



Texas Board of Chiropractic Examiners

Thursday, May 21, 2020

BOARD MEETING: 9:03 A.M. – Final Adjournment at 2:00 P.M.

William P. Hobby Building
333 Guadalupe St., Suite 3-825
Austin, Texas 78701

*****NOTICE: This Board meeting was conducted electronically on the Internet via video conference. *****

UNOFFICIAL BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners (Board) met on May 21, 2020, 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 and roll call:

Action Taken: Board President Mark Bronson, D.C., called the meeting to order at **9:03 A.M.** Dr. Bronson called the roll.

Present Members:

Dr. Nicholas Baucum
Dr. Mindy Neal
Dr. Michael Henry
Ms. Ebony Todd, J.D.
Dr. Debra White
Dr. Scott Wofford
Mr. Brandon Allen (arrived late due to technical issues)
Mr. Gus Ramirez (arrived late due to technical issues)

Absent Members:

none

Board Staff Present:

Patrick Fortner, Executive Director
Christopher Burnett, General Counsel
Jennifer Hertsenberg, Director of Operations



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Sarah Matthews, Director of Licensing
Norma Rodriguez, Director of Enforcement
James Elliott, Field Investigator, Dallas
Joseph McLaughlin, Staff Attorney
Andres Orantes, Compliance Assistant/Investigator

7 out of 9 Board Members are present and a quorum was announced. Mr. Fortner announced that due to technical error, Mr. Ramirez was an attendee of the meeting but not a panelist, and Dr. Bronson decided to wait until staff could make the technical correction. In the meantime, Dr. Bronson skipped Agenda Item 2 and moved to Agenda Item No. 3.

3. President's Report:

Dr. Bronson acknowledged everyone's attendance and thanked them for their flexibility and commitment. Dr. Bronson requested that any Board Member needing to step out of the meeting allow him to announce that so he could note a quorum was still present.

Dr. Bronson thanked the licensee community for complying with the Board's emergency directives during the Covid-19 crisis. He shared a timeline of the events of the crisis and the Board's response since January 2020. This included announcements made by both the Board and federal and state government.

Dr. Bronson then announced the most recent activities of the Board. The April stakeholder meeting regarding the use of stem cells in chiropractic was postponed indefinitely until it can be safely rescheduled. He also noted that staff is continuing with the State Auditor's Office process audit. He announced that the Texas Health and Human Services Commission's required human trafficking training is now live and accessible through their website. On April 22-25, the Federation of Chiropractic Licensing Board's annual education conference was canceled. Dr. Bronson's appointment to the finance committee remains intact. Dr. Bronson's nerves proposal was referred for further consideration at the next annual meeting in 2021. Dr. Bronson attended the National Board of Chiropractic Examiners' annual business conference. The May 2020 NBCE Part 4 Exam has been rescheduled for July 10-12 at Parker University with Dr. Bronson as chief examiner and with Dr. Baucum and Dr. White serving as examiners.

Dr. Bronson then announced future events. The NBCE Exam Committee is scheduled to meet June 4, 2020, in Greeley, CO. The fall Part 4 Exam is scheduled for November 13-15.

NOTE: At this time, Mr. Ramirez was able to enter the meeting as a panelist and was counted present by Dr. Bronson. There were now 8 Board Members present.

4. Executive Director's Report:

Mr. Fortner discussed staff's work since mid-March in regards to the Covid-19 pandemic. At least one person has been present in the office every business day, with up to 5 persons present on any given day. Appropriate precautions have been taken to follow social distancing and mask guidelines. Mr. Fortner noted that continuing education and enforcement functions have been continuing as needed with predictable issues such as virtual conferences being necessary.

Mr. Fortner also announced that 5% budget cuts were announced by the state's leadership for the coming fiscal year. Mr. Fortner announced that the cut for the Board would be roughly \$44,000. Mr. Fortner felt that the agency was actually in a good position to weather this cut because the agency already had unused money available for a fulltime position.

NOTE: Ms. Todd pointed out that Mr. Allen was now present. Dr. Bronson noted the time was 9:29 A.M. Dr. Bronson introduced Mr. Allen and he was counted present by Dr. Bronson. All 9 Board members were now present. Dr. Bronson then moved back to Agenda Item No. 2.

2. Discussion and approval of the minutes for the board meeting held on February 20, 2020:

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to approve the minutes from the February 20, 2020, Board Meeting. The Board **APPROVED** the motion unanimously.

Dr. Bronson then moved to Agenda Item No. 5.

5. Discussion and possible action on the Texas Board of Chiropractic Examiners Strategic Plan 2021-2025:

Dr. Bronson recognized Mr. Fortner. Mr. Fortner explained that strategic plans are opportunities for agencies to plan future changes or needs for operations and possible recommendations to the Legislature for statutory changes. He was particularly focused on how the agency could make itself more efficient, and noted that the preliminary draft was due to the Legislative Budget Board on June 1. Dr. Bronson then recognized Ms. Todd for questions. Ms. Todd asked Mr. Fortner how Board members could assist in the preparation of the plan. Mr. Fortner responded that any feedback and approval by Board Members was welcome and that he encouraged their involvement in the process.

Dr. Bronson requested a motion to accept the 2021 through 2025 strategic plan draft presented by Mr. Fortner.

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

6. Public Comment:

No members of the public requested an opportunity to comment.

7. Discussion and action on requests to sit for the Texas Jurisprudence Examination:

a. Connie Seo

The staff recommendation was to allow the applicant to sit for Texas Jurisprudence Exam after taking and passing the NBCE's Special Purpose Exam at her expense.

Action Taken: **HENRY MOVED** and **WHITE SECONDED** to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

b. David Yi

The staff recommendation was to allow the applicant to sit for Texas Jurisprudence Exam with no stipulations. Dr. Henry asked about the applicant's disciplinary history. Ms. Matthews noted that the applicant had disciplinary actions on record in the state of Washington. The most recent one was from 2010.

NOTE: At 9:48 A.M., Dr. Baucum stepped out of the meeting. Dr. Bronson noted that 8 members were still present and there was still a quorum.

The applicant was given an opportunity to explain his disciplinary history. He explained that the actions were for using a modality that was out of scope at the time in the state of Washington.

Action Taken: **HENRY MOVED** and **TODD SECONDED** to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

c. Stacy Godsey

The staff recommendation was to deny the applicant the opportunity to sit for the Texas Jurisprudence Exam. Dr. Henry asked the applicant why he was prepared to retake responsibility for being a chiropractor in Texas. The applicant explained that he was convicted of conspiracy to import anabolic steroids in 2017 and had his license revoked in 2017. He stated that his conviction was the result of naivety as to the intentions of former business partners and friends. He was personally using the steroids but was not selling them. The conspiracy lasted for about a year. He explained that other charges that were related to the arrest in regards to the steroids were all dropped. He served a prison sentence at both the state and federal level and has been on supervised release since March of 2019. He noted that he is subject to random drug testing as part of his supervised release. Dr. Bronson asked the applicant when he was last licensed to practice. The applicant replied that he was suspended on August 9, 2016.

Dr. Henry moved and Ms. Todd seconded to table this item to allow further consideration of the character letters provided by applicant. Mr. Burnett explained that no motion was necessary and that they could re-evaluate the Agenda Item at any time. Dr. Bronson moved to Agenda Item 8.

8. Discussion and action on required revocation of license for conviction of certain offenses:

a. Richard James Stephenson, Lic. No. 6119

NOTE: Dr. Baucum returned to the meeting and Dr. White stepped away at 10:08 A.M. Dr. Bronson noted that 8 members were still present and there was still a quorum.

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

Dr. Henry then asked how long it would be before the licensee could apply for reinstatement. Mr. McLaughlin replied that the licensee could apply after one year, on May 21, 2021.

9. Discussion and action on adopting the repeal and replacement of 22 Texas Administrative Code (TAC) §72.2 (License Application):

Mr. Burnett explained that no comments were received on the proposed repeal and replacement of Rule 72.2.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to adopt the repeal and replacement of 22 Texas Administrative Code §72.2 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

10. Discussion and action on adopting the repeal and replacement of 22 TAC §72.3 (Qualifications):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to adopt the repeal and replacement of 22 Texas Administrative Code §72.3 as published in the Texas Register with minor grammatical changes to the proposal. The Board **APPROVED** the motion unanimously.

11. Discussion and action on adopting the repeal and replacement of 22 TAC §72.5 (Approved Schools and Colleges):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY MOVED and TODD SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.5 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

12. Discussion and action on adopting the repeal and replacement of 22 TAC §72.6 (Exam Requirements) (Title changed to "National Board Exam Requirements"):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY MOVED and NEAL SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.6 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

13. Discussion and action on adopting the repeal and replacement of 22 TAC §72.7 (Jurisprudence Examination) (Title changed to "Jurisprudence Exam Requirements"):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY MOVED and WOFFORD SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.7 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

14. Discussion and action on adopting the repeal of 22 TAC §72.9 (Reexaminations):

Mr. Burnett explained that the contents of Rule 72.9 were being placed in Rule 72.8, so 72.9 would become superfluous. No comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY MOVED and NEAL SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.9 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

NOTE: Dr. Bronson then tabled Agenda Item 15 due to confusion over whether the repeal and replacement of Rule 72.11 was up for proposal or adoption. He also explained that Agenda Item 16 would be skipped as it was placed on the Agenda in error because the repeal and replacement of Rule 72.15 was actually up for proposal, not adoption, and would be addressed in Agenda Item 37.

17. Discussion and action on adopting the repeal and replacement of 22 TAC §72.16 (Inactive Status):

Mr. Burnett and Dr. Henry explained some non-substantive changes that they recommended be made to the proposed rule. The changes were to try and make some of the terminology used in the proposal more consistent with the language used in other rules.

Action Taken: HENRY MOVED and ALLEN SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.16 as published in the Texas Register and with the non-substantive changes to the proposal as discussed. The Board **APPROVED** the motion unanimously.

18. Discussion and action on adopting the repeal and replacement of 22 TAC §72.17 (Fee Exemption for Charity Care) (Title changed to “Retired Chiropractor”):

No public comments were received on the proposal. Dr. Henry discussed some non-substantive changes to clarify the language in the proposal regarding what retired licensees are allowed to do.

Action Taken: HENRY MOVED and ALLEN SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.17 as published in the Texas Register and with the non-substantive changes to the proposal as discussed. The Board **APPROVED** the motion unanimously.

19. Discussion and action on adopting the repeal and replacement of 22 TAC §72.20 (Out-of-State Applicants):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY MOVED and WHITE SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.20 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

NOTE: At 10:43 A.M., Dr. Bronson recognized Dr. White’s return and all 9 Board members were present at this time. Dr. White noted that she had returned at 10:13 AM.

20. Discussion and action on adopting the repeal and replacement of 22 TAC §72.21 (Requirements for Military Spouses):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: TODD MOVED and HENRY SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.21 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

21. Discussion and action on adopting the repeal and replacement of 22 TAC §72.22 (Requirements for Military Members and Veterans):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY MOVED and NEAL SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.22 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

22. Discussion and action on adopting the repeal and replacement of 22 TAC §73.1 (Continuing Education) (Title changed to "Continuing Education Requirements for Licensees"):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: WHITE MOVED and HENRY SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §73.1 as published in the Texas Register. There was much discussion as to how to best phrase the language. The Board **APPROVED** the motion unanimously.

23. Discussion and action on adopting the repeal and replacement of 22 TAC §73.2 (Failure to Meet Continuing Education Requirements):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY MOVED and WHITE SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §73.2 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

24. Discussion and action on adopting the repeal and replacement of 22 TAC §73.3 (Approval for Continuing Education Courses) (Title changed to "Requirements for Sponsors of Continuing Education Courses"):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement with one minor, non-substantive change to subsection (g) to clarify the language.

Action Taken: **HENRY MOVED** to adopt the repeal and replacement of 22 Texas Administrative Code §73.3 as published in the Texas Register and with the non-substantive change to the proposal as discussed. Ms. Todd then asked a question about subsection (o). There was then discussion on how to clarify how much credit a licensee could receive when absent for a portion of a continuing education presentation.

Action Taken: **HENRY AMENDED** his motion and **WHITE SECONDED** to adopt the repeal and replacement of 22 Texas Administrative Code §73.3 as published in the Texas Register and with the non-substantive changes to the proposal as discussed. The Board **APPROVED** the motion unanimously.

25. Discussion and action on adopting proposed new Board Rule 22 TAC §73.4 (Requirements for Continuing Education Instructors):

Dr. Bronson and Mr. Burnett explained that no comments were received on this proposal and the Governor's Office approved of this rulemaking action as part of its new oversight. The staff recommendation was to adopt without changes and Mr. Burnett noted that they could not approve any changes to the proposal after the Governor's Office approval.

Action Taken: **WHITE MOVED** and **HENRY SECONDED** to adopt the repeal and replacement of 22 Texas Administrative Code §73.4 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

26. Discussion and action on adopting proposed new Board Rule 22 TAC §73.5 (Requirements for Claiming Continuing Education as a National Board Examiner):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: **HENRY MOVED** and **NEAL SECONDED** to adopt the repeal and replacement of 22 Texas Administrative Code §73.5 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

27. Discussion and action on adopting the repeal and replacement of 22 TAC §81.2 (Enforcement Actions):

Mr. Burnett explained that the sections of the old rule affecting informal settlement conferences would be split out into a separate rule. Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY MOVED and ALLEN SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §81.2 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

28. Discussion and action on adopting the repeal of 22 TAC §81.4 (Administrative Hearings):

Mr. Burnett explained that the rule was superfluous, no comments were received on this proposal, and recommended adoption without changes.

Action Taken: WOFFORD MOVED and HENRY SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §81.4 as published in the Texas Register. Ms. Todd asked a question. The Board **APPROVED** the motion unanimously.

29. Discussion and action on adopting the repeal and replacement of 22 TAC §81.5 (Appearance):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: BAUCUM MOVED and WOFFORD SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §81.5 as published in the Texas Register. Ms. Todd asked a question. The Board **APPROVED** the motion unanimously.

30. Discussion and action on adopting the repeal and replacement of 22 TAC §81.6 (Default Judgment):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY MOVED and WOFFORD SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §81.6 as published in the Texas Register. Ms. Todd asked a question. The Board **APPROVED** the motion unanimously.

31. Discussion and action on adopting the repeal and replacement of 22 TAC §81.7 (Depositions, Subpoenas, and Witness Expenses):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: BAUCUM MOVED and WOFFORD SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §81.7 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

32. Discussion and action on adopting the repeal and replacement of 22 TAC §81.8 (Hearing Exhibits and Record):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: BAUCUM **MOVED** and TODD **SECONDED** to adopt the repeal and replacement of 22 Texas Administrative Code §81.8 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

33. Discussion and action on adopting the repeal and replacement of 22 TAC §81.9 (Proposal for Decision):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: WOFFORD **MOVED** and NEAL **SECONDED** to adopt the repeal and replacement of 22 Texas Administrative Code §81.9 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

34. Discussion and action on adopting the repeal and replacement of 22 TAC §81.10 (Final Board Order):

Mr. Burnett explained that no comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to adopt the repeal and replacement of 22 Texas Administrative Code §81.10 as published in the Texas Register. Ms. Todd asked a question. The Board **APPROVED** the motion unanimously.

35. Discussion and action on readopting certain rules relating to internal Board procedures pursuant to Texas Government Code §2001.039, 22 TAC Chapter 82 (Internal Board Procedures):

Mr. Burnett explained that a rule review is required every 5 years by the Administrative Procedures Act. Most of the rules in Chapter 82 are required by statute and the Board must have them, however Rule 82.4 is not required. He further explained that, later in the meeting, the Board would separately vote to repeal that rule for lack of authority to have such a rule.

Action Taken: HENRY **MOVED** and WHITE **SECONDED** to readopt 22 Texas Administrative Code Chapter 82, except Rule 82.4, as published in the Texas Register. The Board **APPROVED** the motion unanimously.

At this time, the Board returned to consideration of Agenda Item 7c.

7. Discussion and action on requests to sit for the Texas Jurisprudence Examination:

c. Stacy Godsey

Dr. Baucum explained to the other Board Members that Mr. Godsey was apprehended with over 6,000 doses of steroids despite his position that he had no intention to distribute. The Board members discussed that not enough time had passed between the end of the case to justify reissuing a license.

Action Taken: TODD MOVED and WHITE SECONDED to accept the staff recommendation to deny the applicant the opportunity to sit for the Texas Jurisprudence Exam. Mr. Godsey was given an opportunity to speak again. The Board **APPROVED** the motion unanimously.

Action Taken: At 11:51 A.M., Dr. Bronson allowed for a short break.

Action Taken: At 12:13 P.M., Dr. Bronson reconvened the meeting and called the roll.

Present:

Mr. Brandon M. Allen

Dr. Nicholas Baucum

Dr. Mindy Neal

Dr. Michael Henry

Mr. Gus Ramirez

Ms. Ebony Todd, J.D.

Dr. Debra White

Dr. Scott Wofford

Dr. Bronson announced that a quorum was present and all 9 Board Members were in attendance. Dr. Bronson then returned the Board to consideration of Agenda Item 15.

15. Discussion and action on adopting the repeal and replacement of 22 TAC §72.11 (Temporary Faculty License):

Mr. Burnett explained that this Agenda Item was indeed an adoption. No comments were received on this proposal. The staff recommendation was to adopt the proposed repeal and replacement without changes. Dr. Henry then proposed a non-substantive change to subsection (b).

Action Taken: HENRY MOVED and WHITE SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §72.11 as published in the Texas Register and

with the non-substantive changes to the proposal as discussed. The Board **APPROVED** the motion unanimously.

Gus Ramirez commented on Agenda Item 7c.

NOTE: Next, the Board moved to Agenda Item 36. As a reminder, Agenda Item 16 was skipped as it was an incorrect entry into the Agenda and was covered in Agenda Item 37.

36. Discussion and action on proposing the repeal and replacement of 22 TAC §72.14 (License Renewal):

Mr. Burnett explained that this action was a simple rewrite of the license renewal rule to remove superfluous language.

Action Taken: HENRY **MOVED** and WOFFORD **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §72.14 as discussed. The Board **APPROVED** the motion unanimously.

37. Discussion and action on proposing the repeal and replacement of 22 TAC §72.15 (Temporary License):

Dr. Bronson noted that this Agenda Item takes into account Agenda Item No. 17 and proposed some language for the Board to consider in the update. Dr. Henry discussed the issues which this rule was intended to address. Dr. Bronson, Dr. Henry, Ms. Todd, and Mr. Burnett then discussed the recommended language at length.

Action Taken: HENRY **MOVED** and TODD **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §72.15 as discussed. The Board **APPROVED** the motion unanimously.

38. Discussion and action on proposing the repeal and replacement of 22 TAC §72.18 (Criminal History):

Mr. Burnett explained that the language of this rule needed to be updated to reflect certain legislative changes.

Action Taken: HENRY **MOVED** and RAMIREZ **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §72.18 as discussed. The Board **APPROVED** the motion unanimously.

39. Discussion and action on proposing the repeal and replacement of 22 TAC §76.1 (Required Contents of Patient Records):

Mr. Burnett and Dr. Henry explained that the next set of proposals relating to Chapter 76 was the result of a stakeholder meeting for the purpose of updating the rules regarding patient records. The 2 existing rules will be split out into 4 separate rules.

Action Taken: NEAL **MOVED** and RAMIREZ **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §76.1 as discussed. The Board **APPROVED** the motion unanimously.

40. Discussion and action on proposing the repeal and replacement of 22 TAC §76.2 (Requests for Patient Records):

Mr. Burnett and Dr. Henry discussed some proposed language to be added to the initial proposal. Dr. Wofford, Dr. White, and Dr. Baucum noted that language regarding the patient's reason for requesting their records was unnecessary.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §76.2 as discussed. The Board **APPROVED** the motion unanimously.

41. Discussion and action on proposing a new Board rule, 22 TAC §76.3 (Fees for Providing Patient Records):

Mr. Burnett discussed a change to be made to the initial proposal. Dr. Henry explained the thought process behind the new fee calculation guidelines.

Action Taken: RAMIREZ **MOVED** and HENRY **SECONDED** to propose the new rule 22 Texas Administrative Code §76.3 as discussed. The Board **APPROVED** the motion unanimously.

42. Discussion and action on proposing a new Board rule, 22 TAC §76.4 (Duty to Maintain and Store Patient Records):

Ms. Todd noted a clarification to be made to the initial proposal.

Action Taken: HENRY **MOVED** and RAMIREZ **SECONDED** to propose the new rule 22 Texas Administrative Code §76.4 as discussed. Dr. White and Ms. Todd then asked clarifying questions. Dr. Henry and Dr. Wofford discussed the rule's impact on custodianship of records. The Board **APPROVED** the motion unanimously.

43. Discussion and action on proposing the amendment of 22 TAC §78.14 (Acupuncture):

Mr. Burnett explained that this proposed rulemaking action would be an amendment rather than a repeal and replacement and discussed the significance of this difference. He advised that the Board confine their discussion to subsection (e).

After a question from Ms. Todd, Mr. Burnett also advised the Board members that the Board's litigation counsel does not believe amending the rule will negatively impact the Board's litigation.

At this time, the Board recognized Dr. Lance Durrett who was requesting the opportunity to qualify for an acupuncture permit under provisions in subsection (e) that had expired. The Board members explained that they believed the amendments proposed would hopefully allow licensees such as Dr. Durrett who had fulfilled the requirements in existence at the time prior to the current rule the opportunity to qualify.

The Board members discussed at length how best to amend the rule to perpetually include provisions of prior rules which allowed a licensee to practice acupuncture.

Action Taken: HENRY MOVED and WOFFORD SECONDED to propose the amendment of 22 Texas Administrative Code §78.14 as discussed. The Board **APPROVED** the motion unanimously.

NOTE: Ms. Todd left the meeting at 1:31 PM. Dr. Bronson noted that 8 members were still present and there was still a quorum.

44. Discussion and action on proposing the repeal and replacement of 22 TAC §79.1 (Unprofessional Conduct), (Title change to "Inappropriate Sexual Conduct"):

Mr. Burnett explained that the next two proposals would split the current unprofessional conduct rule into 2 separate rules.

Action Taken: HENRY MOVED and WHITE SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §79.1 as discussed. The Board **APPROVED** the motion unanimously.

NOTE: Ms. Todd returned to the meeting at 1:33 PM. All 9 Board members were present again.

45. Discussion and action on proposing a new Board rule, 22 TAC §79.3 (Financial Misconduct):

Dr. Baucum asked whether a certain definition was necessary for the proposal. Mr. Burnett and other Board members discussed why a reasonableness standard was more appropriate.

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

NOTE: Mr. Allen left the meeting at 1:37 PM. Dr. Bronson noted that 8 members were still present and there was still a quorum.

46. Discussion and action on proposing the repeal and replacement of 22 TAC §80.2 (Complaint Procedures):

Mr. Burnett explained that this proposal would solidify the procedure for informal conferences. Dr. Baucum and Dr. Wofford explained that this and another rule proposal would allow the informal conferences to resume without being taken advantage of and used to unnecessarily delay enforcement proceedings. Ms. Todd asked a clarifying question regarding uncooperative complainants. There was more discussion over how the language of the proposal should handle such issues.

NOTE: Mr. Allen returned to the meeting at 1:43 PM. All 9 Board members were present again.

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

47. Discussion and action on proposing the repeal of 22 TAC §80.8 (Default on Student Loans):

Mr. Burnett explained that this rule needed to be repealed due to legislative change.

Action Taken: HENRY MOVED and WHITE SECONDED to propose the repeal of 22 Texas Administrative Code §80.8 as discussed. The Board **APPROVED** the motion unanimously.

48. Discussion and action on proposing a new Board rule, 22 TAC §80.11 (Informal Settlement Conferences):

Action Taken: BAUCUM MOVED and WOFFORD SECONDED to propose the new rule 22 Texas Administrative Code §80.11 as discussed. The Board **APPROVED** the motion unanimously.

49. Discussion and action on proposing the repeal of 22 TAC §82.4 (Private Donors):

Mr. Burnett explained that this was the rule he was referring to earlier in Agenda Item 35 that needed to be repealed due to a lack of statutory authority for such a rule.

Action Taken: TODD MOVED and WOFFORD SECONDED to propose the repeal of 22 Texas Administrative Code §82.4 as discussed. The Board **APPROVED** the motion unanimously.

50. Closed session.

There was no closed session.

51. The Board, if necessary, will discuss and take action on on-going litigation as discussed in closed session under agenda item #50.

There was nothing to discuss.

52. Requests from Board members for future agenda items.

Dr. Henry asked about possible amendment proposals to the continuing education rules at the next meeting. Dr. Henry, Ms. Todd, and the Rules Committee would discuss proposals to submit.

Mr. Burnett said the effective date for the adopted rules should be around June 15.

Mr. Fortner said that the next Board meeting should be scheduled for some time in August. After discussion, it was decided that he would try and schedule it for August 20, 2020.

53. Adjournment.

Action Taken: RAMIREZ MOVED and WOFFORD SECONDED to adjourn the meeting at **2:00 P.M.** The Board **APPROVED** the motion unanimously.

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 February 20, 2020, were **APPROVED** by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held on May 21, 2020.



6/29/2020

Patrick Fortner
Executive Director
Texas Board of Chiropractic Examiners

Date