



Texas State Board of Acupuncture Examiners

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November 5, 2018

VIA HAND DELIVERY

Patrick Fortner
Executive Director
Texas Board of Chiropractic Examiners
333 Guadalupe Street, Suite 825
Austin, TX 78701

Re: The Texas Board of Chiropractic Examiners (Chiropractic Board) Proposed New Rule §78.14

Dear Mr. Fortner:

The Texas State Board of Acupuncture Examiners' (Acupuncture Board) mission is to protect and enhance the public's health, safety, and welfare by establishing and maintaining standards of excellence used in regulating the practice of acupuncture and ensuring quality health care for the citizens of Texas through licensure, discipline, and education. The acupuncturist members of the Acupuncture Board have a combined 53 years of practice in the state of Texas. All members have a combined 38 years of experience sitting on the Acupuncture Board, appointed by two different governors. The Acupuncture Board appreciates the opportunity to comment on the proposed new rule §78.14, published in the Texas Register on July 20, 2018.

Proposed Rule §78.14 purports to authorize chiropractors to practice acupuncture without meeting the requirements of and obtaining a license required under Chapter 205 of the Texas Occupations Code (the Acupuncture Act). Allowing the unlicensed practice of acupuncture by chiropractors is contrary to the legislative purpose behind the enactment of the Acupuncture Act, and will expand the scope of chiropractic practice beyond what is permitted by Chapter 201 of the Texas Occupations Code (the Chiropractic Act).

Should the rule be adopted, it will result in an impermissible regulatory scheme allowing the unlicensed practice of acupuncture by chiropractors who have not met the rigorous educational and training standards required by the Acupuncture Act, and will serve to mislead the public as to a chiropractor's licensure status and qualifications to perform acupuncture, representing a risk to the public health, safety, and welfare in Texas. The Acupuncture Board opposes the rule and urges the Chiropractic Board to act in the public's interest and decline to adopt it.

When enacting the Acupuncture Act through S.B. 1062 (R.S. 1993), the 73rd Legislature found that “the review and establishment of statewide standards for the training, education, and discipline of persons performing acupuncture are in the public interest; and...the health, safety, and welfare of the people of this state are best served by an orderly system of regulating the practice of acupuncture.” Accordingly, the Acupuncture Act, the single chapter in the Occupations Code pertaining to acupuncture practice, grants the Acupuncture Board, subject to the advice and approval of the Medical Board, the power to establish rules related to the training, education, licensure, and discipline for individuals practicing acupuncture in Texas. Tex. Occ. Code §205.101.

The Acupuncture Act contains no exception for individuals licensed by the Chiropractic Board to perform acupuncture without a license issued by the Acupuncture Board. The Chiropractic Act, a separate and distinct set of laws regulating the scope of chiropractic practice, does not include or reference the term acupuncture, authorize the practice of acupuncture by individuals lacking a license issued by the Acupuncture Board, or otherwise permit the Chiropractic Board to regulate the practice of acupuncture.

In addition to the Acupuncture Act, the statewide standards for training, education, and licensure related to acupuncture practice are also found under Title 22, Chapter 183 of the Texas Administrative Code (acupuncture rules). The acupuncture rules require that in order to obtain a license to practice acupuncture from the Acupuncture Board, an individual must have completed at least 1,800 hours of training from an accredited acupuncture school and must have passed two nationally recognized examinations. Such individuals must further demonstrate that they have on a full-time basis, actively treated persons, been a student or on the active teaching faculty at an acceptable approved acupuncture school, within either of the last two years prior to applying for licensure. 22TAC §183.4. Individuals who have been granted a license by the Acupuncture Board may not use any false, misleading, or deceptive advertising, including with respect to the use of the term “board certified.” 22 TAC §183.19.

Thirteen subsections, (a) through (m), are proposed under §78.14, and unilaterally propose a divergent pathway for individuals seeking the authority to practice acupuncture in Texas without obtaining a license from the Acupuncture Board, in direct conflict with the Acupuncture Act. Such a scheme violates the legislative objectives behind the enactment of the Acupuncture Act, so clearly stated through SB 1062.

New §78.14’s proposed alternative pathway for practicing acupuncture in Texas without a license includes a definition of acupuncture, found under subsection (a), claiming acupuncture practice as a therapeutic modality within the chiropractic scope of practice. Further, individuals are permitted to obtain “acupuncture certification” issued by the Chiropractic Board under subsections (b) through (d). The rule further sets forth educational, training, and examination standards for chiropractors to obtain such certification by the Chiropractic Board. Simply put, the Chiropractic Board has no authority under the Chiropractic Act or any other Texas law to define the term “acupuncture”, to issue licenses to practice acupuncture in Texas, or to establish rules related to the educational, training, or examination standards related to the practice of acupuncture.

Rather than 1800 instructional hours, §78.14(d)(1) proposes to offer a certificate based upon only 200 hours of training, which is less than 10% of the hours required under the Acupuncture Act. Details as to whether the training must include clinical or practical hours, or whether in-person instruction is required are left unspecified and open to interpretation. While the rule also would require the passage of an examination, details as to the type, length, or subjects of the examination are left unspecified.

Even lesser standards are found under subsection (d)(2)–(d)(3). For individuals licensed by the Chiropractic Board after 2010 but before the effective date of the rule, they may obtain “acupuncture certification” after having completed only 100 hours of acupuncture training, which is approximately 5%, a tiny fraction of the training required under the Acupuncture Act. For individuals licensed by the Chiropractic Board prior to 2010, the rule proposes that those licensees may as one option obtain a certificate based upon the completion of an unspecified examination in a 100-hour training course, the specifics of which are again left open to interpretation. When the course must have been completed, the source or location of the course, whether any clinical or practical component is required is left unaddressed.

Other individuals licensed prior to 2010 who may have completed less than 100 hours of training may still obtain a certificate if they have practiced acupuncture for at least 10 years. It is unclear whether the 10 years of experience must have been continuous or completed within a certain period of time from applying for the certificate. Further lacking under subsection (d) is any requirement that the training requirements and passage of an examination must have been completed within a certain period of time prior to application for the certificate.

Subsection (f) would require a licensee to submit “proof of compliance” with subsection (d), but also would require that prior to initiating acupuncture practice, a numbered “acupuncture certificate” be received from the Chiropractic Board, further appearing to authorize the Chiropractic Board to issue a license to practice acupuncture under an alternative licensure process, outside of any authority provided under the laws in Texas.

Perhaps even more alarming, proposed new subsection (h) would allow such individuals who have obtained “acupuncture certification” to hold themselves out as “board certified in Acupuncture as an adjunctive modality by the Texas Board of Chiropractic Examiners.” Allowing such advertising will mislead the public as to the licensing requirements in Texas for an individual to practice acupuncture in the state, and an individual’s level of specialized knowledge in the practice of acupuncture.

The commonly understood meaning of the term “board-certified” is a designation conferred by a nationally recognized certifying board, indicating a specialized knowledge of a particular practice area, typically going beyond minimum competency requirements set forth by a state’s licensing laws. A license or other authority to practice in a particular area conferred by a state agency, on the other hand, traditionally demonstrates that an individual has minimum competency to practice in an area, but does not necessarily indicate superior or specialized knowledge as compared to others also licensed to practice.

Section 78.14 would aggravate an already inappropriate scheme allowing the unlicensed practice of acupuncture, by creating a state seal of approval implying a superior knowledge base for the practice of acupuncture by an individual who holds a certificate issued by the Chiropractic Board to practice acupuncture. The proposed advertising allowed under §78.14 will upend the commonly-understood meaning behind the phrase “board certified” and mislead the public.

In publishing the proposed language, the Chiropractic Board asserts that the rule’s purpose is to “promote a clear understanding of the use of acupuncture as a modality by chiropractors.” To the contrary, should §78.14 be adopted as law, it will result in an impermissible and disorderly pathway for the unlicensed practice of acupuncture in Texas for individuals who have met ill-defined and lesser educational and training standards, risking the public health and welfare. Further, the rule would allow such individuals to advertise in such a way so that the public will be unable to clearly understand the individual’s level of licensure or knowledge in the practice of acupuncture, eliminating the public’s ability to make meaningful and well-informed decisions with respect to acupuncture care.

The Acupuncture Board opposes the adoption of §78.14 and urges the Chiropractic Board to act in the public’s best interest and decline to adopt the rule.

Respectfully,

A handwritten signature in black ink, appearing to read "Allen Cline". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Allen Cline, DAOM, L.Ac.
Presiding Officer
Texas Acupuncture Board

RECEIPT OF HAND DELIVERY:

11/5/18: Rita Chapin, Legal Assistant, TMB hand delivered letter dated 11/5/18 to Patrick Fortner, Executive Director, TBCE on behalf of Allen Cline, DAOM, L.Ac., Presiding Officer, Texas Acupuncture Board.

A handwritten signature in black ink, appearing to be "Patrick Fortner", written over a horizontal line.

Rec'd by:

RECEIVED
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TEXAS BOARD OF
CHIROPRACTIC EXAMINERS