member
Dr. Nicholas Baucum, Member
John Steinberg, Public Member

New Appointees present were:

Dr. Scott Wofford, D.C., Member
Dr. Mindy Neal, D.C., Member
Dr. Debra White, D.C. Member

Board Staff Members present:

Patrick Fortner, Executive Director
Christopher Burnett, General Counsel
Jennifer Hertsberg, Operations Manager
Sarah Matthews, Director of Licensing
Norma Rodriguez, Director of Enforcement
Joseph McLaughlin, Staff Attorney
Theodore Leal, Compliance Specialist
Lisa Agarwal, Office Manager

2.0 Approval of 8/16/2018 Minutes with Correction to Public Member: Kenya Woodruff's Name.

Action Taken: STEINBERG, **MOVED** and HENRY, **SECONDED APPROVAL** of the minutes from the **08/16/2018**, Board Meeting. After consideration, the Board **APPROVED** the motion, unanimously.

3.0 President's Report:

Dr. Mark Bronson made a brief oral report to the Board on matters of current interest.

- Instructed new Board Members on rules & procedures:
 - Attendance
 - G-mail Accounts
 - Parliamentary Procedure

- Committees & Officers:
 - Officer elections will be at the next meeting of the Board in February 2019.

- Presidential Activities:
 - September 8th- Dr. Bronson met in Austin, with Executive Director and General Counsel to discuss various agency concerns including budget and the implementation of Sunset Provisions.

 - Upcoming FCLB Meeting Discussed.
 - President attended conference on Sept. 21-22, 2018.
 - Conference included representatives from the 20 most western states and Districts 1 & 4.

- Discussion of Upcoming events:
 - November 9-11, 2018 – NBCE Part Four Examination in Dallas, Texas at Parker University.
 - Dr. Bronson: Serving as Chief Examiner
 - Dr. Baucum: Serving as an Examiner

 - December 18, 2018
 - Governors Training Seminar for new trainees.

Entered into closed session at 9:17 a.m.

Meeting reconvened after 45 minute closed session

4.0 Approval of adoption of the repeal of certain board rules relating to rules of practice:

A. 22 TAC § 78.14 (Acupuncture) (Current Rule)

Action Taken: HENRY, **MOVED** and WOFFORD, **SECONDED REPEAL** of certain Board Rules relating to Rules of Practice: After consideration, the Board **APPROVED** the motion, unanimously.

5.0 Approval of adopting certain proposed board rules relating to rules of practice:

A. 22 TAC § 78.14 (Acupuncture) (Current Rule)

Action Taken: HENRY, **MOVED** and WOFFORD, **SECONDED ADOPTING** of certain proposed Board Rules relating to Rules of Practice: After consideration, the Board **APPROVED** the motion, unanimously.

6.0 Staff Reports:

Executive Director:

- Presented oral reports to the Board concerning matters relevant to each department.
 - Discussed recent arrest of an individual accused of performing chiropractic illegally in Dallas County
 - Discussed the need for a new investigator or fraud investigator in the Houston Area.
 - Discussed implementation of statutory and non-statutory requirements from the Sunset Commission.
 - Discussed Rule numbering changes.
 - Discussed Information Requests from
 - State Auditor's Office:
 - Sunset Commission Non-Statutory Requirements
 - Attorney General's Office:
 - Complaint Data Requested
 - Legislative Budget Board:
 - More information for Exceptional Item Request

Sarah Mathews, Director of Licensing:

- Discussed the Licensing Dashboard for Fiscal Year: 2017-2018 Fourth Quarter and presented to the Board statistical information regarding license renewals, active, inactive, probated, suspended licenses.

Jennifer Hertsberg, Operations Manager:

- Discussed the Financial Report Dashboard for the first month of the fiscal year

Norma Rodriguez, Director of Enforcement:

- Discussed the investigation of an individual illegally practicing chiropractic in Dallas County.
 - Gave detailed report on steps taken during the investigation, and the eventual arrest of the individual.
- Introduced new investigator: James Elliott
- The report also included opened, closed, and active complaints. Specific information was provided regarding cases closed by Agreed Order, Cease and Desist Order and administratively.

7.0 Committee Reports:

- Rules Committee: No Updates
- Licensing Committee: No Updates
- Education Standards Committee: No Updates
- Enforcement Committee:
 - Enforcement Chair discussed the “highest potential exposure,” which pertains to fee amounts on the Notices sent by the Enforcement Committee. Discussed the need for a set amount in order to let chiropractors know that the amount is only the “highest potential exposure,” and not a final amount.
 - Staff Attorney mentioned that the notices sent out are only the maximum potential sanctions that they could face, and that it’s not a demand in the initial letter, only a “highest potential exposure.”
 - Discussed use of peer reviews in lieu of informal conferences.

8.0 Public Comments:

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

- Michelle Quattlebaum, Esq. [Sprott Newsom Quattlebaum Messenger]:
 - Ms. Quattlebaum expressed her concerns with the decision to do away with informal settlement conferences before the Enforcement Committee and replacing them with Staff Conferences.
- Dr. William Lawson [Texas Chiropractic Association]:
 - Echoed Ms. Quattlebaum’s Comments.

9.0 Approval Of Board’s Report to the Texas Legislature on Eligibility Requirements Related to an Applicant for Licensure’s Criminal History As Required By House Bill 91 (85th Legislature, Regular Session):

Action Taken: BRONSON , **MOVED** and STEINBERG , **SECONDED APPROVAL** of the Board’s Report to the Texas Legislature. After consideration, the Board **APPROVED** the motion, unanimously.

10. Approval Of Board’s Making Legislative and Policy Recommendations to the Texas Legislature Concerning Texas Occupations Code Chapter 201:

Action Taken: Discussion Only. No Action. Recommendations to be presented at January Board Meeting for possible adoption.

11. Approval Of Possible Action On Addressing The Texas Sunset Commission’s Recommendation to Amend 22 TAC § 79.1 (Unprofessional Conduct) (Formerly 22 TAC § 78.1). To Define What Constitutes “Unsanitary And Unsafe Equipment”:

Action Taken: Discussion Only. No Action. Recommendations to be presented at January Board Meeting for possible adoption.

12. Approval Of Possible Action On Changing Continuing Education Requirements In 22 TAC § 73.1 (Continuing Education) (Formerly 22 TAC § 75.5) From 16 Hours Per Year To 32 Hours Per Biennium, And To Expand Approved Continuing Education Courses Defined In 22 TAC § 73.3 (Approved Continuing Education Requirements) (Formerly 22 TAC § 75.7) To Include Those Approved By Other State Regulatory Agencies:

Action Taken: Discussion Only. No Action. Recommendations may be presented at January Board Meeting for possible adoption.

Break taken at 11:10a.m.

Reconvened meeting at 11:27 a.m.

13. Requests for Jurisprudence Exam:

A. Lou Roz

Action Taken: STEINBERG, **MOVED** to approve applicant to sit for the Jurisprudence Exam, and HENRY, **SECONDED WITH AMENDMENT TO ACTION** for **APPROVAL** of Lou Roz, sitting for the Jurisprudence Exam. BAUCUM **SECONDED AMENDED ACTION FOR APPROVAL**. After consideration, the Board **APPROVED** the motion 4 to 3.

YAY: Dr. Henry; Dr. Steinberg; Dr. Baucum; Dr. Neal

NAY: Dr. Wofford; Dr. White; Dr. Bronson

- Dr. Henry: Amended action.
 - Ethics and Boundaries Exam (EBAS), Must Have Passing Score, and taken before the Jurisprudence Exam.
 - 2 years Probationary License after passing the Jurisprudence Exam.

B. Jeff Salczenko

Action Taken: HENRY, **MOVED** to **DENY** applicant to sit for the Jurisprudence Exam, and STEINBERG, **SECONDED DENIAL** of Jeff Salczenko, sitting for the Jurisprudence Exam. After consideration, the Board **DENIED** the motion 7 to 0.

C. Michael Maggio

Action Taken: STEINBERG, **MOVED** to approve applicant to sit for the Jurisprudence Exam, and WOFFORD, **SECONDED APPROVAL** of Michael Maggio, sitting for the Jurisprudence Exam. After consideration, the Board **APPROVED** the motion 7 to 0.

14. Request for A Criminal History Evaluation Letter Pursuant To Texas Occupations Code § 53.102 And 22 TAC § 72.12:

A. Desiree Villareal

Action Taken: HENRY, **MOVED** to approve request for a criminal history evaluation letter, and BAUCUM, **SECONDED** approval. After consideration, the Board **APPROVED** the motion 7 to 0.

15. Approval of Requests To Expunge Disciplinary Records Pursuant To Texas Occupations Code § 201.156(C) And 22 TAC §79.3 (Formerly 22 TAC §78.11)

A. Matthew J. Rayner,

- License. No. 12017 for TBCE Case No. 2014-255.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to expunge disciplinary records for Licensee: Matthew J. Rayner. After consideration, the Board **APPROVED** the motion 7 to 0.

B. Richard A. Alexander,

- License No. 08088 for TBCE Case No. 2017-296

Action Taken: HENRY **MOVED** and WHITE **SECONDED** to expunge disciplinary records for Licensee: Richard A. Alexander. After consideration, the Board **APPROVED** the motion 7 to 0.

16. Approval of Action On Default Orders Pursuant To Texas Occupations Code §201.0555, Texas Government Code §§2001.056(4) And 2001.058(D-1), And 22 TAC §81.6(B) (Formerly 22 TAC §79.6 (B)):

A. TBCE v. Kenneth Lester, License No. 08406 (TBCE Case No. 2017-492, SOAH Docket No. 508-18-4139)

Action Taken: HENRY **MOVED** and WHITE, **SECONDED** to approve the default order listed. After consideration, the Board **APPROVED** the motion 7 to 0.

17. Approval Of Action On Proposed Agreed Consent Orders Pursuant To Texas Occupations Code §201.504(A)(1):

A. John M. Sullivan, License No. 56056, TBCE Case No. 2017-449 (voluntary surrender in lieu of discipline)

- **Action Taken:** HENRY **MOVED** and NEAL, **SECONDED** to approve the proposed Agreed Consent Order. After consideration, the Board **APPROVED** the motion 7 to 0

B. Gregory K. Harmon, License No. 5704, TBCE Case No. 2017-396 (\$500 penalty)

- **Action Taken:** WOFFORD **MOVED** and HENRY, **SECONDED** to approve the proposed Agreed Consent Order. After consideration, the Board **APPROVED** the motion 7 to 0

C. Daxton T. Krugman, License No. 8577, TBCE Case No. 2018-158 (2 year suspension, fully probated with stipulations)

- **Action Taken:** HENRY MOVED and STEINBERG, **SECONDED** to approve the proposed Agreed Consent Order. After consideration, the Board **APPROVED** the motion 7 to 0
- D.** *W. Joe Ford, Jr., License No. 7844*, TBCE Case No. 2018-037 (letter of reprimand)
- **Action Taken:** WOFFORD MOVED and WHITE, **SECONDED** to approve the proposed Agreed Consent Order. After consideration, the Board **APPROVED** the motion 7 to 0
- E.** *Steven M. Catalina, License No. 8281*, TBCE Case Nos. 2017-481 & 2018-038, (\$1750 penalty)
- **Action Taken:** HENRY MOVED and WHITE, **SECONDED** to approve the proposed Agreed Consent Order. After consideration, the Board **APPROVED** the motion 7 to 0
- F.** *Nathan L. Hansen, License No. 10518*, TBCE Case No. 2018-103 (\$1000 penalty and jurisprudence exam)
- **Action Taken:** STEINBERG MOVED and HENRY, **SECONDED** to approve the proposed Agreed Consent Order. After consideration, the Board **APPROVED** the motion 7 to 0
- G.** *Ngoc-Oanh Thi Nguyen-Tong, License No. 8584*, TBCE Case No. 2018-130 (\$4000 penalty)
- **Action Taken:** STEINBERG MOVED and WOFFORD, **SECONDED** to approve the proposed Agreed Consent Order. After consideration, the Board **APPROVED** the motion 7 to 0
- H.** *Gregory A. Green, License No. 11465*, TBCE Case No. 2018-172 (\$3750 penalty and EBAS exam)
- **Action Taken:** STEINBERG MOVED and WHITE, **SECONDED** to approve the proposed Agreed Consent Order. After consideration, the Board **APPROVED** the motion 7 to 0
- 18. Approval of Action on Adopting the Repeal of Certain Board Rules Relating To Chiropractic Radiological Technologists:**
- A.** 22 TAC §74.1 (Defintions)
- B.** 22 TAC §74.2 (Registration of Chiropractic Radiological Technologists)
- **Action Taken:** HENRY MOVED and **YIELDED** to STEINBERG and WOFFORD, **SECONDED** to approve the repeal of certain Board Rules relating to chiropractic radiological technologist. After consideration, the Board **APPROVED** the motion 7 to 0

19. **Approval of Action on Adopting the Repeal of Certain Board Rules Relating To Professional Conduct:**
- A. **22 TAC §77.13 (Bribery)**
 - B. **22 TAC §77.14 (Coercion of Public Servant or Voter)**
 - C. **22 TAC §77.15 (Improper Influence)**
 - D. **22 TAC §77.16 (Tampering With a Witness)**
 - E. **22 TAC §77.17 (Obstruction or Retaliation)**
 - **Action Taken:** WOFFORD MOVED and NEAL, **SECONDED** to adopt the repeal of certain board rules relating to professional conduct. After consideration, the Board **APPROVED** the motion 7 to 0
20. **Approval of Action on Adopting the Amendment of Certain Board Rules Relating To Licenses and Renewals:**
- A. **22 TAC §75.1 (Notification and Change of Address)**
 - **Action Taken:** STEINBERG MOVED and HENRY, **SECONDED** to approve the amendment of certain Board Rules relating to licenses and renewals. After consideration, the Board **APPROVED** the motion 7 to 0
21. **Approval of Action on Proposing the Amendment of Certain Board Rules Relating To Continuing Education:**
- A. **22 TAC §73.1 (Continuing Education) (formerly 22 TAC §75.5)**
 - **Action Taken:** STEINBERG MOVED and HENRY, **SECONDED** to approve the proposing of the amendment of certain Board Rules relating to Continuing Education. After consideration, the Board **APPROVED** the motion 7 to 0
22. **No Closed Session**
23. **No Closed Session / No Discussion**

24. Requests from Board Members for Future Agenda Items:

A. Dr. Debra White

- Shared comments and concerns over Informal Settlement Conferences, and has requested that the issue be raised at the next board meeting as an Agenda Item.

B. Dr. Mark Bronson

- The Board planned to change the TBCE Board Meeting, and would further discuss the matter via e-mail due to the “Bill Filing Period” ending on March 8th, 2019:
- Suggested Dates Were
 - i. February 6th, & 7th, 2019
 - ii. February 13th & 14th, 2019

25. Adjournment:

FINAL ADJOURNMENT: 1:00 P.M.

- **Action Taken:** HENRY MOVED and STEINBERG, **SECONDED** to approve the adjournment of the Board Meeting.

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 date. The minutes from the Board Meeting held on August 16, 2018, were **APPROVED** by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held on November 8, 2018.



3/1/2019

Patrick Fortner
Executive Director
Texas Board of Chiropractic Examiners

Date