

Texas Board of Chiropractic Examiners

Thursday, September 12, 2019

BOARD MEETING: 9:00 A.M. – Final Adjournment at 2:26 P.M.

William P. Hobby Building
333 Guadalupe St., Tower 2, Room 225
Austin, Texas 78701

BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners (Board) met on September 12, 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 **9:00 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.
Gus Ramirez, Public Member
Ebony Todd, J.D., Public Member

Absent Member:

John Steinberg, 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
James Elliott, Field Investigator, Dallas
Joseph McLaughlin, Staff Attorney
Lisa Agarwal, Office Manager

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

Texas Board of Chiropractic Examiners

2. Discussion and Approval of the Minutes for the Board Meeting Held on May 16, 2019:

Action Taken: WOFFORD MOVED and BAUCUM SECONDED to approve of the minutes from the May 16, 2019, Board Meeting. The Board **APPROVED** the motion unanimously.

3. President's Report:

Dr. Bronson informed the Board members that Mr. Steinberg plans to tender his resignation from the Board and commended Mr. Steinberg for all his years of service to the Board. Dr. Bronson offered brief remarks congratulating Mr. Fortner on his selection to the Governor's Executive Development Program. He also reviewed some of the activities since the last Board meeting. These included the proctoring of the Spring National Board of Chiropractic Examiners (N.B.C.E.) Part 4 Exam on May 17, 18, and 19, a Part 4 Test Committee meeting on June 21 and 22, a Stakeholder Meeting on July 30 for input on possible rulemaking regarding patient recordkeeping requirements, and a meeting with the Solicitor General's Office regarding litigation. Discussion of upcoming activities included the proctoring of the Fall N.B.C.E. Part 4 Exam, the Federation of Chiropractic Licensing Boards (F.C.L.B.) Districts 1 and 4 meetings on October 3-6, and the 2019 Government Law and Liability Conference on December 12 and 13.

4. Staff Reports:

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

- Mr. Fortner thanked the Board for its support in allowing Staff to attend various training programs provided by the Governor's Office and provided a brief overview of those training programs. Mr. Fortner also noted that Ms. Rodriguez is now certified as a medical compliance specialist.
- Infrastructure Update: The agency invested in 8-10 new computers for staff as its old computers had reached the end of their functional life.
- Database Update: Staff has completed its statement of work and submitted it to the Department of Information Resources.

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

- She compared the third quarters 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 ended on September 1, 2019. Licensees have been sent multiple notices of this deadline and 90% of those required to obtain a background check have done so. Licensees who have failed to meet this requirement will have their next renewal blocked.
- Licensing staff has issued 354 acupuncture permits since the new Board Rule 78.14 took effect on December 5, 2018.

Texas Board of Chiropractic Examiners

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

- For salaries and other expenditures through July 31 2019, the Board was well within its budget and finished Fiscal Year 2019 with a surplus, which went towards purchasing the new computers for Staff.

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

- The Houston Field Investigator position has been filled as of September 3, 2019.
- There is a new opening for the Compliance Assistant position, which Ms. Rodriguez hopes to fill with an Investigator I to assist with lengthy investigations
- At the time of her report, there are 168 open cases and the average length of time to close cases is 233 days, which is under the performance measure target of 250.

5. Committee Reports:

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

- The Rules Committee is continuing its efforts to clean up the language of the rules and make them more readable. He hopes the process will be completed by May-June of 2020.

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 fully approved 2 Continuing Education (C.E.) classes.
- The Education Standards Committee is continuing to research other states' continuing education procedures and requirements.

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

- The use of telehealth services is becoming a growing topic of interest among the profession and some rulemaking action might be necessary in the future.
- There are increasing reports of chiropractors who are billing for services rendered using doctor of osteopathy codes rather than doctor of chiropractic codes. Dr. Baucum believes much of this is stemming from poor advice from C.E. providers and that increased oversight might be necessary. Mr. Burnett added the rules on C.E. will be up for consideration at the February 2020 Board meeting.
- There are also reports and concerns of ransomware infecting cloud computing software that is increasingly being used to maintain patient records. Staff might consider addressing this in a F.A.Q. on the Board's website.
- The E.C. is considering the use of non-D.C. experts to help provide reports and testimony in more complicated enforcement cases.
- The E.C. wants to consider bringing back informal conferences (I.C.) for category I violations only. He proposed providing only one opportunity for a respondent to attend an IC and stressed that there is a need for I.C.'s to be used judiciously so that the

Texas Board of Chiropractic Examiners

enforcement process is not needlessly slowed down. Nevertheless, there are certain situations where the I.C.'s can help facilitate settlement.

51. Closed Session:

Action Taken: The Board entered a closed session pursuant to Texas Government Code §551.071 to receive updates from legal counsel concerning litigation from **9:45 A.M.** until **10:26 A.M.** All others present left the meeting room.

52. Closed Session:

Action Taken: The Board continued in closed session pursuant to Texas Government Code §551.074 to consider the compensation level of the Executive Director from **10:27 A.M.** until **10:41 A.M.**

53. Discussion on Any Matters Discussed in Closed Session Under Agenda Item 51:

Action Taken: Dr. Bronson reconvened the open meeting at **10:52 A.M.**

Nothing from that Closed Session was discussed.

54. Discussion and Action on the Compensation Level of the Executive Director as Discussed in Closed Session under Agenda Item 52:

Action Taken: **HENRY MOVED** and **WOFFORD SECONDED** to approve the cap that was set by the Legislature of \$100,830 a year for Mr. Fortner's salary and that Mr. Fortner's salary be raised up to the cap. The Board **APPROVED** the motion unanimously.

Mr. Fortner announced that Staff will be implementing a work-from-home policy in the coming weeks. Dr. Neal asked about the status of Staff's anticipated move from the Hobby Building due to the impending sale of Hobby. Mr. Fortner explained that the Legislative Bill to sell Hobby had passed but that no timetable for a move had yet been provided. Staff has not yet received an official notice of where they will be moving.

6. Discussion on the Relevancy of Out of Scope Continuing Education Courses for Licensees:

Dr. White and Dr. Bronson began by emphasizing that, as portal-of-entry doctors, chiropractors need to know about issues outside of their scope of practice to better care for their patients and to be able to refer them to other doctors as appropriate. Mr. Burnett asked how the Board members anticipate this policy impacting the Board's C.E. rules. Dr. Henry did not anticipate much change to the rules themselves but that C.E. Committee would be taking a broader look at what courses to approve for credit. The C.E. Committee agreed that they would want C.E. courses to focus on healthcare related subjects, including coding and billing subjects. Dr. Bronson announced that he

Texas Board of Chiropractic Examiners

wants the C.E. Committee and Staff to investigate possible approval of C.E. courses offered and approved by other state agencies. Dr. Bronson observed that the limited number of potential sponsors impacts the availability of C.E.

7. Discussion on the Use of the Term "Dr." by Retired Former Licensees:

Staff and the Board members agreed that the context of the use of the term is important and that the use of the term as an honorific does not necessarily implicate Texas Occupations Code Chapter 201. However, when used in a healthcare setting or to convey healthcare expertise, it should be clarified whether someone is actively licensed or not. Dr. Henry noted that it would be helpful for there to be something included in a rule that allows for retired former licensees to refer to themselves as a "Dr., ret." There was discussion on how exactly a rule could be drafted to allow for this.

8. Discussion on the Use of Video Demonstrations of Chiropractic Procedures by Licensees:

Dr. Bronson asked whether the posting of these videos then leads to people who are not licensed trying to copy the techniques and then posing as doctors. Dr. Baucum observed that freedom of speech concerns would be implicated in any attempt to regulate these videos. Dr. Wofford and Dr. White also noted that there were potential benefits to allowing increased public awareness of what chiropractors do and to give patients a better idea of what they can expect. There was a general consensus that it would be best to for licensees who post video demonstrations to the internet to include disclaimers to try and insulate themselves from liability.

Mr. Matthew Mix, President of the Chiropractic Society of Texas, explained that it was the Society's position that chiropractors must be diligent about what is posted to Youtube in order to help protect the profession's image and reputation.

The Board members discussed concerns about the use of the videos in a profane manner to generate revenue for the licensees.

9. Discussion on the Results of the July 30, 2019, Stakeholder Meeting Regarding Patient Records:

Dr. Henry began by explaining that everyone involved was mindful of the overarching goal for the rules regarding patient recordkeeping, which is to ensure patient and public safety. He and Dr. Bronson agreed that the meeting was very productive and allowed the Rules Committee to create a good rough draft of some rules to move forward with at a later date.

Texas Board of Chiropractic Examiners

10. Public Comments:

Hollen Meyer, D.C. [Texas Chiropractic Association]:

- Dr. Meyer and T.C.A. agreed with Dr. White and Dr. Bronson regarding out of scope C.E. content and suggested adding a requirement that C.E. applications state a purpose or specify that the content is out of scope. T.C.A. also supports allowing retired licensees to continue to use the term “Dr.” T.C.A. supports the Board’s position that posting videos of chiropractic demonstrations online should include disclaimers and that chiropractors need to be aware of any potential civil liability. T.C.A also offered several recommendations for how to draft potential new rules regarding patient record keeping.

Travis Prothro, D.C. [In his personal capacity]

- Regarding the use of the term doctor by retired licensees, Dr. Prothro offered the analogy of the use of the term “veteran” among all former military personnel, whether active duty, reserve, or discharged. He supports making a distinction between the use of the term “doctor” as an honorific and the use of “doctor of chiropractic” as an active credential.

Matthew Mix, D.C. [Chiropractic Society of Texas]

- Regarding out of scope C.E. content, the Society believes in a stricter definition of the scope of chiropractic and feels that C.E. credit specifically for chiropractic should not be awarded for courses that teach non-chiropractic technique. He recommended that the Board might delegate some of its C.E. oversight responsibility to the state associations and chiropractic colleges.

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

Ms. Matthews presented the following requests to the Board-

a. Jongchan Lim

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

b. Melva Mitchell-Gray

NOTE: At this time (12:00 P.M.), Dr. Baucum had to leave the meeting due to travel requirements to attend a N.B.C.E. meeting in Greely, Colorado.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to grant the applicant’s request to take the Texas Jurisprudence Examination with the stipulation that she not be allowed to bill insurance for services rendered until January 1, 2025. The Board **APPROVED** the motion unanimously.

Texas Board of Chiropractic Examiners

c. Angel Rivas

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

d. Brett Greenberg

Action Taken: RAMIREZ **MOVED** and HENRY **SECONDED** to grant the applicant's request to take the Texas Jurisprudence Examination. Dr. Neal abstained from voting, while the remaining six Board members **APPROVED** the motion unanimously.

12. Discussion and Action on Proposed Final Decision (PFD) orders:

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

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

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

14. Discussion and Action on Proposed Default Orders:

There were no proposed default orders for this meeting.

15. Discussion and Action on Proposed Agreed Orders:

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

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

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

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

This item was tabled until the next meeting.

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

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

Texas Board of Chiropractic Examiners

d. Jaime R. Morales, License No. 6462, TBCE Case No. 2018-156

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

e. Dwane Davis, License No. 13115, TBCE Case No. 2018-162

This item was tabled until the next meeting.

f. Richard Brian Shaffer, License No. 7885, TBCE Case No. 2018-170

This item was tabled until the next meeting.

16. 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 Gosalvez III, License No. 12099, TBCE Case No. 2019-252

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

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

Mr. McLaughlin explained that this final record expunction request was made too late to be included on the agenda for the May 2019 Board meeting but was actually made before the Board voted to repeal the record expunction rule at that same meeting. Therefore, the Staff recommended that, in the interests of fairness, the Board should consider this request.

Mr. McLaughlin presented the following request to the Board-

a. Shukura B. Leo, License No. 12087, TBCE Case No. 2012-179

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

17. Discussion and Action on Adopting the Proposed Repeal and Replacement of 22 Texas Administrative Code §72.19:

Mr. Burnett explained that no public comments were received on the proposed changes to this rule and that the replaced rule's effective date would be November 1.

Texas Board of Chiropractic Examiners

Action Taken: WOFFORD MOVED and WHITE SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.19 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

18. Discussion and Action on Adopting the Proposed Repeal and Replacement of 22 Texas Administrative Code §75.2:

Mr. Burnett explained that no public comments were received on the proposed changes to this rule and 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 NEAL SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §75.2 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

19. Discussion and Action on Adopting the Proposed Repeal and Replacement of 22 Texas Administrative Code §75.6:

Mr. Burnett explained that no public comments were received on the proposed changes to this rule and that this rulemaking action is an update to the mandatory notice to the public rule.

Action Taken: WHITE MOVED and HENRY SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §75.6 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

Dr. Bronson asked whether there was any stakeholder input on this rulemaking action and Dr. Henry asked whether any public comment was received on any proposed rules being considered for adoption at this meeting and Mr. Burnett replied to both that there was not.

20. Discussion and Action on Adopting Proposed New Board Rule 22 Texas Administrative Code §75.7, Mandatory Display of License:

Mr. Burnett explained that this action was part of the update to the rules regarding displaying a license and mandatory public disclosures.

Action Taken: HENRY MOVED and WOFFORD SECONDED to adopt the new rule 22 Texas Administrative Code §75.7 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

Texas Board of Chiropractic Examiners

21. Discussion and Action on Adopting Proposed New Board Rule 22 Texas Administrative Code §75.8, Unsafe and Unsanitary Conditions:

Mr. Burnett explained that no public comments were received on the proposed changes to this rule.

Action Taken: WOFFORD **MOVED** and HENRY **SECONDED** to adopt the new rule 22 Texas Administrative Code §75.8 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

22. Discussion and Action on Adopting the Proposed Repeal of 22 Texas Administrative Code §79.3:

Mr. Burnett explained that no public comments were received on the proposed changes to this rule and that there would be no more expunction requests for the Board to consider after this action.

Action Taken: NEAL **MOVED** and RAMIREZ **SECONDED** to adopt the repeal of 22 Texas Administrative Code §79.3 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

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

Mr. Burnett explained that no public comments were received on the proposed changes to this rule and that and this was an update to the existing rule.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to adopt the repeal and replacement of 22 Texas Administrative Code §80.1 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

24. Discussion and Action on Adopting the Proposed Repeal and Replacement of 22 Texas Administrative Code §80.2:

Mr. Burnett recommended that the Board table this agenda item for further discussion at a later date as the E.C. was requesting that I.C.'s be brought back in some fashion. The Board agreed and this item was tabled until the next meeting.

25. Discussion and Action on Adopting the Proposed Repeal and Replacement of 22 Texas Administrative Code §80.3:

Mr. Burnett explained that no public comments were received on the proposed changes to this rule and that the replacement language for this rule will contain language relating to reporting of

Texas Board of Chiropractic Examiners

disciplinary actions by the Board to clarify that disciplinary actions taken for administrative violations will not be reported to national databases.

Action Taken: WOFFORD MOVED and RAMIREZ SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §80.3 as published in the Texas Register. Ms. Todd asked a question about whether the proposed language might cause a licensee to inadvertently abandon patients during a license suspension. Much discussion followed as to how the language could be amended to avoid confusion. WOFFORD then **WITHDREW** the motion after further discussion.

Action Taken: TODD MOVED and HENRY SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §80.3 as discussed with a non-substantive change to reflect that communications are permitted to ensure continuation of care. The Board **APPROVED** the motion unanimously.

26. Discussion and Action on Adopting the Proposed Repeal and Replacement of 22 Texas Administrative Code §80.5:

Mr. Burnett explained that the purpose of this action was to clarify the language of this rule and that no public comments were received on the proposal.

Action Taken: HENRY MOVED and WOFFORD SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §80.5 as published in the Texas Register with a non-substantive change to allow active licensees or others with appropriate professional credentials to serve as expert witnesses. The Board **APPROVED** the motion unanimously.

27. Discussion and Action on Adopting the Proposed Repeal and Replacement of 22 Texas Administrative Code §80.6:

Mr. Burnett explained that the purpose of this action was to clarify the language of this rule and that no public comments were received on the proposal.

Action Taken: TODD MOVED and HENRY SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §80.6 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

28. Discussion and Action on Adopting the Proposed Repeal and Replacement of 22 Texas Administrative Code §80.7:

Mr. Burnett explained that the purpose of this action was to clarify the language of this rule and that no public comments were received on the proposal. He also noted that this new language will clarify the authority of the Enforcement Committee to issue cease and desist orders on behalf of the Board in a more expeditious manner.

Texas Board of Chiropractic Examiners

Action Taken: WOFFORD MOVED and TODD SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §80.7 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

29. Discussion and Action on Adopting Proposed New Board Rule 22 Texas Administrative Code §80.9:

Mr. Burnett explained that the purpose of this rulemaking action was to transfer the language regarding temporary license suspensions into a new rule to better organize the rules for readability, organization, and ease of access. This action will also clarify that the E.C. is delegating the authority to sign these orders to the Executive Director and that the E.C. can dissolve these suspensions at any time or automatically after 60 days.

Action Taken: WOFFORD MOVED and NEAL SECONDED to adopt the new rule 22 Texas Administrative Code §80.9 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

Action Taken: Dr. Bronson adjourned the meeting for a short break at **12:50 P.M.**

Action Taken: Dr. Bronson reconvened the meeting at **12:58 P.M.**

30. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §71.1:

Mr. Burnett began by explaining the progress of the rule revision project and how he planned for it to proceed. He then explained that this action would replace the definitions in the current 71.1 with a re-write of the petition for adoption of rules in 71.2.

Action Taken: HENRY MOVED and WOFFORD SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §71.1 as discussed. The Board **APPROVED** the motion unanimously.

31. Discussion and Action on Proposing the Repeal of 22 Texas Administrative Code §71.2:

Mr. Burnett explained that this action was necessary because of the move of 71.2 to 71.1 as previously discussed.

Action Taken: NEAL MOVED and WOFFORD SECONDED to propose the repeal of 22 Texas Administrative Code §71.2 as discussed. The Board **APPROVED** the motion unanimously.

Texas Board of Chiropractic Examiners

32. Discussion and Action on Proposing the Repeal of 22 Texas Administrative Code §72.1:

Mr. Burnett explained this action was a repeal of superfluous definitions from Chapter 72.

Action Taken: HENRY MOVED and WOFFORD SECONDED to propose the repeal of 22 Texas Administrative Code §72.1 as discussed. The Board **APPROVED** the motion unanimously.

33. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §72.10:

Mr. Burnett explained that the process for appealing a denied application needed to be moved from the enforcement chapters to the licensing chapter and that the language needed to be cleaned up.

Action Taken: NEAL MOVED and RAMIREZ SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §72.10 as discussed. The Board **APPROVED** the motion unanimously.

34. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §72.12:

Mr. Burnett explained that this action was to clarify the rule's language and make it easier to read and follow.

Action Taken: WOFFORD MOVED and RAMIREZ SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §72.12 as discussed. The Board **APPROVED** the motion unanimously.

35. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §75.1:

Mr. Burnett explained that this action was to clarify the rule's language and make it easier to read and understand.

Action Taken: HENRY MOVED and NEAL SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §75.1 as discussed. The Board **APPROVED** the motion unanimously.

Texas Board of Chiropractic Examiners

36. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §75.3:

Mr. Burnett explained that this action was to clarify the rule's language and make it easier to read and understand. Some of the changes would remove the definitions and incorporate the definition of fraud used in the penal code.

Action Taken: HENRY MOVED and WOFFORD SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §75.3 as discussed. The Board **APPROVED** the motion unanimously.

37. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §77.1:

Mr. Burnett explained that this action will repeal the chapter 77.1 definitions and replace them with the advertising and public communications language in 77.2 and then leave the telemarketing provisions in the current 77.2 where they are. Dr. Bronson and Dr. Henry discussed the organization of the language in the proposal to remove superfluous language. Dr. Bronson led discussion on how to write the proposed language regarding use of the terms "Dr." and "D.C." There was much discussion on potentially requiring licensees to specify what jurisdiction they are licensed in and more discussion on using "Dr...ret." Regarding the use of disclaimers in chiropractic demonstration videos posted to the internet, Dr. Henry felt that a requirement to include disclaimers would be unenforceable. Mr. Burnett suggested a disclaimer requirement might be included as part of a standalone rule. Therefore, Dr. Henry suggested removing the subsection addressing disclaimers and then proposing the remaining language as discussed.

Action Taken: TODD MOVED and WOFFORD SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §77.1 as discussed. The Board **APPROVED** the motion unanimously.

38. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §77.2:

Mr. Burnett explained as previously discussed that this action would create a standalone telemarketing rule.

Action Taken: TODD MOVED and NEAL SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §77.2 as discussed. The Board **APPROVED** the motion unanimously.

Texas Board of Chiropractic Examiners

39. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §77.3:

Mr. Burnett explained that this action is a rewrite of the existing rule.

Action Taken: HENRY MOVED and WOFFORD SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §77.3 as discussed. The Board **APPROVED** the motion unanimously.

40. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §78.2:

Mr. Burnett explained that this action would specify some additional categories of substances that chiropractors are not allowed to prescribe. Dr. Henry added that this rule required some additional specification to be absolutely clear what areas are outside the scope of chiropractic.

Action Taken: HENRY MOVED and TODD SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §78.2 as discussed. The Board **APPROVED** the motion unanimously.

41. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §78.3:

Mr. Burnett explained that the purpose of this action and the proposed new rule 78.4 were to split up the delegation provisions into general delegations of responsibility and delegations to students and recent graduates. There was also discussion on creating a separate rule for delegating the administration of x-ray imaging.

Action Taken: HENRY MOVED and WOFFORD SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §78.3 as discussed. The Board **APPROVED** the motion unanimously.

42. Discussion and Action on Proposing a New Board Rule, 22 Texas Administrative Code §78.4, Delegation to Chiropractic Students and Recent Graduates:

Mr. Burnett explained that the Governor's Office recommended some minor changes to this rule that he applied to the draft proposal.

Action Taken: TODD MOVED and RAMIREZ SECONDED to propose the new rule 22 Texas Administrative Code §78.4 as discussed. The Board **APPROVED** the motion unanimously.

Texas Board of Chiropractic Examiners

43. Discussion and Action on Proposing the Repeal of 22 Texas Administrative Code §78.5:

Mr. Burnett explained that the changes to Chapter 75 rendered this rule unnecessary.

Action Taken: TODD MOVED and HENRY SECONDED to propose the repeal of 22 Texas Administrative Code §78.5 as discussed. The Board **APPROVED** the motion unanimously.

44. Discussion and Action on Proposing a New Board Rule, 22 Texas Administrative Code §78.10, Questions about Scope of Practice:

Mr. Burnett explained that this rule is a response to an increase in requests for clarity on the scope of practice from licensees. Mr. Burnett explained that the rule would make it clear that any response to such a question is an informal response from the Board that does not constitute a formal Board opinion or position with any binding legal authority.

Action Taken: HENRY MOVED and TODD SECONDED to propose the new rule 22 Texas Administrative Code §78.10 as discussed. The Board **APPROVED** the motion unanimously.

45. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §79.2:

Mr. Burnett explained that the Governor's Office recommended some minor changes to this rule that he applied to the draft proposal.

Action Taken: TODD MOVED and NEAL SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §79.2 as discussed. The Board **APPROVED** the motion unanimously.

46. Discussion and Action on Proposing the Repeal and Replacement of 22 Texas Administrative Code §79.4:

Mr. Burnett explained that this action was to clarify the rule's language and make it easier to read and understand. He also explained that the action would change the rule's standard from probable cause that the licensee is impaired to reasonable cause. Ms. Todd noted that a provision regarding age of a licensee needed to be removed.

Action Taken: TODD MOVED and WHITE SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §79.4 as discussed. The Board **APPROVED** the motion unanimously.

Texas Board of Chiropractic Examiners

47. Discussion and Action on Proposing a New Board Rule, 22 Texas Administrative Code §80.10, Time Limits for Filing Complaints:

Mr. Burnett explained that the Board needed a rule that would mirror the time limit for patient record keeping.

Action Taken: WOFFORD **MOVED** and RAMIREZ **SECONDED** to propose the new rule 22 Texas Administrative Code §80.10 as discussed. The Board **APPROVED** the motion unanimously.

48. Discussion and Action on Proposing the Repeal of 22 Texas Administrative Code §81.1:

Mr. Burnett explained this action was a repeal of superfluous definitions from Chapter 81.

Action Taken: TODD **MOVED** and NEAL **SECONDED** to propose the repeal of 22 Texas Administrative Code §81.1 as discussed. The Board **APPROVED** the motion unanimously.

49. Discussion and Action on Proposing the Repeal of 22 Texas Administrative Code §81.3:

Mr. Burnett explained that this was a repeal of the license application denial rule that was being moved to the licensing chapter.

Action Taken: HENRY **MOVED** and RAMIREZ **SECONDED** to propose the repeal of 22 Texas Administrative Code §81.3 as discussed. The Board **APPROVED** the motion unanimously.

50. Discussion and Action on Proposing the Repeal of 22 Texas Administrative Code §81.11:

Mr. Burnett explained that this action was a repeal of superfluous provisions that are already included in the Administrative Procedures Act.

Action Taken: RAMIREZ **MOVED** and WOFFORD **SECONDED** to propose the repeal of 22 Texas Administrative Code §81.11 as discussed. The Board **APPROVED** the motion unanimously.

Dr. White asked a question regarding what aspects of the Board's litigation that Board members could discuss with licensees and other members of the public. Mr. Burnett responded that doing so would implicate a waiver of the Board's attorney-client privilege and explained that no Board member should do so individually.

Texas Board of Chiropractic Examiners

Mr. Fortner recommended that the Board cancel its November meeting and schedule the next meeting for February 2020.

56. Requests from Board Members for Future Agenda Items:

There were no requests for future agenda items.

Dr. Bronson thanked all present for their endurance and commitment at such a long meeting.

57. Adjournment:

Action Taken: Dr. Bronson adjourned the meeting at **2:26 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 date. The minutes from the Board Meeting held on May 16, 2019, were **APPROVED** by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held on September 12, 2019.



2/7/2020

Patrick Fortner
Executive Director
Texas Board of Chiropractic Examiners

Date