

Texas Board of Chiropractic Examiners

Thursday, May 16, 2019

BOARD MEETING: 9:00 A.M. – Final Adjournment at 1:54 P.M.

William P. Hobby Building
333 Guadalupe St., Room 100
Austin, Texas 78701

BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners (Board) met on May 16, 2019, 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, & Vote On Absences:

Action Taken: Board President Mark Bronson, D.C., called the meeting to order at **9:02 A.M.** and Board Secretary Scott Wofford called the roll. Eight Board Members were present.

Present Members:

Mark Bronson, D.C.
Michael Henry, D.C.
Scott Wofford, D.C.
Nicholas Baucum, D.C.
Mindy Neal, D.C.
Debra White, D.C.
John Steinberg, Public Member
Ebony Todd, J.D., Public Member

Absent Member:

Gus Ramirez, Public Member

Board Staff 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
Lisa Agarwal, Office Manager
Shaquanda Banks, Compliance Assistant

Dr. Bronson announced that Mr. Ramirez would be unable to attend the meeting for health reasons and had requested an excusal from the meeting.

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Action Taken: WOFFORD **MOVED** and NEAL **SECONDED** to excuse Mr. Ramirez from the Board meeting. The Board **APPROVED** the motion unanimously.

A quorum was announced by Dr. Bronson with 8 members of the 9 person Board present.

2. Discussion and Approval of the Minutes for the Board Meeting Held on January 31, 2019:

Action Taken: NEAL **MOVED** and STEINBERG **SECONDED** to approve of the minutes from the January 31, 2019, Board Meeting. The Board **APPROVED** the motion unanimously.

3. President's Report:

Dr. Bronson offered brief remarks congratulating the Board's four newest members on their Senate confirmations and thanking staff for their service. He also reviewed some of the discussions at the most recent Federation of Chiropractic Licensing Boards (F.C.L.B.) Annual Congress and Business Meeting, including important emerging topics in the chiropractic field and resolutions considered by the Federation. Dr. Bronson also discussed the upcoming National Board of Chiropractic Examiners Part 4 Examinations and Committee Meetings and F.C.L.B. District 4 Meeting.

4. Staff Reports:

a. Executive Director: Mr. Fortner spoke on the following topics-

- Legislative Update: The Legislature's budget is in the process of being finalized and Staff will monitor the final budget to plan the Board's expenditures.
- Database Update: The Board terminated its contract with the previous vendor and is awaiting a full refund of its expenditures as promised. Staff is in the process of researching a new solution and potential vendors. Staff is also researching procurement of new laptops as the current machines are reaching the end of their effective life.
- Facilities Update: The bill to sell the Hobby Building passed both houses of the Legislature. Mr. Fortner anticipates that between 12 to 18 months from now, Staff's offices will be in a new location.
- Mr. Fortner also proposed that the August board meeting be moved to sometime in September due to lack of availability of conference rooms in the Hobby Building. It was agreed that Staff would work on scheduling the next board meeting for the second week of September.

b. Director of Licensing: Ms. Matthews spoke on the following topics-

- She compared the second quarter of Fiscal Year 2019 to Fiscal Year 2018 and presented to the Board statistical information regarding license renewals, active, inactive, probated, and suspended licenses, as well as continuing education applications.
- Ms. Matthews noted that the deadline for licensees initially licensed prior to September 1, 2004, to obtain a background check will be September 1, 2019. Licensees have been sent

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multiple notices of this deadline and 88% of those required to obtain a background check have done so.

- Licensing staff has issued 192 acupuncture permits since the new Board Rule 78.14 took effect on December 5, 2018.
- Staff has complied with Dr. Henry's request to include an F.A.Q. for the website concerning radiological technologist certification changes.
- At the January 31, 2019 board meeting, Dr. Bronson asked about projected changes in the number of licensees over the next couple of years. Ms. Matthews noted that the Board issues an average of 250-300 new licenses each year.

c. Operations Manager: Ms. Hertsenberg spoke on the following topics-

- For salaries and other expenditures through March 2019, the only area of concern is the Board's travel budget. However, the Board has other areas in its budget currently running a surplus that can be used to cover a deficit. Ms. Hertsenberg noted that it is normal for the Board to run a deficit on the travel budget at this time of year and that the travel budget will increase in the next biennium.

d. Director of Enforcement: Ms. Rodriguez spoke on the following topics-

- The Compliance Assistant position has been filled.
- At the time of her report, there are 182 active investigations, with 28 having recently been presented to the Enforcement Committee.
- The average number of days enforcement cases have been open is 141 days, well under the performance measure target of 250.

5. Committee Reports:

a. Rules Committee: Dr. Henry spoke on the following topics-

- He was pleased with the progress on updating the rules and stated that staff was doing a good job of making the rules more readable and easy to follow.

b. Licensing Committee: Mr. Steinberg had nothing to report.

c. Education Standards Committee: Dr. White spoke on the following topics-

- She noted that the committee had approved 4 Continuing Education (C.E.) classes.
- Dr. White explained that the committee's research showed that other similar sized jurisdictions require C.E. providers to include a disclaimer in their C.E. content that some of the material might be out of the scope of practice in their jurisdiction, and that they typically discourage out-of-scope C.E. content.
- Dr. White and Dr. Bronson feel that it would be a good idea for licensees to have access to C.E. content on out-of-scope topics in order to have a better understanding of when to refer a patient to another class of healthcare provider.

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d. Enforcement Committee: Dr. Baucum spoke on the following topics-

- Dr. Baucum and Mr. Burnett explained that it was likely that the Legislature would soon pass laws to end the authority of occupational licensing agencies to discipline licensees for defaults on student loans. Therefore, they believe that the Board should decline to discipline licensees in student loan default cases moving forward.
- Dr. Baucum described how the E.C. would like to handle expired license cases moving forward and explained that the E.C. wants to allow first-time expired licensees to get back in good standing simply by paying the late fee if they are less than 90 days delinquent on renewing.
- Finally, he proposed that staff post a F.A.Q. on the website suggesting that when licensees post online videos demonstrating chiropractic technique, they should include disclaimers that the techniques should only be attempted by licensed chiropractors.
- Dr. Bronson posed a question to the board members and staff as to when board members have an obligation to report conduct that they believe to be a violation of the Board's statutes or rules. Mr. Steinberg and Mr. Burnett explained that board members have a duty to report suspected wrongdoing but must avoid any appearance of harassing competitors and must allow staff to impartially conduct the investigation and disciplinary process. Board members who report suspected wrongdoing should also recuse themselves from voting on any future Board disciplinary actions.

6. Public Comments:

William Lawson, D.C. [Texas Chiropractic Association]:

- Dr. Lawson announced that he was present to provide TCA feedback on any agenda items as necessary.

7. Discussion on the Formulation of the Agency's Next Strategic Plan:

Mr. Fortner stated that he plans to create a timeline for formulating the strategic plan after the current legislative session ends. The plan will be due in late spring or early summer of 2020.

8. Discussion and Action on Requests to Sit for the Texas Jurisprudence Examination:

Ms. Matthews presented the following requests to the Board-

a. Sang Lee

Action Taken: HENRY MOVED and WOFFORD SECONDED to grant the applicant's request to take the Texas Jurisprudence Examination. The Board **APPROVED** the motion unanimously.

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b. Heidi Townsend

Action Taken: HENRY MOVED and NEAL SECONDED to grant the applicant's request to take the Texas Jurisprudence Examination. The Board **APPROVED** the motion unanimously.

c. Jeremy Eason

Action Taken: WOFFORD MOVED and TODD SECONDED to deny the applicant's request to take the Texas Jurisprudence Examination. The Board **APPROVED** the motion unanimously.

9. Discussion and Action on Proposed Cease and Desist Orders:

There were no proposed cease and desist orders for this meeting.

10. Discussion and Action on Proposed Default Orders:

There were no proposed default orders for this meeting.

11. Discussion and Action on Proposed Agreed Orders:

Mr. McLaughlin presented the following proposed order to the Board-

a. Mark Allen Dennis, License No. 11418, TBCE Case No. 2017-440

This item was tabled until the next meeting.

b. Gary Cagan Randall, License No. 12225, TBCE Case No. 2018-023

Action Taken: BAUCUM MOVED and WOFFORD SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

c. Patrick L. McCabe, License No. 12906, TBCE Case No. 2018-041

This item was tabled until the next meeting.

d. Robert Scott Small, License No. 13440, TBCE Case No. 2018-079

This item was tabled until the next meeting.

e. Kelly Don Clenney, License No. 7116, TBCE Case No. 2018-155

Action Taken: BAUCUM MOVED and NEAL SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

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f. Donovan L. Thomas, License No. 6919, TBCE Case No. 2018-164

Action Taken: HENRY MOVED and NEAL SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

g. Ryan N. Bass, License No. 10096, TBCE Case No. 2018-169

Action Taken: BAUCUM MOVED and HENRY SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

h. Steven John Kicinski, License No. 7245, TBCE Case No. 2019-004

Action Taken: BAUCUM MOVED and WOFFORD SECONDED to dismiss the case. The item was then tabled for later in the meeting.

i. Daxton T. Krugman, License No. 8577, TBCE Case No. 2019-077

Action Taken: HENRY MOVED and WOFFORD SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

12. Discussion and Action on Required Suspension of License for Conviction of Certain Offenses:

Mr. McLaughlin presented the following proposed order to the Board-

a. David T. Scott, License No. 8740, TBCE Case No. 2019-078

Action Taken: HENRY MOVED and STEINBERG SECONDED to approve the revocation of the license. The Board **APPROVED** the motion unanimously.

Action Taken: Dr. Bronson adjourned the meeting for a short break at **10:52 A.M.**

Action Taken: Dr. Bronson reconvened the meeting at **11:06 A.M.**

34. Discussion and Action on Requests to Expunge Disciplinary Records:

Mr. Burnett explained that the Board would vote to repeal the disciplinary records expunction rule later in the meeting, but recommended that the Board apply the rule as it was at the time of the meeting to the remaining requests on the meeting's agenda.

Mr. McLaughlin presented the following requests to the Board-

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a. Lanny Blair Brustein, License No. 5511, TBCE Case No. 101-087:

Action Taken: HENRY MOVED and WOFFORD SECONDED to expunge disciplinary records for the licensee. The Board **APPROVED** the motion unanimously.

b. Gilbert Lynn Danforth, License No. 7276, TBCE Case No. 102-235:

Action Taken: HENRY MOVED and WOFFORD SECONDED to expunge disciplinary records for the licensee. The Board **APPROVED** the motion unanimously.

c. Mike D. Maddox, License No. 4162, (Multiple Cases):

Action Taken: HENRY MOVED and BAUCUM SECONDED to deny the request to expunge disciplinary records for the licensee. The Board **APPROVED** the motion unanimously.

11. Discussion and Action on Proposed Agreed Orders:

h. Steven John Kicinski, License No. 7245, TBCE Case No. 2019-004

(After continued discussion, the Board returned to the original motion to dismiss the case made before the break.)

Action Taken: BAUCUM MOVED and WOFFORD SECONDED to dismiss the case. The Board voted by roll call-

Nay: Neal	Aye: Baucum
Todd	Wofford
Steinberg	Bronson
Henry	White

The motion **FAILED** as a tie.

Action Taken: HENRY MOVED and STEINBERG SECONDED to approve the agreed order. HENRY then **WITHDREW** the motion after further discussion.

Action Taken: WOFFORD MOVED and HENRY SECONDED to dismiss the case. The Board **APPROVED** the motion by a vote of 6 ayes to 1 nay with Mr. Steinberg abstaining.

Nay: Todd	Aye: Baucum
	Bronson
	Henry
	Neal
	White
	Wofford

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13. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §72.19:

Mr. Burnett explained that the rule needed to be updated to remove references to radiologic technologists and to remove the link to the fee chart and insert the chart directly into the body of the rule. He also explained that staff found a statutory requirement for renewal late fee amounts that needed to be reflected in the new rule. Ms. Hertsenberg explained the process for updating the fee amounts with the Comptroller's Office.

Action Taken: HENRY MOVED and STEINBERG SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §72.19 as discussed. The Board **APPROVED** the motion unanimously.

14. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §75.2:

Mr. Burnett explained that the rule needed to be updated to remove references to chiropractic facility registrations and to instead focus on when a chiropractor provides services at a location other than their primary place of business.

Action Taken: HENRY MOVED and STEINBERG SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §75.2 as discussed. The Board **APPROVED** the motion unanimously.

15. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §75.6:

Mr. Burnett began by explaining that there is often confusion among licensees about the requirements for displaying a copy of their chiropractic license in addition to the requirement to display information about filing complaints with the Board. This rulemaking action is intended to both resolve that confusion and clarify how to provide notice in circumstances where a licensee is providing services outside their primary place of business.

Action Taken: HENRY MOVED and STEINBERG SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §75.6 as discussed.

Dr. Bronson then recognized Larry Montgomery, D.C. to offer public comments on this agenda item. Dr. Montgomery asked how this proposed action would affect the provision of charity care. There was discussion among the Board members and General Counsel about how to draft the rule to avoid creating an undue burden on licensees providing charity or pro bono care.

The Board **APPROVED** the motion unanimously.

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16. Discussion and Action on Proposing a New Board Rule, 22 Texas Administrative Code §75.7, Mandatory Display of License:

Mr. Burnett explained that this proposed action would work in conjunction with the proposal in Agenda Item 15 to resolve the confusion on the requirement that licensees display a copy of their chiropractic license when providing care.

Action Taken: BRONSON **MOVED** and STEINBERG **SECONDED** to propose the new rule 22 Texas Administrative Code §75.7 as discussed.

Much discussion followed concerning how to draft the rule to clarify that licensees do not need to provide a copy of their license to patients but must make it available to patients if requested or prominently display it.

Action Taken: BRONSON **AMENDED** the motion, WOFFORD **SECONDED** the amendment, and the Board **APPROVED** the amended motion unanimously.

There was then discussion over how to coordinate the changes proposed in Agenda Item 15 with the proposed new rule in Agenda Item 16.

Action Taken: TODD **MOVED** and HENRY **SECONDED** to amend 22 Texas Administrative Code §75.6 to make it consistent with the proposed new rule, 22 Texas Administrative Code §75.7. The Board **APPROVED** the motion unanimously.

17. Discussion and Action on Adopting the Proposed Amendment of 22 Texas Administrative Code §78.14:

Mr. Burnett explained that the acupuncture rule needed some slight language clarification and recommended that the Board adopt the proposed amendment without any changes.

Action Taken: STEINBERG **MOVED** and WHITE **SECONDED** to adopt the amendment of 22 Texas Administrative Code §78.14 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

18. Discussion and Action on Adopting the Proposed Amendment of 22 Texas Administrative Code §77.4:

Mr. Burnett explained that the proposed amendment would specify additional situations where misleading statements to patients were prohibited and recommended that the Board adopt the proposed amendment without any changes.

Action Taken: WOFFORD **MOVED** and BAUCUM **SECONDED** to adopt the amendment of 22 Texas Administrative Code §77.4 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

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Mr. Burnett clarified that Rule 77.4 applies not only to advertisements but also instances of directly misleading a patient concerning their condition.

19. Discussion and Action on Adopting the Proposed Repeal and Replacement of 22 Texas Administrative Code §80.4:

Mr. Burnett explained that the Disciplinary Schedule of Sanctions needed to be updated and recommended that the Board adopt the proposed repeal and replacement with one non-substantive change made to add a legal citation.

Action Taken: WOFFORD **MOVED** and BAUCUM **SECONDED** to adopt the repeal and replacement of 22 Texas Administrative Code §80.4 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

20. Discussion and Action on Adopting Proposed New Board Rule 22 Texas Administrative Code §75.1, Unsafe and Unsanitary Conditions:

Mr. Burnett explained that due to a procedural error, the Board needed to withdraw the proposed new rule, 22 Texas Administrative Code §75.1, and replace it with a new proposed rule, 22 Texas Administrative Code §75.8.

Action Taken: HENRY **MOVED** and WOFFORD **SECONDED** to withdraw the proposed new rule. The Board **APPROVED** the motion unanimously.

35. Discussion and Action on Proposing a New Board Rule, 22 Texas Administrative Code §75.8, Unsafe and Unsanitary Conditions:

Action Taken: HENRY **MOVED** and TODD **SECONDED** to propose the new rule 22 Texas Administrative Code §75.8 as discussed. The Board **APPROVED** the motion unanimously.

21. Discussion and Action on Proposing the Repeal of 22 Texas Administrative Code §79.3:

Staff recommended that the Board propose the repeal of the disciplinary record expunction rule because it lacked the statutory authority to have such a rule. The Board instructed staff to cease accepting requests for expunction of disciplinary records.

Action Taken: HENRY **MOVED** and WOFFORD **SECONDED** to propose the repeal of 22 Texas Administrative Code §79.3 as discussed. The Board **APPROVED** the motion unanimously.

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22. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §80.1:

Mr. Burnett explained that this rule regarding responses to complaints needed to be updated to remove references to chiropractic facilities. There was also discussion as to what language needed to be included in the new rule regarding the type of mail used when sending notices of complaints. The Board agreed that the proposed repeal and replacement could be amended if needed to ensure that the correct notice requirement is included in the rule.

Action Taken: NEAL MOVED and STEINBERG SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §80.1 as discussed. The Board **APPROVED** the motion unanimously.

23. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §80.2:

Mr. Burnett explained that this rule regarding complaint procedures needed to be updated to remove references to radiological technologists and facility registrations. The link to the complaint form also needed to be removed so the complaint form can be updated without requiring rule making procedures. Finally, the temporary license suspension procedures would be separated into a different rule.

Action Taken: HENRY MOVED and WOFFORD SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §80.2 as discussed. The Board **APPROVED** the motion unanimously.

Dr. Wofford left the room at this time.

24. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §80.3:

Mr. Burnett explained that this rule needed to be replaced with a new rule containing new disciplinary guidelines for the reporting of cases to the National Practitioner Databank.

Action Taken: HENRY MOVED and STEINBERG SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §80.3 as discussed. The Board **APPROVED** the motion unanimously.

25. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §80.5:

Dr. Wofford re-entered the room at 12:42 P.M.

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Mr. Burnett explained that this rule needed to be updated to create new guidelines for how the Board would utilize standard of care reviewers. Staff recommended that the Board propose the repeal and replacement of the rule with 2 non-substantive changes to the rule text.

Action Taken: HENRY **MOVED** and WHITE **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §80.5 as discussed. The Board **APPROVED** the motion unanimously.

26. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §80.6:

Mr. Burnett recommended that the Board propose the repeal and replacement of the rule regarding undercover investigations.

Action Taken: HENRY **MOVED** and WOFFORD **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §80.6 as discussed. The Board **APPROVED** the motion unanimously.

27. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §80.7:

Mr. Burnett explained that the replacement rule would delegate the authority to issue cease and desist orders directly to the Enforcement Committee to avoid unnecessary delay in cases where immediate action is needed against unlicensed individuals.

Action Taken: WOFFORD **MOVED** and BAUCUM **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §80.7 as discussed. The Board **APPROVED** the motion unanimously.

28. Discussion and Action on Proposing a New Board Rule, 22 Texas Administrative Code §80.9, Temporary License Suspension:

Dr. Neal left the room at 12:53 P.M.

Mr. Burnett explained that a new rule should be created setting out the procedures for temporary emergency suspensions of licensees. He also explained how this proposed rule conformed to the statutory requirements for temporary emergency license suspensions.

Dr. Neal re-entered the room at 12:57 P.M.

Action Taken: HENRY **MOVED** and STEINBERG **SECONDED** to propose the new rule 22 Texas Administrative Code §80.9 as discussed. The Board **APPROVED** the motion unanimously.

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29. Discussion and Action on Adopting a New Ethics Policy for the Agency as a Standing Board Order Pursuant to Texas Government Code §572.051(c):

Staff recommended that the Board adopt the proposed new ethics policy as a standing board order.

Action Taken: STEINBERG MOVED and WOFFORD SECONDED to adopt a new policy as discussed. The Board **APPROVED** the motion unanimously.

30. Closed Session:

Action Taken: The Board entered a closed session pursuant to Texas Government Code §551.071 to receive legal advice relating to ethics training from Mr. Fortner, Mr. Burnett, and Mr. McLaughlin from **12:59 P.M.** until **1:47 P.M.** All others present left the meeting room.

31. Closed Session:

Action Taken: The Board continued in a closed session pursuant to Texas Government Code §551.071 to receive updates from Mr. Fortner, Mr. Burnett, and Mr. McLaughlin concerning litigation from **1:47 P.M.** until **1:51 P.M.**

32. Discussion on Any Matters Discussed in Closed Session:

Action Taken: Dr. Bronson reconvened the open meeting at **1:52 P.M.**

Nothing from the Closed Session was discussed.

33. Requests from Board Members for Future Agenda Items:

There was some discussion on future meeting room locations.

36. Adjournment:

Action Taken: HENRY MOVED and WOFFORD SECONDED to adjourn the meeting at **1:54 P.M.** The Board **APPROVED** the motion unanimously.

(Affirmation and Signature Follow)

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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 January 31, 2019, were **APPROVED** by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held on May 16, 2019.



7/18/2019

Patrick Fortner
Executive Director
Texas Board of Chiropractic Examiners

Date