

TEXAS COMMISSION OF LICENSING AND REGULATION

Meeting of June 30, 2020
Twin Towers Office Center
1st Floor Public Meeting Room
Austin, Texas

Summary of Minutes

Chairman Figueroa called the meeting of the Texas Commission of Licensing and Regulation to order at 9:02 a.m., June 30, 2020. Members present were: Chairman Rick Figueroa, Commissioners Thomas Butler, Helen Callier, Dr. Ray Callas, Dr. Gary Wesson and Joel Garza. A roll call verified that a quorum was present. Commissioner Callas seconded by Commissioner Butler moved to excuse the absence of Commissioner Nora Castañeda. Motion passed by unanimous vote. This meeting was held by videoconference under procedures approved by the Office of the Governor and the Office of Attorney General.

Staff present included: Brian Francis, Executive Director; Christina Kaiser, Deputy Executive Director; Mike Arismendez, Deputy Executive Director; David Gonzales, Deputy Executive Director; Brad Bowman, General Counsel and Della Lindquist, Deputy General Counsel.

Chairman Figueroa moved to agenda item D, Approval of Minutes – Meeting of June 30, 2020. Commissioner Callier called for an amendment to be made on page 3 of the minutes. Commissioner Callier seconded by Commissioner Garza, made a motion to modify the minutes. Motion passed by unanimous vote.

Chairman Figueroa moved to agenda item C, Public Comment. Fifty-Seven written public comments were received. Six phone-in public comments were received.

Chairman Figueroa moved to agenda item E, **Discussion and possible action** on the proposed **amendments** to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter B, §111.13; Subchapter C, §111.20 and §111.23; Subchapter D, §111.35 and §111.37; Subchapter E, §§111.41, 111.42, 111.45, and 111.47; Subchapter F, §§111.52, 111.55, and 111.57; Subchapter H, §111.75 and §111.77; Subchapter I, §§111.81, 111.85, and 111.87; Subchapter J, §§111.92, 111.95, and 111.97; Subchapter L, §111.115 and §111.117; Subchapter N, §§111.130 - 111.132; Subchapter P, §§111.150, 111.151, 111.154, and 111.155; Subchapter Q, §111.160; Subchapter R, §111.171; Subchapter T, §111.192; Subchapter U, §111.201; and Subchapter V, §111.212; the proposed **new rules** at Subchapter M, §§111.120 - 111.125; and Subchapter R, §§111.172 – 111.176; and the proposed **repeal** of existing rules at Subchapter S, §§111.180 – 111.183; and Subchapter U, §111.200, regarding the **Speech-Language Pathologists and Audiologists** program. The proposed rules are necessary to implement House Bill (HB) 1899, HB 2059, and HB 2847, Articles 7 and 10, 86th Legislature, Regular Session (2019) and HB 2680, Section 1, 79th Legislature, Regular Session (2005); implement recommended changes from the Licensing Workgroup; and make terminology and other clean-up changes. Commissioner Callier seconded by Commissioner Callas, moved to adopt the rules and allow Commissioner's electronic signatures be placed on written orders and decisions. The rules were adopted without changes as published in the Texas Register, to be effective August 1, 2020.

Chairman Figueroa moved to agenda item F, **Discussion and possible action** on the proposed **amendments** to existing rules at 16 Texas Administrative Code (TAC), Chapter 116, Subchapter A, §116.2; Subchapter C, §116.20; Subchapter E, §116.40 and §116.42; Subchapter F, §§116.50, 116.51, and 116.53; Subchapter I, §§116.80 - 116.82; Subchapter K, §§116.100, 116.101, 116.104, and 116.105; Subchapter M, §116.120; and Subchapter O, §116.141 and §116.142; the proposed **repeal** of existing rules at Subchapter C, §116.21; Subchapter D, §116.30; Subchapter J, §116.90; and Subchapter N, §§116.130 – 116.132; and the proposed **new rules** at Subchapter C, §116.22; and Subchapter M, §§116.121 – 116.123, regarding the **Dietitians** program. The proposed rules implement HB 2847, Articles 7 and 12, and HB 2059, 86th Legislature, Regular Session (2019); implement changes recommended by the Dietitians Advisory Board Licensing Workgroup and Department staff, including streamlining the license application and renewal processes and updating various license requirements; and make terminology and other clean-up changes to the rule chapter. Commissioner Helen Callier seconded by Commissioner Garza, moved to adopt the rules and allow Commissioner’s electronic signatures be placed on written orders and decisions. The rules were adopted without changes as published in the Texas Register, to be effective August 1, 2020.

Chairman Figueroa moved to agenda item G, **Discussion and possible action** on the proposed **amendments** to existing rules at 16 Texas Administrative Code (TAC), Chapter 115, §115.14 and §115.70, regarding the **Midwives** program, to implement House Bill (HB) 2059, 86th Legislature, Regular Session (2019), which requires human trafficking prevention training for health care practitioners prior to the renewal of a license, and Senate Bill (SB) 1531, 86th Legislature, Regular Session (2019), which removes conviction of a “misdemeanor of moral turpitude or a felony” from the list of items authorizing discipline of a midwife or denial of an application for a midwife license or its renewal. Commissioner Callas seconded by Commissioner Callier, moved to adopt the rules and allow Commissioner’s electronic signatures be placed on written orders and decisions. The rules were adopted without changes as published in the Texas Register, to be effective August 1, 2020.

Chairman Figueroa moved to agenda item H, **Discussion and possible action** on proposed **amendments** to an existing rule at 16 Texas Administrative Code (TAC), Chapter 120, §120.26, regarding the **Dyslexia Therapy** program, to implement House Bill 2059, 86th Legislature, Regular Session (2019), which requires human trafficking prevention training for health care practitioners prior to the renewal of a license. Commissioner Garza seconded by Commissioner Callier moved to adopt the rules and allow Commissioner’s electronic signatures be placed on written orders and decisions. The rules were adopted without changes as published in the Texas Register to be effective August 1, 2020.

Chairman Figueroa moved to agenda item I, **Discussion and possible action** on proposed **amendments** to an existing rule at 16 Texas Administrative Code (TAC), Chapter 114, §114.40, regarding the **Orthotists and Prosthetists** program. The proposed amendments are necessary to implement the requirements of House Bill 2059, 86th Legislature, Regular Session (2019), and Texas Occupations Code, Chapter 116, requiring human trafficking prevention training for health care practitioners prior to the renewal of a license. The proposed amendments also amend the rule section’s definition of “licensee” to reflect the definition used throughout Chapter 114 for purposes of clarity and consistency. Commissioner Callas seconded by Commissioner Callier moved to adopt

the rules and allow Commissioner's electronic signatures be placed on written orders and decisions. The rules were adopted without changes as published in the Texas Register to be effective August 1, 2020.

Chairman Figueroa moved to agenda item J, **Discussion and possible action** on the proposed **amendments** to existing rules at 16 Texas Administrative Code (TAC), Chapter 110, §§110.21, 110.23, 110.30, and 110.70, regarding the **Athletic Trainers** program. The proposed amendments make changes to certain licensing requirements; make clean-up changes; add a non-exclusive list of domains that may be tested on the Texas written examination; change the term of a temporary license; and remove a prohibition on using testimonials in advertising. The proposed amendments include recommendations from a workgroup of the Advisory Board of Athletic Trainers and recommendations from staff. Commissioner Callas seconded by Commissioner Wesson moved to adopt the rules and allow Commissioner's electronic signatures be placed on written orders and decisions. The rules were adopted without changes as published in the Texas Register to be effective August 1, 2020.

Chairman Figueroa moved to agenda item K, **Discussion and possible action** on the proposed **amendments** to existing rules at 16 Texas Administrative Code (TAC), Chapter 62, §§62.10, 62.23, 62.24, and 62.70, regarding the **Code Enforcement Officers** program. The proposed amendments implement House Bill 2584, 86th Legislature, Regular Session (2019), to authorize a certified code enforcement officer to carry an instrument used specifically for deterring an animal bite while performing official duties and establish training courses, principles, and procedures for the officers. Commissioner Callas seconded by Commissioner Wesson moved to adopt the rules and allow Commissioner's electronic signatures be placed on written orders and decisions. The rules were adopted without changes as published in the Texas Register, to be effective August 1, 2020.

Chairman Figueroa moved to agenda item L, **Discussion and possible action** on the proposed **amendments** to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.100, regarding the **Electricians** program. The proposed rule is necessary to adopt the 2020 National Electrical Code (NEC), as required by statute. The Texas Electrical Safety and Licensing Act, §1305.101(a), requires the Commission to adopt, every three years, the revised NEC as the electrical code for the state. The current rule references the 2017 edition of the NEC. The 2020 edition of the NEC was approved by the National Fire Protection Association on August 25, 2019. Commissioner Callas seconded by Commissioner Wesson moved to adopt the rules and allow Commissioner's electronic signatures be placed on written orders and decisions. The rules were adopted with changes as published in the Texas Register to be effective October 1, 2020, and with the effective date of the 2020 NEC requirement to be November 1, 2020.

Chairman Figueroa moved to agenda item M, **Discussion and possible action** on the proposed **amendments** to existing rules at 16 Texas Administrative Code (TAC), Chapter 121, §§121.10, 121.21, 121.22, 121.26, 121.70, 121.75, and 121.95, regarding the **Behavior Analysts** program. The proposed amendments implement House Bill (HB) 2059 and HB 2847, Article 7, 86th Legislature, Regular Session (2019). Collectively, these bills address immunity for individuals assisting with complaint investigations and require a training course on human trafficking prevention. The proposed amendments also include recommendations from the Behavior Analyst Advisory Board to revise and expand the professional responsibilities and ethics code of license

holders. Commissioner Wesson seconded by Commissioner Callier moved to adopt the rules and allow Commissioner's electronic signatures be placed on written orders and decisions. The rules were adopted without changes as published in the Texas Register to be effective August 1, 2020.

Chairman Figueroa moved to agenda item N, **Discussion and possible action** on the proposed **amendments** to an existing rule at 16 Texas Administrative Code (TAC), Chapter 68, §68.100; and **new rule** §68.104, regarding the **Elimination of Architectural Barriers** program. The proposed rules update a reference from the "Commission" to the "Department," as well as the date that defines an existing state building or facility. The proposed rules also implement necessary changes required by House Bill 3163, 86th Legislature, Regular Session (2019). Commissioner Callier seconded by Commissioner Callas moved to adopt the rules and allow Commissioner's electronic signatures be placed on written orders and decisions. The rules were adopted with changes as published in the Texas Register to be effective August 1, 2020.

Chairman Figueroa moved to agenda item O, **Discussion and possible action** on the emergency rulemaking adoption of **amendments** to an existing rule at 16 Texas Administrative Code (TAC), Chapter 83, §83.72, Responsibilities of Beauty Culture Schools, regarding the **Cosmetology** program. This emergency adoption is necessary to correct errors in the previously amended rule text in order to protect the public health, safety, and welfare. The effective date for these amendments is June 30, 2020. Commissioner Callas seconded by Commissioner Callier moved to adopt the emergency rule and allow Commissioner's electronic signatures be placed on written orders and decisions.

Chairman Figueroa moved to agenda item P, Commission Work Groups – including update from work groups discussion, and possible action on items discussed. Sunset, Strategic Plan, Legislative Appropriations Request Work Group. Update on activities related to TDLR's Sunset Advisory Commission review. Legislative Appropriations Requests and Instructions. Eric Beverly, Government Relations Officer, provided an update on activities related to the Department's Sunset Advisory Commission review. Since publication of the report on June 4, 2020, Brian Francis, Executive Director, established the Sunset Management Advisory Team headed by Christina Kaiser, Deputy Executive Director of Regulatory Services. The Sunset Management Advisory Team has met on multiple occasions and identified recommendations that can be implemented swiftly, if adopted by the Sunset Commission. On June 25, 2020 the Department submitted a response to the Sunset Advisory staff report. The Sunset Commission released comments relating to the Department's staff report. The Sunset Commission has received 241 public comments, which are available on Sunset's website. The Department's public hearing is scheduled for August 19, 2020.

Chairman Figueroa moved to agenda item Q, Staff Reports. Briefing from agency staff on monthly activities, statistical data, personnel changes, communication and public outreach. May include discussion of the following topics: Executive Office, Office of General Counsel, Human Resources Division, Office of Strategic Communications, and Office of Project and Transformation Management: COVID-19 Response, Agency Reports, Statistics, and Trends, Legislative Appropriation Request, Strategic Plan, Sunset Report, Budget Reductions and Current Projects. Brian Francis, Executive Director stated the Commission would get an update from Executive staff as follows. Christina Kaiser, Deputy Executive Director of Regulatory Services provided an update on Enforcement, Field Inspections, and Regulatory Program Management Divisions, highlighting activities on the Sunset Management Actions Team. David Gonzales, Deputy Executive Director of

Licensing Services provided an update on Customer Service, Education & Examination, and Licensing Divisions focusing on the Department's COVID-19 Response, Agency Reports, Statistics, and Trends, and Current Projects. Mike Arismendez, Deputy Executive Director of Administrative Services and Strategic Response provided an update on Financial Services Division, Information Technology Division, and Strategic Response Unit, focusing on the 5% budget cuts.

Chairman Figueroa moved to agenda item R, Agenda items for future Commission Meetings
The next Commission meeting date is August 4, 2020.

Chairman Figueroa moved to agenda item S, Agenda items for future Commission Meetings
There was no discussion on this item.

Chairman Figueroa moved to agenda items T and U, Executive Session and Action on items discussed in Executive Session. There was no action on this item.

Chairman Figueroa moved to agenda item V, Contested Cases - consideration and possible action (heard before State Office of Administrative Hearings):

Docket Number COS20190009680 / 452-19-5067.COS; Brinda C. Redwine. Commissioner Callas seconded by Commissioner Wesson, moved to adopt the Proposal for Decision (PFD) with amendments, and revoke Respondent's Cosmetology license and allow Commissioner's electronic signatures be placed on written orders and decisions. The Commission found the Administrative Law Judge did not apply the law properly in this matter. The Commission modified Conclusion of Law No. 11, and added Conclusions of Law Nos. 12-14, relating to the Department's authority, pursuant to Section 51.353(a), Occupations Code, to sanction a licensee's license (in this case Cosmetology) for failing to pay an administrative penalty relating to a violation of another type of license held by that licensee (Licensed Breeder.)

Docket Number TOW20190011258 / 452-19-6081.TOW; Robert A. Lalen, Jr. Commissioner Butler seconded by Commissioner Callas, moved to adopt the Proposal for Decision with modifications and allow Commissioner's electronic signatures be placed on written orders and decisions, and to deny Respondent's application for Incident Management Tow license. The Commission modified the PFD by amending Finding of Fact No. 7, relating to a technical error referencing the type of license sought, and by the addition of Conclusions of Law Nos. 12 and 13 relating to the applicability of Section 51.4012, Occupations Code, in revoking or denying a license.

Docket Number TOW20190011167 / 452-19-6080.TOW; Dalton Dakota Mosley. No action was taken on this agenda item. The matter was continued until the next public meeting of the Texas Commission of Licensing and Regulation.

Chairman Figueroa moved to agenda item W, Motions for Rehearing – The Commission may consider and take any action related to the following case, including but not limited to, rehearing matters previously decided, modifying a prior order, or entering a new order:

TOW20180008022, TOW20170021041, TOW20180016579, TOW20190001307, TOW20190004916; Gareth Francis, d/b/a Lightning Towing & Recovery, and Lightning Roadside Assistance, LLC, d/b/a Lightning Towing & Recovery. Commissioner Wesson seconded by Commissioner Callas, moved to deny the Motion for Rehearing and allow Commissioner's electronic signatures be placed on written orders and decisions.

COS20190016479; Hein Nguyen D/B/A Grand Lux Day Spa. Commissioner Butler seconded by Commissioner Callier, moved to grant the Motion for Rehearing and reduce the administrative penalty owed to \$500 and allow Commissioner's electronic signatures be placed on written orders and decisions.

Commissioner Callas seconded by Commissioner Callier moved to adjourn the meeting. Motion passed by unanimous vote. Chairman Figueroa adjourned the meeting at 12:57 p.m.

Rick Figueroa, Chairman
Texas Commission of Licensing and Regulation