

**CAUSE NO. D-1-GN-14-000355**

TEXAS ASSOCIATION OF	§	IN THE DISTRICT COURT OF
ACUPUNCTURE AND ORIENTAL	§	
MEDICINE,	§	
PLAINTIFF	§	
	§	
v.	§	
	§	
TEXAS BOARD OF CHIROPRACTIC	§	
EXAMINERS,	§	TRAVIS COUNTY, TEXAS
DEFENDANT	§	
	§	
v.	§	
	§	
TEXAS CHIROPRACTIC	§	
ASSOCIATION,	§	
INTERVENOR	§	201ST JUDICIAL DISTRICT

**TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE’S  
MOTION TO COMPEL DISCOVERY RESPONSES**

Plaintiff Texas Association of Acupuncture and Oriental Medicine (“Acupuncture Association”) files this Motion to Compel Discovery Responses and for Sanctions, asking the Court to require Defendant Texas Board of Chiropractic Examiners (“Chiropractic Board”) and Intervenor Texas Chiropractic Association’s (“Chiropractic Association”) (collectively “Chiropractic Defendants”) to supplement their deficient discovery responses and produce requested documents not later than seven days from the date this Court enters its order (as more fully set forth in the prayer below).

**INTRODUCTION**

On August 19, 2022, this Court entered an order denying the Chiropractic Defendants’ Motion to Limit Discovery and Issues for Decision. Now, more than a month later, the Chiropractic Defendants continue to drag their feet in providing substantive responses and producing documents in connection with the Acupuncture Association’s written discovery requests, which were served June 8, 2022. The Acupuncture Association appreciates that the Chiropractic

Defendants are seeking appellate remedies—the court of appeals denied their petition for writ of mandamus challenging this Court’s order, and they are now seeking the same relief at the Texas Supreme Court. But trial is scheduled for February 13, 2023, and the Acupuncture Association is entitled to obtain written discovery ahead of trial. Because the Chiropractic Defendants are refusing to respond to written discovery, the Acupuncture Association also is precluded from meaningfully deposing the Chiropractic Defendants’ experts and a Chiropractic Board representative. In short, the Chiropractic Defendants’ stonewalling on discovery is, at this point, jeopardizing the February trial date. The Acupuncture Association is therefore forced to file this Motion to Compel.

### **BACKGROUND**

As this Court is aware, this lawsuit is a rule challenge brought by the Acupuncture Association challenging Chiropractic Board rules authorizing chiropractors to practice acupuncture. When this case was previously in this Court, Judge Naranjo granted summary judgment for the Chiropractic Board. The court of appeals reversed and remanded to this Court. On remand, the Chiropractic Defendants assert that this case can, once again, be disposed of as a matter of law based on the shape of acupuncture needles. As such, after the Acupuncture Association served discovery requests, the parties disclosed experts, and the Acupuncture Association requested limited depositions, the Chiropractic Defendants filed a Motion to Limit Discovery and Issues in Dispute premised on their stance that “few if any factual findings” are required in this case. Motion to Limit Discovery and Issues for Decision at p. 1.<sup>1</sup> On August 19, 2022, this Court denied their motion. **Exhibit A.**

---

<sup>1</sup> In the meantime, while the Chiropractic Defendants’ motion was pending, the parties coordinated with this Court regarding rescheduling the trial date from September 26, 2022 to November 7, 2022.

After this Court denied the motion, the Acupuncture Association's counsel reached out to the Chiropractic Defendants' counsel about receiving supplemental written discovery, scheduling depositions, and submitting for this Court's consideration a supplemental scheduling order. **Exhibit B.** The Chiropractic Defendants responded that they intended to file a mandamus petition challenging this Court's order. On August 23, 2022, the Chiropractic Defendants filed a mandamus petition in the court of appeals, which the court of appeals promptly denied on August 31 without requesting a response. *See Exhibit C.* Meanwhile, the parties agreed, in conjunction with this Court's coordinator, to reschedule the November 2022 trial to February 13, 2023 given the ongoing discovery dispute.

When weeks went by without the Chiropractic Defendants seeking further review at the Texas Supreme Court, the Acupuncture Association's counsel again reached out regarding receiving supplemental written discovery, scheduling depositions, and submitting for this Court's consideration a supplemental scheduling order. **Exhibit B.** The Chiropractic Defendants responded that they would be filing a further mandamus petition at the Texas Supreme Court. *Id.* This mandamus petition was filed September 26, 2022. *See Cause No. 22-0841, In re Texas Board of Chiropractic Examiners and Texas Chiropractic Association.* Because the Chiropractic Defendants failed to inform the Texas Supreme Court of the upcoming February 2023 trial setting, the Acupuncture Association's counsel filed a letter at Supreme Court informing it of the trial setting and requesting that the Court forward the mandamus petition to the mandamus attorney rather than circulating it in the ordinary course (in order to hopefully expedite the Court's consideration of the petition).

While the Acupuncture Association believes the Texas Supreme Court will ultimately deny the Chiropractic Defendants' mandamus petition as did the court of appeals, it is unknown how

long the petition will remain pending at the Supreme Court before final disposition. In the meantime, given the February 13, 2023 trial setting, the Acupuncture Association must press forward with its claims. As such, since the Chiropractic Defendants continue to refuse to comply with their discovery obligations, the Acupuncture Association files this Motion to Compel.

### ARGUMENT

#### **A. Objections related to the Motion to Limit Discovery and Issues in Dispute.**

On June 8, 2022, the Acupuncture Association served requests for production and interrogatories on each of the Chiropractic Defendants. **Exhibit D** and **E**. On July 13, 2022 and July 20, 2022, respectively, the Chiropractic Board and Chiropractic Association responded, and on August 5, 2022, the Chiropractic Board served first amended responses to the interrogatories. **Exhibit F, G, H, and I**. While the Chiropractic Defendants substantively responded to some of the requests and interrogatories, they objected to the majority of them. The Chiropractic Board objected that most interrogatories and requests are “beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the [interrogatory/requested information] until its Motion to Limit has been heard and finally determined.” **Exhibit F** and **I**. The Chiropractic Association lodged similar objections, refusing to respond to any requests or interrogatories except as related to the shape of acupuncture needles. **Exhibit G** and **H**.

The vast majority of the Chiropractic Defendants’ objections are tied to their stance set forth in their Motion to Limit Discovery and Issues for Decision: that the sole focus in dispute is the shape of acupuncture needles, and no discovery is warranted beyond this narrow issue. This Court has already rejected that argument. *See Exhibit A*. The Acupuncture Association’s

narrowly-tailored discovery requests solely concern the Chiropractic Board's acupuncture rule, the practice of acupuncture by chiropractors, and the use of acupuncture needles and solid filiform needles by chiropractors, as expressly defined in the Chiropractic Board's acupuncture rule. 22 TEX. ADMIN. CODE § 78.14. The Acupuncture Association's requests are hardly overbroad or irrelevant to the subject matter of the pending action. *See* TEX. R. CIV. P. 192.3.

The Chiropractic Defendants also lodged a handful of objections that are somewhat unrelated to the Motion to Limit Discovery and Issues for Decision, which the Acupuncture Association briefly addresses. First, in some instances, the Chiropractic Defendants objected to producing attorney-client or attorney work-product privileged information. The Acupuncture Association does not seek attorney-client or attorney work-product privileged information.

Second, the Chiropractic Board objected to at least one request as being "unlimited in time." **Exhibit F** (Request for Production No. 18). But the Acupuncture Association's definitions and instructions provide that the applicable time frame is January 1, 2014 to present, unless otherwise indicated. **Exhibit D** and **E**.

Third, the Chiropractic Association claims it should not have to produce documents that are not in its possession, custody, or control. *See, e.g.,* **Exhibit G** (Request for Production No. 9). The Acupuncture Association does not seek documents that are not in either Chiropractic Defendants' possession, custody, or control. *See* TEX. R. CIV. P. 192.3(b).

In short, the Acupuncture Association seeks only limited discovery that is directly relevant to its challenge to the Chiropractic Board's acupuncture rule. This Court should require the Chiropractic Defendants to supplement their responses and produce the requested documents.



**CERTIFICATE OF CONFERENCE**

Counsel for the Acupuncture Association conferred with counsel for the Chiropractic Defendants regarding the relief requested in this Motion to Compel. As demonstrated in Exhibit B, the parties were unable to agree, necessitating the filing of this Motion to Compel.

*/s/ Shelby O'Brien*

\_\_\_\_\_  
Shelby O'Brien

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 3, 2022, a true and correct copy of the above and foregoing has been served by electronic filing service on the following:

Karen Watkins  
Assistant Attorney General  
Administrative Law Division  
P.O. Box 12548  
Austin, Texas 78711  
512.475.4300 / 512.320.0167 (fax)  
[karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)

Matt C. Wood  
**WEISBART SPRINGER HAYES LLP**  
212 Lavaca Street, Suite 200  
Austin, Texas 78701  
512.652.5780 / 512.682.2074 (fax)  
[mwood@wshllp.com](mailto:mwood@wshllp.com)

*/s/ Shelby O'Brien*

\_\_\_\_\_  
Shelby O'Brien

# Exhibit A



AGREED AS TO FORM AND SUBSTANCE:

By: /s/ Shelby O'Brien

Shelby L. O'Brien (SBN 24037203)

sobrien@enochkever.com

Amy L. Prueger (SBN 24041842)

aprueger@enochkever.com

**ENOCH KEVER PLLC**

7600 N. Capital of Texas Hwy

Building B, Suite 200

Austin, Texas 78731

512.615.1200 / 512.615.1198 (fax)

**ATTORNEYS FOR PLAINTIFF**

**TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE**

AGREED AS TO FORM:

By: /s/ Karen Watkins

Karen Watkins (SBN 20927425)

Assistant Attorney General

Administrative Law Division

P.O. Box 12548

Austin, Texas 78711

512.475.4300 / 512.320.0167 (fax)

karen.watkins@oag.texas.gov

**ATTORNEY FOR DEFENDANT**

**TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

By: /s/ Matt C. Wood

Matt C. Wood (SBN 24066306)

**WEISBART SPRINGER HAYES LLP**

212 Lavaca Street, Suite 200

Austin, Texas 78701

512.652.5780 / 512.682.2074 (fax)

mwood@wshllp.com

**ATTORNEY FOR INTERVENOR**

**TEXAS CHIROPRACTIC ASSOCIATION**

# Exhibit B

**From:** [Karen Watkins](#)  
**To:** [Shelby O'Brien](#); [Matt Wood](#)  
**Cc:** [Amy Prueger](#)  
**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association  
**Date:** Friday, September 23, 2022 10:55:05 AM  
**Attachments:** [image001.jpg](#)

---

**CAUTION:** This email originated from outside of the organization. Do not open links/attachments unless you recognize the sender and know the content is safe.

Shelby,

Thank you for your email.

It generally takes more time for the Attorney General's office (as opposed to a private law firm) to file a petition for writ of mandamus at the Supreme Court, even after having filed one at the Court of Appeals, because the Office of the Solicitor General has to approve each step.

We have just received permission to file at the Supreme Court and anticipate doing so by early next week, at the latest.

While this does not prevent you from filing a motion to compel or noticing depositions, I am hopeful that this additional information will forestall those actions.

Karen

*Karen L. Watkins*  
**Assistant Attorney General**  
**Administrative Law Division**  
**Office of the Attorney General**  
**P. O. Box 12548**  
**Austin, Texas 78711-2548**  
**(512) 475-4208**  
**(512) 320-0167 Facsimile**  
**E-mail: [karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)**

---

**From:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>  
**Sent:** Friday, September 23, 2022 10:40 AM  
**To:** Karen Watkins <[Karen.Watkins@oag.texas.gov](mailto:Karen.Watkins@oag.texas.gov)>; Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>  
**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>  
**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

Karen and Matt – I assume you all saw that the court of appeals denied the Chiropractic Defendants' mandamus petition over three weeks ago (on August 31). We haven't seen a mandamus petition filed at the Texas Supreme Court. Please provide amended discovery responses and documents by

Thursday, September 29, at 5:00 or we will be required to file a motion to compel. Likewise, please provide dates for the Acupuncture Association to depose a Chiropractic Board representative (on the topics previously identified to you) and the Chiropractic Defendants' two remaining designated experts (Mark Hanson and Kenneth Thomas) by Thursday, September 29, at 5:00 or else we will need to unilaterally notice those depositions. I am envisioning dates in early to mid-December for the depositions (before the holidays) to allow us sufficient time to review the documents before the depositions and then sufficient time after the depositions to prepare for trial. Finally, we need to agree to a supplemental docket control order regarding a new discovery deadline and setting forth the new trial date. I previously circulated a draft, though dates will need to be tweaked. Thank you – Shelby

Shelby O'Brien

Board Certified – Civil Appellate Law – Texas Board of Legal Specialization

ENOCH KEVER PLLC

7600 N. Capital of Texas Hwy, Building B, Suite 200

Austin, Texas 78731

(512) 615-1225 *Direct*

(512) 415-4410 *Cell*

[sobrien@enochkever.com](mailto:sobrien@enochkever.com)

[www.enochkever.com](http://www.enochkever.com)

EK\_logo



---

**From:** Karen Watkins <[Karen.Watkins@oag.texas.gov](mailto:Karen.Watkins@oag.texas.gov)>

**Sent:** Tuesday, August 23, 2022 6:45 PM

**To:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>; Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>

**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>

**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

**CAUTION:** This email originated from outside of the organization. Do not open links/attachments unless you recognize the sender and know the content is safe.

Thank you for the thoughtful response, Shelby. I am in favor of looking at early February dates, if Judge Soifer is willing, and I am not opposed to seeking expedited consideration of the mandamus. I think that looking for a February date would be a better alternative than seeking a stay from Judge Soifer because, then, no matter how the mandamus is decided, we're starting at a later date to seek the new trial setting, putting it off even longer.

In response to your surprise that we filed the motion to limit discovery "so close to the discovery cut off . . . given how long ago the Texas Supreme Court opinion at issue was released," I suspect your surprise stems from our differing readings of the TBCE v. TMA opinion. As you know – even though you do not agree – I read the case to contemplate that the discovery your client seeks on many

issues cannot be pursued by one challenging a rule. It was not until we received the expert disclosures on May 20 that we understood you all disagreed with our understanding of the case. (It appears that the last discovery we had from you before that was the answers your client provided to RFA's, RFP's and interrogatories in August, 2019, when Joe Thrash still had the case and well before the opinion issued.) I don't think anyone can say that we wasted time at that point, because we had the motion on file 13 days later.

I, too, wish this issue had not come to a head as late in the schedule as it did. But it has, and I know that you understand that we are not doing this for delay, but because we believe we must to protect our clients' interests. And, in my case, this will be a continuing issue for all of our client agencies, so we want to get it resolved as soon as we can. So, as you say, I believe that we should focus on getting an answer from the appellate courts as soon as possible and, then, afterwards, conducting discovery and having a trial, also as soon as possible.

I appreciate your response, Shelby, particularly as you are in trial. I will contact Ms. Chipelo tomorrow about the possibility of alternative dates and let you know what she says.

I wish you continued good luck in your trial,

Karen

*Karen L. Watkins*

**Assistant Attorney General**  
**Administrative Law Division**  
**Office of the Attorney General**  
**P. O. Box 12548**  
**Austin, Texas 78711-2548**  
**(512) 475-4208**  
**(512) 320-0167 Facsimile**  
**E-mail: [karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)**

---

**From:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>

**Sent:** Tuesday, August 23, 2022 5:34 PM

**To:** Karen Watkins <[Karen.Watkins@oag.texas.gov](mailto:Karen.Watkins@oag.texas.gov)>; Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>

**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>

**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

Karen and Matt, I spoke with my client. As noted previously, we can't agree to an indefinite stay of discovery with a November trial date. We need to conduct our requested discovery before trial, which your clients are refusing to participate in until the mandamus petition filed today is ruled upon. We presume you intend to file the same at the Texas Supreme Court if the court of appeals denies relief. We also cannot agree to an indefinite stay of the case while the case proceeds in the normal course at the court of appeals and Texas Supreme Court

With that said, we don't see how it is possible to keep the November trial date in light of this mandamus proceeding. In our view, it is necessary to receive our requested discovery and imminently schedule depositions to occur September to conduct the November trial. Even if the mandamus proceedings are expedited, it is difficult to envision the mandamus being ruled upon in time. So we would propose the following:

- See if Judge Soifer has any early (perhaps February) 2023 dates available for a bench trial, explaining that the mandamus proceeding will make it impossible to have the November 7 bench trial given pretrial deadlines and that discovery would need to occur over the next month.
- As necessary, ask the court of appeals to expedite consideration of the mandamus proceeding, and the supreme court as well.

Please let me know if something along these lines is acceptable, subject to Judge Soifer's willingness and availability.

In terms of your comments regarding delay, I certainly agree that any delays following remand went both ways, and no doubt my client needed additional time during the Covid pandemic, which your clients agreed to, and which we appreciated. More recently, though, I was surprised when your clients filed a motion to limit discovery so close to the discovery cut off and four months from trial given how long ago the Texas Supreme Court opinion at issue was released. But at this juncture, let's try to figure out the best path forward.

Thank you – Shelby

Shelby O'Brien

Board Certified – Civil Appellate Law – Texas Board of Legal Specialization

ENOCH KEVER PLLC

7600 N. Capital of Texas Hwy, Building B, Suite 200

Austin, Texas 78731

(512) 615-1225 *Direct*

(512) 415-4410 *Cell*

[sobrien@enochkever.com](mailto:sobrien@enochkever.com)

[www.enochkever.com](http://www.enochkever.com)

EK\_logo



---

**From:** Karen Watkins <[Karen.Watkins@oag.texas.gov](mailto:Karen.Watkins@oag.texas.gov)>

**Sent:** Monday, August 22, 2022 11:32 AM

**To:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>; Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>

**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>

**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

**CAUTION:** This email originated from outside of the organization. Do not open links/attachments unless you recognize the sender and know the content is safe.

That is completely reasonable, Shelby, and, yes, I think we would need to stay the trial, too.

Karen

*Karen L. Watkins*

**Assistant Attorney General**

**Administrative Law Division**

**Office of the Attorney General**

**P. O. Box 12548**

**Austin, Texas 78711-2548**

**(512) 475-4208**

**(512) 320-0167 Facsimile**

**E-mail:** [karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)

---

**From:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>

**Sent:** Monday, August 22, 2022 11:30 AM

**To:** Karen Watkins <[Karen.Watkins@oag.texas.gov](mailto:Karen.Watkins@oag.texas.gov)>; Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>

**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>

**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

Karen, we can't even go to trial without discovery, obviously, so a stay of discovery won't work. It would require moving the trial date the court just set for us. If your intention is to stay the entire case, not just discovery, I will need to visit with my client about that. But we won't agree just to a stay of discovery while keeping a November trial date.

---

**From:** Karen Watkins <[Karen.Watkins@oag.texas.gov](mailto:Karen.Watkins@oag.texas.gov)>

**Sent:** Monday, August 22, 2022 11:27 AM

**To:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>; Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>

**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>

**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

**CAUTION:** This email originated from outside of the organization. Do not open links/attachments unless you recognize the sender and know the content is safe.

Good morning, Shelby and Amy.

I can agree to the portion of the order setting the trial date, but, despite your gracious flexibility about the precise date, I can agree to the discovery deadline only as to those parts of the discovery that we contend are relevant under TBCE v. TMA.

As I indicated I would be doing in response to your email about whether we could get you discovery by the end of last week, I explored with our Office of Solicitor General the possibility of filing a petition for writ of mandamus concerning the decision on our motion to limit discovery. We will be filing that petition for writ as soon as it has been reviewed and approved by our internal management reviewers at OAG.

I know that this is frustrating for your client, which now wants to hurry and go to trial after a delay of several years. We understand that desire. However, please remember that the delays in this case were not something for which my client was solely responsible. Aside from the delays necessitated by the pandemic, all but one of the requests for abatement or delay were joint; the one that was not was initiated by your client, and we did not oppose it.

I can also understand that everyone (including me, now that I have inherited it) would like to get this 2014 case resolved, finally. But I must act in my client's best interests. Because we truly believe that TBCE v. TMA requires the limited approach to discovery that we advocated for in our motion to limit, filing a writ of mandamus – and declining to agree to a discovery deadline as to the irrelevant discovery – is what I must do for my client. I am not doing it for purposes of delay, because discovery can be wrapped up much more quickly if we are not conducting it concerning irrelevant matters.

All that said, although I believe that I know the answer you must give, I want to inquire whether you would be amenable to entering into a stay of discovery until we can get the discovery-limit issue resolved? If so, I will draft a stay order and send it over. If not, I will prepare a motion for emergency temporary relief to file in the original proceeding and confer with you (or more likely Amy, since you will be in trial) about that.

Sincerely,

Karen

*Karen L. Watkins*

**Assistant Attorney General  
Administrative Law Division  
Office of the Attorney General  
P. O. Box 12548  
Austin, Texas 78711-2548  
(512) 475-4208  
(512) 320-0167 Facsimile  
E-mail: [karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)**

---

**From:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>

**Sent:** Monday, August 22, 2022 8:54 AM

**To:** Karen Watkins <[Karen.Watkins@oag.texas.gov](mailto:Karen.Watkins@oag.texas.gov)>; Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>

**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>

**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

Karen, I definitely understand being busy. I have a jury trial in Burnet County this week, though we just got bumped by one day, so it is starting tomorrow. But November 7 is not that far away, and it seems critical that the following occur:

- Figure out our new discovery deadline (which my proposed supplemental deadline addresses – but if you all think another deadline works better, let us know).
- Go ahead and get depositions on the schedule for September. We previously requested to depose the defendants' remaining two experts and a TBCE representative. Likewise, if you want to depose any of our folks, we need to get that on their calendars.

Relatedly, we need the discovery we requested in advance of the depositions. You all both said you would endeavor to get that to us by Friday last week, but I never heard anything further. Again, I understand busy schedules, and I honestly will not be able to look at anything this week anyway. But I think it is beneficial for all of us to get this firmed up when the November trial date isn't that far away.

I look forward to hearing from you both.

Shelby O'Brien

Board Certified – Civil Appellate Law – Texas Board of Legal Specialization

ENOCH KEVER PLLC

7600 N. Capital of Texas Hwy, Building B, Suite 200

Austin, Texas 78731

(512) 615-1225 *Direct*

(512) 415-4410 *Cell*

[sobrien@enochkever.com](mailto:sobrien@enochkever.com)

[www.enochkever.com](http://www.enochkever.com)

EK\_logo



---

**From:** Karen Watkins <[Karen.Watkins@oag.texas.gov](mailto:Karen.Watkins@oag.texas.gov)>

**Sent:** Thursday, August 18, 2022 5:10 PM

**To:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>; Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>

**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>

**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v.

Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

**CAUTION:** This email originated from outside of the organization. Do not open links/attachments unless you recognize the sender and know the content is safe.

My apologies, Shelby. I had a hearing yesterday and another significant one this morning (with a request for a follow-up submission by the end of the day tomorrow), as well as a brief deadline today and initial disclosures due out in another case tomorrow.

I hope you'll bear with me as I deal with the fires closest to my feet first.

Karen

*Karen L. Watkins*

**Assistant Attorney General**  
**Administrative Law Division**  
**Office of the Attorney General**  
**P. O. Box 12548**  
**Austin, Texas 78711-2548**  
**(512) 475-4208**  
**(512) 320-0167 Facsimile**  
**E-mail: [karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)**

---

**From:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>

**Sent:** Thursday, August 18, 2022 4:58 PM

**To:** Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>; Karen Watkins <[Karen.Watkins@oag.texas.gov](mailto:Karen.Watkins@oag.texas.gov)>

**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>

**Subject:** FW: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

Matt and Karen, I am following up on this. Please let me know if this is acceptable. Thanks – Shelby

Shelby O'Brien

Board Certified – Civil Appellate Law – Texas Board of Legal Specialization

**E**NOCH **K**EVER PLLC

7600 N. Capital of Texas Hwy, Building B, Suite 200

Austin, Texas 78731

(512) 615-1225 *Direct*

(512) 415-4410 *Cell*

[sobrien@enochkever.com](mailto:sobrien@enochkever.com)

[www.enochkever.com](http://www.enochkever.com)

EK\_logo

---

**From:** Shelby O'Brien

**Sent:** Tuesday, August 16, 2022 4:28 PM

**To:** Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>; Karen Watkins ([karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)) <[karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)>

**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>

**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

Matt and Karen, please see attached and let us know if this works. Thanks – Shelby

Shelby O'Brien

Board Certified – Civil Appellate Law – Texas Board of Legal Specialization

ENOCH KEVER PLLC

7600 N. Capital of Texas Hwy, Building B, Suite 200

Austin, Texas 78731

(512) 615-1225 *Direct*

(512) 415-4410 *Cell*

[sobrien@enochkever.com](mailto:sobrien@enochkever.com)

[www.enochkever.com](http://www.enochkever.com)

EK\_logo



---

**From:** Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>

**Sent:** Tuesday, August 16, 2022 3:32 PM

**To:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>; Karen Watkins ([karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)) <[karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)>

**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>

**Subject:** RE: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

**CAUTION:** This email originated from outside of the organization. Do not open links/attachments unless you recognize the sender and know the content is safe.

Thank you Shelby

Matt C. Wood

Partner

Weisbart Springer Hayes LLP

512.652.5780 office  
512.831.3619 direct

---

**From:** Shelby O'Brien <[sobrien@enochkever.com](mailto:sobrien@enochkever.com)>  
**Sent:** Tuesday, August 16, 2022 11:20 AM  
**To:** Karen Watkins ([karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)) <[karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)>; Matt Wood <[mwood@wshllp.com](mailto:mwood@wshllp.com)>  
**Cc:** Amy Prueger <[aprueger@enochkever.com](mailto:aprueger@enochkever.com)>  
**Subject:** FW: Cause No. D-1-GN-14-000355; Texas Association of Acupuncture & Oriental Medicine v. Tex. Bd. of Chiropractic Examiners and Texas Chiropractic Association

Karen and Matt, we can prepare a draft supplement to the scheduling order moving the discovery deadline and trial date and circulate for your review. Thanks – Shelby

Shelby O'Brien  
Board Certified – Civil Appellate Law – Texas Board of Legal Specialization  
ENOCH KEVER PLLC  
7600 N. Capital of Texas Hwy, Building B, Suite 200  
Austin, Texas 78731  
(512) 615-1225 *Direct*  
(512) 415-4410 *Cell*  
[sobrien@enochkever.com](mailto:sobrien@enochkever.com)  
[www.enochkever.com](http://www.enochkever.com)



# Exhibit C

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

---

---

**NO. 03-22-00520-CV**

---

---

**In re Texas Board of Chiropractic Examiners and Texas Chiropractic Association**

---

**ORIGINAL PROCEEDING FROM TRAVIS COUNTY**

---

**MEMORANDUM OPINION**

The petition for writ of mandamus is denied. *See* Tex. R. App. P. 52.8(a).

---

Chari L. Kelly, Justice

Before Justices Goodwin, Baker, and Kelly

Filed: August 31, 2022

# Exhibit D



**CERTIFICATE OF SERVICE**

I hereby certify that, on June 8, 2022, a true and correct copy of the above and foregoing has been served by electronic filing service on the following:

Karen Watkins  
Assistant Attorney General  
Administrative Law Division  
P.O. Box 12548  
Austin, Texas 78711  
512.475.4300 / 512.320.0167 (fax)  
[karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)

Matt C. Wood  
**WEISBART SPRINGER HAYES LLP**  
212 Lavaca Street, Suite 200  
Austin, Texas 78701  
512.652.5780 / 512.682.2074 (fax)  
[mwood@wshllp.com](mailto:mwood@wshllp.com)

*/s/ Shelby O'Brien*

\_\_\_\_\_  
Shelby O'Brien

## **INSTRUCTIONS FOR REQUESTS FOR PRODUCTION AND INTERROGATORIES**

### **A. Requests for Production**

If any documents otherwise required to be produced by this request are withheld, you shall identify the document by stating its date, author, recipients, and the reason for withholding. If any claim of immunity or privilege is made with respect to each document requested, Plaintiff respectfully requests that you list all such documents in chronological order, setting forth as to each the following: Date; Author; Addressee; Title; Type of document; Subject matter; Basis for the claimed privilege, immunity, or objection; and Identity of all persons to whom copies of such documents were sent.

If any document requested was previously in your possession, custody, or control and has been lost or destroyed, you are requested to submit, in lieu of each document, a written statement which:

1. describes in detail the nature of the document and its contents;
2. identifies the person who prepared or authorized the document and, if applicable, the person to whom the document was sent;
3. specifies the date on which the document was prepared or transmitted or both; and
4. specifies, if possible, the date on which the document was lost or destroyed, and, if destroyed, the conditions of, or reasons for, such distribution and the persons requesting and performing the destruction.

This Request for Production is continuing, and you shall produce any document obtained or located subsequent to production which would have been produced had it been available or its existence known.

### **B. Interrogatories**

These interrogatories are deemed continuing so as to require your or your attorney to reasonably supplement your answers if you, your attorney, or any other person acting on your behalf, obtain further information between the time of your answers and time of trial. You are

further notified that these interrogatories, and your sworn answers to them, may be used in evidence upon trial of this cause.

In answering these questions, please furnish all information available to you, including information in the possession of your attorney or any other person acting on your behalf. If you cannot answer the interrogatory in full after exercising due diligence to secure the information, state this in your answer, and to the extent possible answer stating whatever information or knowledge you have.

Your attention is called to the following important provisions of the Texas Rules of Civil Procedure regarding interrogatories and their answers:

1. Answer the interrogatories separately and fully.
2. These interrogatories must be signed under oath.
3. You and your attorney are under a duty to supplement your answers to these interrogatories by amending your answers if you obtain information indicating that the answer was incorrect or incomplete when made or that the answer is no longer true and complete, even though it was correct and complete when made.

### **DEFINITIONS AND OTHER INSTRUCTIONS**

The following terms are defined and used in these interrogatories and requests for production:

1. “Plaintiff” and “TAAOM” refers to the Texas Association of Acupuncture and Oriental Medicine and its agents, employees, and representatives.
2. “Defendant,” “you,” “your,” and “TBCE” refers to the Texas Board of Chiropractic Examiners, its executive director, and its other agents, employees, and representatives.

3. “Person” means the plural as well as the singular and includes: natural persons, corporations, firms, associations, partnerships, joint ventures, trusts, estates, or any other form of legal entity, and governmental agencies departments, units, or subdivisions thereof.

4. “Communication(s)” refer to any transmission or exchange of information either orally or in writing, and includes without limitation, any conversation, letter, note, memorandum, intra-firm or interoffice correspondence, telephone calls, telegraphs, telexes, telecopies, facsimile transmissions, cables, conferences, tape recordings, discussions or face-to-face communications.

5. “Document(s)” refer to any records, reports, deeds, letters, telegrams, memoranda, notes, complaints, contracts, correspondence, studies, statements, affidavits, minutes, diaries, appointment books, circulars, charts, schedules, computer print-outs, e-mails, or other computer documentation, tape recordings or transcripts thereof, financial statements, financial records, canceled checks, bills, invoices, ledgers, worksheets, sketches, graphs, photographic slides, movies, films, microfilm, photographs, magnetic and electronic data and any and all other forms of writing, reproduction or data compilation from which information may be obtained, including the original and any non-identical copies or drafts thereof, regardless of origin or location, and including any record of any type or description, whether handwritten, typed, printed, punched, taped, filed, transcribed, or otherwise created, and regardless of whether it is produced, reproduced or stored on discs, tapes, cards or other computer, magnetic or electronic devices. For Documents stored via electronic or magnetic means, Plaintiff requests that the Documents be produced in disk format, with sufficient instructions that the items produced are readily retrievable and usable, or, alternatively, that the Documents be printed out in “hard copy” from their electronic or magnetic storage.

6. “Statement” includes any written or graphic statement signed or otherwise adopted or proved by the person making it, and any stenographic, mechanical, electrical, or other record or

transcription thereof which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

7. “Identify” or “identify of” when referring to:

(a) a person, means to state his or her full name, occupation, job title, employer, and employer’s address at the time of the event or period referred to in each particular interrogatories, requests for admission, and requests for production, and present, or last known, business or residential street address, city, state, and phone number;

(b) a public or private corporation, partnership, association, or other organization or to a governmental agency, means to state its full name and present or last known pertinent business street address, city, state, and phone number;

(c) a statement, means to identify who made it, who took or recorded it, and all others, if any present during the making thereof; to state when, where, and how it was taken or recorded, and to identify who has present or last known possession, custody, or control thereof;

(d) a document, means to state the nature of the document (e.g., letter, handwritten note), the title or heading that appears on the document, the date of the document and the date of each addendum, supplement, or other addition or change, the identities of the author, signer of the document, or person on whose behalf or at whose request or direction the document was prepared or delivered, and the present location of the document with the name, address, position or title, and telephone number of the person(s) having custody of the document; and

(e) any other tangible thing, means to give a reasonably detailed description hereof, including, if applicable, when, where, and how it was made; to identify who made it; and to identify who has present or last known possession, custody, or control thereof.

8. “Report completely” when referring to:

(a) oral or written statements means to reduce to writing each and every word you or anyone you assert has knowledge of the facts of this case has heard, and state the date, time, place, and state the date, time, place, and persons who were present when such oral or written statement was said or made;

(b) personal acts include any gestures, facial expression, noises which do not constitute speech, or any movement of a person's body, as well as the date, time, place, and persons who were present when such act occurred; and

(c) official acts include any assignments, office arrangement, category or type of work expected, workload, or any act done by or requested by an individual purportedly in the course and scope of their authority over the Defendant as well as the date, time, place, and persons who were present when such act occurred.

9. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.

10. "Chiropractor" means a person licensed by the Texas Board of Chiropractic Examiners to practice chiropractic under Texas Occupations Code, Chapter 201, who is not also licensed to practice acupuncture by the Texas State Board of Acupuncture Examiners under Texas Occupations Code, Chapter 205.

11. "TCA" refers to Intervenor Texas Chiropractic Association and its agents, employees, and representatives.

12. "Rule 78.14" refers to 22 Texas Administrative Code section 78.14, as adopted in 2018 and amended in 2020.

13. “Rulemaking proceedings” refers to the TBCE informal stakeholder proceedings and ultimate rulemaking proceedings that led to the adoption of Rule 78.14 in 2018 and amendment of Rule 78.14 in 2020.

14. Unless otherwise indicated in a specific request for interrogatory, the applicable timeframe for all enumerated requests and interrogatories is January 1, 2014, to present.

### **REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Produce all comments submitted during the 2017-2020 rulemaking proceedings.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 2:** Produce all communications with the Office of the Texas Governor, Greg Abbott regarding the 2017-2020 rulemaking proceedings, Rule 78.14, or the practice of acupuncture by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 3:** Produce all recordings from TBCE stakeholder meetings or TBCE board meetings from January 1, 2012, to present regarding the practice of acupuncture by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 4:** Produce all letter opinions or statements (including opinions or statements posted on the TBCE website) by TBCE regarding the practice of acupuncture by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 5:** Produce all letters to the Office of the Attorney General regarding the practice of acupuncture by chiropractors. This request does not include attorney-client privileged communications.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 6:** Produce the TBCE policy statement referenced in the Texas Sunset Advisory Commission’s April 17, 1980 staff report regarding TBCE stating chiropractors cannot practice acupuncture.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 7:** Produce all communications with TAAOM during the 2017-2020 rulemaking proceedings.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 8:** Produce all communications with TCA during the 2017-2020 rulemaking proceedings.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 9:** Produce all complaints regarding the practice of acupuncture or use of acupuncture or solid filiform needles by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 10:** Produce all complaints regarding advertising by chiropractors regarding the practice of acupuncture or “chiropractic acupuncture.”

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 11:** Produce all documents or communications concerning enforcement proceedings initiated by TBCE regarding the practice of acupuncture or use of acupuncture or solid filiform needles by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 12:** Produce all documents or communications concerning enforcement proceedings initiated by TBCE regarding advertising by chiropractors regarding the practice of acupuncture or “chiropractic acupuncture.”

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 13:** Produce all documents or communications concerning the removal of the TBCE Acupuncture FAQs section from the TBCE website regarding the practice of dry needling by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 14:** Produce all documents or communications received from Parker University or Texas Chiropractic College regarding the 2017-2020 rulemaking proceedings, Rule 78.14, the practice of acupuncture by chiropractors, or the use of acupuncture needles by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 15:** Produce all documents or communications supporting or referencing TBCE's decision to reduce acupuncture training requirements from 200 hours in its proposed Rule 78.14 to 100 hours in the adopted Rule 78.14.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 16:** Produce all documents or communications supporting, referencing, or arguing that 100 hours of training in acupuncture is sufficient for the safe and effective practice of acupuncture.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 17:** Produce all documents or communications supporting, referencing, or arguing that chiropractors are capable of practicing acupuncture in a manner that is within the scope of practice set forth in Texas Occupations Code, Chapter 201.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 18:** Produce all documents or communications supporting, referencing, or arguing that acupuncture needles are nonincisive or nonsurgical.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 19:** Produce all documents or communications in which Patricia Gilbert acknowledged that acupuncture is incisive.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 20:** Produce all documents or communications in which any member of or employee of TBCE has acknowledged that acupuncture is incisive.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 21:** Produce any communications between TBCE and any member of the Texas Legislature, including Representative Senfronia Thompson, regarding the practice of acupuncture by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 22:** Produce all documents or communications from or to Patricia Gilbert related to the 2017-2020 rulemaking proceedings.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 23:** Produce all documents or communications concerning any situation or case TBCE is aware of in which a patient has been injured by a chiropractor performing acupuncture.

**RESPONSE:**

**SECOND SET OF INTERROGATORIES**

**INTERROGATORY NO. 1:** How many chiropractors are or have been practicing acupuncture in Texas each year since Rule 78.14 was adopted?

**RESPONSE:**

**INTERROGATORY NO. 2:** On average, how much acupuncture-specific training and education have been completed by the chiropractors performing acupuncture in Texas each year since Rule 78.14 was adopted?

**RESPONSE:**

**INTERROGATORY NO. 3:** Of the chiropractors performing acupuncture in Texas since Rule 78.14 was adopted, how many are doing so with no more than the 100 hours of acupuncture training required by Rule 78.14?

**RESPONSE:**

**INTERROGATORY NO. 4:** How many hours of meridian and point location training are chiropractors required to complete to practice acupuncture in Texas under Rule 78.14?

**RESPONSE:**

**INTERROGATORY NO. 5:** How many hours of supervised patient treatment in acupuncture are chiropractors required to complete to practice acupuncture in Texas under Rule 78.14?

**RESPONSE:**

**INTERROGATORY NO. 6:** How are chiropractors who practice acupuncture in Texas authorized to represent themselves to the public as practitioners of acupuncture under Rule 78.14?

**RESPONSE:**

**INTERROGATORY NO. 7:** Describe the curriculum in acupuncture chiropractors are required to complete in order to obtain a “permit” to practice acupuncture under Rule 78.14.

**RESPONSE:**

**INTERROGATORY NO. 8:** Describe the specific clinical training required for a chiropractor to practice acupuncture under Rule 78.14.

**RESPONSE:**

**INTERROGATORY NO. 9:** Describe the specific training required at Texas chiropractic schools regarding the use of needles by chiropractors.

**RESPONSE:**

**INTERROGATORY NO. 10:** Describe the specific training required at Texas chiropractic schools regarding the use of acupuncture needles or solid filiform needles by chiropractors.

**RESPONSE:**

**INTERROGATORY NO. 11:** Describe how a chiropractor can determine whether a particular needle is incisive or not.

**RESPONSE:**

**INTERROGATORY NO. 12:** Describe how TBCE ensures that chiropractors are only using “nonincisive” needles when practicing acupuncture and any enforcement actions brought by TBCE against chiropractors for using “incisive” needles.

**RESPONSE:**

**INTERROGATORY NO. 13:** Describe the number and type of enforcement actions brought by TBCE against chiropractors regarding advertising by chiropractors regarding the practice of acupuncture or “chiropractic acupuncture.”

**RESPONSE:**

**INTERROGATORY NO. 14:** Describe the accredited chiropractic curriculum specific to acupuncture or the use of solid filiform needles that is taught at Texas chiropractic schools.

**RESPONSE:**

**INTERROGATORY NO. 15:** Describe TBCE’s position on the training required for a chiropractor to use of acupuncture or solid filiform needles for dry needling.

**RESPONSE:**

**INTERROGATORY NO. 16:** Describe any situation or case TBCE is aware of in which a patient has been injured by a chiropractor performing acupuncture.

**RESPONSE:**

**INTERROGATORY NO. 17:** Explain how acupuncture needles or solid filiform needles are capable of being inserted into the body in a nonincisive manner.

**RESPONSE:**

# Exhibit E



**CERTIFICATE OF SERVICE**

I hereby certify that, on June 8, 2022, a true and correct copy of the above and foregoing has been served by electronic filing service on the following:

Karen Watkins  
Assistant Attorney General  
Administrative Law Division  
P.O. Box 12548  
Austin, Texas 78711  
512.475.4300 / 512.320.0167 (fax)  
[karen.watkins@oag.texas.gov](mailto:karen.watkins@oag.texas.gov)

Matt C. Wood  
**WEISBART SPRINGER HAYES LLP**  
212 Lavaca Street, Suite 200  
Austin, Texas 78701  
512.652.5780 / 512.682.2074 (fax)  
[mwood@wshllp.com](mailto:mwood@wshllp.com)

*/s/ Shelby O'Brien*

\_\_\_\_\_  
Shelby O'Brien

## **INSTRUCTIONS FOR REQUESTS FOR PRODUCTION AND INTERROGATORIES**

### **A. Requests for Production**

If any documents otherwise required to be produced by this request are withheld, you shall identify the document by stating its date, author, recipients, and the reason for withholding. If any claim of immunity or privilege is made with respect to each document requested, Plaintiff respectfully requests that you list all such documents in chronological order, setting forth as to each the following: Date; Author; Addressee; Title; Type of document; Subject matter; Basis for the claimed privilege, immunity, or objection; and Identity of all persons to whom copies of such documents were sent.

If any document requested was previously in your possession, custody, or control and has been lost or destroyed, you are requested to submit, in lieu of each document, a written statement which:

1. describes in detail the nature of the document and its contents;
2. identifies the person who prepared or authorized the document and, if applicable, the person to whom the document was sent;
3. specifies the date on which the document was prepared or transmitted or both; and
4. specifies, if possible, the date on which the document was lost or destroyed, and, if destroyed, the conditions of, or reasons for, such distribution and the persons requesting and performing the destruction.

This Request for Production is continuing, and you shall produce any document obtained or located subsequent to production which would have been produced had it been available or its existence known.

### **B. Interrogatories**

These interrogatories are deemed continuing so as to require your or your attorney to reasonably supplement your answers if you, your attorney, or any other person acting on your behalf, obtain further information between the time of your answers and time of trial. You are

further notified that these interrogatories, and your sworn answers to them, may be used in evidence upon trial of this cause.

In answering these questions, please furnish all information available to you, including information in the possession of your attorney or any other person acting on your behalf. If you cannot answer the interrogatory in full after exercising due diligence to secure the information, state this in your answer, and to the extent possible answer stating whatever information or knowledge you have.

Your attention is called to the following important provisions of the Texas Rules of Civil Procedure regarding interrogatories and their answers:

1. Answer the interrogatories separately and fully.
2. These interrogatories must be signed under oath.
3. You and your attorney are under a duty to supplement your answers to these interrogatories by amending your answers if you obtain information indicating that the answer was incorrect or incomplete when made or that the answer is no longer true and complete, even though it was correct and complete when made.

#### **DEFINITIONS AND OTHER INSTRUCTIONS**

The following terms are defined and used in these interrogatories and requests for production:

1. “Plaintiff” and “TAAOM” refers to the Texas Association of Acupuncture and Oriental Medicine and its agents, employees, and representatives.
2. “Intervenor,” “you,” “your,” and “TCA” refers to the Texas Chiropractic Association and its agents, employees, and representatives.

3. “Person” means the plural as well as the singular and includes: natural persons, corporations, firms, associations, partnerships, joint ventures, trusts, estates, or any other form of legal entity, and governmental agencies departments, units, or subdivisions thereof.

4. “Communication(s)” refer to any transmission or exchange of information either orally or in writing, and includes without limitation, any conversation, letter, note, memorandum, intra-firm or interoffice correspondence, telephone calls, telegraphs, telexes, telecopies, facsimile transmissions, cables, conferences, tape recordings, discussions or face-to-face communications.

5. “Document(s)” refer to any records, reports, deeds, letters, telegrams, memoranda, notes, complaints, contracts, correspondence, studies, statements, affidavits, minutes, diaries, appointment books, circulars, charts, schedules, computer print-outs, e-mails, or other computer documentation, tape recordings or transcripts thereof, financial statements, financial records, canceled checks, bills, invoices, ledgers, worksheets, sketches, graphs, photographic slides, movies, films, microfilm, photographs, magnetic and electronic data and any and all other forms of writing, reproduction or data compilation from which information may be obtained, including the original and any non-identical copies or drafts thereof, regardless of origin or location, and including any record of any type or description, whether handwritten, typed, printed, punched, taped, filed, transcribed, or otherwise created, and regardless of whether it is produced, reproduced or stored on discs, tapes, cards or other computer, magnetic or electronic devices. For Documents stored via electronic or magnetic means, Plaintiff requests that the Documents be produced in disk format, with sufficient instructions that the items produced are readily retrievable and usable, or, alternatively, that the Documents be printed out in “hard copy” from their electronic or magnetic storage.

6. “Statement” includes any written or graphic statement signed or otherwise adopted or proved by the person making it, and any stenographic, mechanical, electrical, or other record or

transcription thereof which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

7. “Identify” or “identify of” when referring to:

(a) a person, means to state his or her full name, occupation, job title, employer, and employer’s address at the time of the event or period referred to in each particular interrogatories, requests for admission, and requests for production, and present, or last known, business or residential street address, city, state, and phone number;

(b) a public or private corporation, partnership, association, or other organization or to a governmental agency, means to state its full name and present or last known pertinent business street address, city, state, and phone number;

(c) a statement, means to identify who made it, who took or recorded it, and all others, if any present during the making thereof; to state when, where, and how it was taken or recorded, and to identify who has present or last known possession, custody, or control thereof;

(d) a document, means to state the nature of the document (e.g., letter, handwritten note), the title or heading that appears on the document, the date of the document and the date of each addendum, supplement, or other addition or change, the identities of the author, signer of the document, or person on whose behalf or at whose request or direction the document was prepared or delivered, and the present location of the document with the name, address, position or title, and telephone number of the person(s) having custody of the document; and

(e) any other tangible thing, means to give a reasonably detailed description hereof, including, if applicable, when, where, and how it was made; to identify who made it; and to identify who has present or last known possession, custody, or control thereof.

8. “Report completely” when referring to:

(a) oral or written statements means to reduce to writing each and every word you or anyone you assert has knowledge of the facts of this case has heard, and state the date, time, place, and state the date, time, place, and persons who were present when such oral or written statement was said or made;

(b) personal acts include any gestures, facial expression, noises which do not constitute speech, or any movement of a person's body, as well as the date, time, place, and persons who were present when such act occurred; and

(c) official acts include any assignments, office arrangement, category or type of work expected, workload, or any act done by or requested by an individual purportedly in the course and scope of their authority over the Defendant as well as the date, time, place, and persons who were present when such act occurred.

9. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.

10. "Chiropractor" means a person licensed by the Texas Board of Chiropractic Examiners to practice chiropractic under Texas Occupations Code, Chapter 201, who is not also licensed to practice acupuncture by the Texas State Board of Acupuncture Examiners under Texas Occupations Code, Chapter 205.

11. "TBCE" refers to Defendant Texas Board of Chiropractic Examiners, its executive director, and its other agents, employees, and representatives.

12. "Rule 78.14" refers to 22 Texas Administrative Code section 78.14, as adopted in 2018 and amended in 2020.

13. “Rulemaking proceedings” refers to the TBCE informal stakeholder proceedings and ultimate rulemaking proceedings that led to the adoption of Rule 78.14 in 2018 and amendment of Rule 78.14 in 2020.

14. Unless otherwise indicated in a specific request for interrogatory, the applicable timeframe for all enumerated requests and interrogatories is January 1, 2014, to present.

### **FIRST REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Produce all communications with the Office of the Texas Governor, Greg Abbott regarding the 2017-2020 rulemaking proceedings, Rule 78.14, or the practice of acupuncture by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 2:** Produce all communications with TBCE regarding the 2017-2020 rulemaking proceedings, Rule 78.14, or the practice of acupuncture by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 3:** Produce all communications with TAAOM during the 2017-2020 rulemaking proceedings.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 4:** Produce all documents or communications received from Parker University or Texas Chiropractic College regarding the 2017-2020 rulemaking proceedings, Rule 78.14, the practice of acupuncture by chiropractors, or the use of acupuncture needles by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 5:** Produce all documents or communications supporting or referencing TBCE’s decision to reduce acupuncture training requirements from 200 hours in its proposed Rule 78.14 to 100 hours in the adopted Rule 78.14.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 6:** Produce all documents or communications supporting, referencing, or arguing that 100 hours of training in acupuncture is sufficient for the safe and effective practice of acupuncture.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 7:** Produce all documents or communications supporting, referencing, or arguing that chiropractors are capable of practicing acupuncture in a manner that is within the scope of practice set forth in Texas Occupations Code, Chapter 201.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 8:** Produce all documents or communications supporting, referencing, or arguing that acupuncture needles are nonincisive or nonsurgical.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 9:** Produce all documents or communications in which TCA or any member or employee of TCA has acknowledged that acupuncture is incisive.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 10:** Produce any communications between TCA and any member of the Texas Legislature regarding the practice of acupuncture by chiropractors.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 11:** Produce all documents or communications concerning any situation or case TCA is aware of in which a patient has been injured by a chiropractor performing acupuncture.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 12:** Produce all TCA news articles, including as posted on the TCA website, regarding the performance of acupuncture by chiropractors in Texas.

**RESPONSE:**

### **FIRST SET OF INTERROGATORIES**

**INTERROGATORY NO. 1:** How many TCA members have a “permit” under Rule 78.14 to practice acupuncture?

**RESPONSE:**

**INTERROGATORY NO. 2:** How many TCA members are practicing acupuncture in Texas without obtaining a permit under Rule 78.14?

**RESPONSE:**

**INTERROGATORY NO. 3:** Describe how a chiropractor can determine whether a particular needle is incisive or not.

**RESPONSE:**

**INTERROGATORY NO. 4:** Describe TCA's position on the training required for a chiropractor to use acupuncture or solid filiform needles for dry needling.

**RESPONSE:**

**INTERROGATORY NO. 5:** Explain the "few instances of patients who have been injured by a chiropractor performing acupuncture" referenced in the TCA article entitled "TCA to Fight for Right of Chiropractors to Perform Acupuncture" dated October 17, 2019.

**RESPONSE:**

**INTERROGATORY NO. 6:** Explain how acupuncture needles or solid filiform needles are capable of being inserted into the body in a nonincisive manner.

**RESPONSE:**

# Exhibit F



response indicating that material or information is being withheld from production. *See* Tex. R. Civ. P. 193.3(b).

The Board also objects to TAAOM's attempt to require it to create written statements describing documents that once were, but no longer are, in the Board's possession, custody or control because a request for production cannot be used to require a responding party to create a document, and because it requires a near-impossibility, i.e., having a governmental entity with significant staff turnover during the life of this suit to remember documents that do not exist in sufficient detail to identify the nature of the document and its contents, its author and intended recipient, specifies the date the nonexistent document was created, and relates how that document was destroyed.

The Board objects to the definition of the terms "Defendant," "you," "your," and "TBCE" to include the Board's "other agents, employees, and representatives," because defining these terms in this way would necessarily include the Board's attorneys, both in-house and at the Office of the Attorney General. As a result, the requests and interrogatories using those terms would, in each instance, require the disclosure of attorney-client communications and attorney work product. The Board will not produce or provide privileged information.

## **OBJECTIONS AND RESPONSES TO SPECIFIC REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Produce all comments submitted during the 2017-2020 rulemaking proceedings.

**OBJECTION AND RESPONSE:** The Board objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined. The Board further objects to this request because of the vague definition of the term "2017-2020 rulemaking proceedings." As that term is defined in the

instructions to the requests, any writing to the Board of any kind during the period from 2017-2020 might or might not be responsive to the request, making the request improper because of a failure to identify a specific category of documents or information to be produced. Subject to and without waiving the foregoing objections and construing a rule-making proceeding to be that contemplated by the Administrative Procedure Act, the Board is producing electronically all of the comments submitted in connection with the rulemakings that resulted in the adoption of Rule 78.14 and the two subsequent amendments to that Rule on the same day it serves these objections and responses.

**REQUEST FOR PRODUCTION NO. 2:** Produce all communications with the Office of the Texas Governor, Greg Abbott[,] regarding the 2017-2020 rulemaking proceedings, Rule 78.14, or the practice of acupuncture by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it seeks the production of information that is subject to both the attorney-client communication privilege and the deliberative process privilege; the Board will not produce privileged documents. The Board also objects to this request because, as the term “2017-2020 rulemaking proceedings” is defined, the request fails properly to specify a category of documents for production. The Board further objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 3:** Produce all recordings from TBCE stakeholder meetings or TBCE board meetings from January 1, 2012, to present regarding the practice of acupuncture by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). The Board also objects to this request to the extent that it violates the limitations on discovery set out in

Tex. R. Civ. P. 192.4(a) because the recordings of Board meetings are readily available from its website and obtaining the recordings from that site is more convenient and less burdensome than having the Board produce copies of those recordings. Subject to and without waiving the foregoing objections, the Board refers TAA-OM to the recordings of Board meetings accessible on the Board's website and, in addition, is producing electronically the only recording of a stakeholder meeting it has on the same day that it is serving these objections and responses.

**REQUEST FOR PRODUCTION NO. 4:** Produce all letter opinions or statements (including opinions or statements posted on the TBCE website) by TBCE regarding the practice of acupuncture by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this request as overly broad because it is unlimited in time. To the extent that the request seeks opinions or statements that relate to the qualifications of chiropractors or enforcement actions against chiropractors who have allegedly exceeded the proper scope of practice, the Board also objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). Subject to and without waiving these objections and to the extent that responsive information is not subject to the Board's proper-scope-of-discovery objection, the Board is producing responsive statements in addition to those previously provided to TAA-OM electronically on the same day that it is serving these objections and responses.

**REQUEST FOR PRODUCTION NO. 5:** Produce all letters to the Office of the Attorney General regarding the practice of acupuncture by chiropractors. This request does not include attorney-client privileged communications.

**OBJECTIONS AND RESPONSE:** The Board objects to this request as being overly broad because it is unlimited in time. The Board objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a

result, the Board will not produce any requested information in addition to that previously produced until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 6:** Produce the TBCE policy statement referenced in the Texas Sunset Advisory Commission’s April 17, 1980 staff report regarding TBCE stating chiropractors cannot practice acupuncture.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). Subject to and without waiving this objection, the Board responds that it does not currently have a copy of this document, which is more than 40 years old.

**REQUEST FOR PRODUCTION NO. 7:** Produce all communications with TAAOM during the 2017-2020 rulemaking proceedings.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it would be impossible to comply with as it is worded and as the term “TAA-OM” is defined in the instructions. The Board would not necessarily know all of those persons who were acting as agents or representatives of TAA-OM for purposes of rulemaking proceedings. The Board also objects to this request because, as the term “2017-2020 rulemaking proceedings” is defined, the request fails properly to specify a category of documents for production. The Board further objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 8:** Produce all communications with TCA during the 2017-2020 rulemaking proceedings.

**OBJECTIONS AND RESPONSES:** The Board objects to this request because it would be impossible to comply with as it is worded. The Board would not necessarily know all of those

persons who were acting as agents or representatives of TCA for purposes of the “2017-2020 rulemaking proceedings,” especially as that term is defined. The Board also objects to this request because, as the term “2017-2020 rulemaking proceedings” is defined, the request fails properly to specify a category of documents for production. The Board further objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 9:** Produce all complaints regarding the practice of acupuncture or use of acupuncture or solid filiform needles by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 10:** Produce all complaints regarding advertising by chiropractors regarding the practice of acupuncture or “chiropractic acupuncture.”

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 11:** Produce all documents or communications concerning enforcement proceedings initiated by TBCE regarding the practice of acupuncture or use of acupuncture or solid filiform needles by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is beyond

the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 12:** Produce all documents or communications concerning enforcement proceedings initiated by TBCE regarding advertising by chiropractors regarding the practice of acupuncture or “chiropractic acupuncture.”

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 13:** Produce all documents or communications concerning the removal of the TBCE Acupuncture FAQs section from the TBCE website regarding the practice of dry needling by chiropractors.

**OBJECTION AND RESPONSE:** The Board objects to this request to the extent that it seeks the production of information protected by the attorney-client communication privilege. Subject to and without waiving this objection, the Board states that there are no responsive documents or communications.

**REQUEST FOR PRODUCTION NO. 14:** Produce all documents or communications received from Parker University or Texas Chiropractic College regarding the 2017-2020 rulemaking proceedings, Rule 78.14, the practice of acupuncture by chiropractors, or the use of acupuncture needles by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because, as the term “2017-2020 rulemaking proceedings” is defined, the request fails properly to specify a category of documents for production. The Board also objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038.

*See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). The Board further objects to the request because, as to communications concerning the practice of acupuncture by chiropractors and the use of acupuncture needles by chiropractors, the request is overly broad because it is unlimited in time. Subject to and without waiving the foregoing objections and construing the term “rule-making” to mean the actions described in the APA, the Board responds that there are no responsive documents or communications.

**REQUEST FOR PRODUCTION NO. 15:** Produce all documents or communications supporting or referencing TBCE’s decision to reduce acupuncture training requirements from 200 hours in its proposed Rule 78.14 to 100 hours in the adopted Rule 78.14.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 16:** Produce all documents or communications supporting, referencing, or arguing that 100 hours of training in acupuncture is sufficient for the safe and effective practice of acupuncture.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 17:** Produce all documents or communications supporting, referencing, or arguing that chiropractors are capable of practicing acupuncture in a manner that is within the scope of practice set forth in Texas Occupations Code, Chapter 201.

**OBJECTIONS AND RESPONSE:** The Board objects to this request to the extent that it seeks the production of documents or information protected by the attorney-client communication

privilege or the attorney work product privilege. The Board also objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

**REQUEST FOR PRODUCTION NO. 18:** Produce all documents or communications supporting, referencing, or arguing that acupuncture needles are nonincisive or nonsurgical.

**OBJECTIONS AND RESPONSE:** The Board objects to this request to the extent that it seeks the production of documents or information protected by the attorney-client communication privilege or the attorney work product privilege. The Board also objects to this request because it is overly broad in that it is unlimited in time. Subject to and without waiving these objections, the Board responds that it will produce responsive information, in addition to documents and communications previously produced, electronically on the same day that it is serving these objections and responses.

**REQUEST FOR PRODUCTION NO. 19:** Produce all documents or communications in which Patricia Gilbert acknowledged that acupuncture is incisive.

**OBJECTIONS AND RESPONSE:** The Board objects to this request to the extent that it seeks the production of documents or communications protected by the attorney-client communication privilege or the attorney work product privilege; the Board will not produce any privileged documents or communications. Subject to and without waiving the foregoing objection, the Board responds that it has no such documents or communications.

**REQUEST FOR PRODUCTION NO. 20:** Produce all documents or communications in which any member of or employee of TBCE has acknowledged that acupuncture is incisive.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is overly broad in that it is unlimited in time. The Board further objects to this request to the extent that it seeks the production of documents or communications that are protected by either the attorney-client

or attorney work product privileges; the Board will not produce any privileged documents. Subject to and without waiving the foregoing objections, the Board responds that it has no such documents or communications in addition to those that were previously produced.

**REQUEST FOR PRODUCTION NO. 21:** Produce any communications between TBCE and any member of the Texas Legislature, including Representative Senfronia Thompson, regarding the practice of acupuncture by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is overly broad in that it is unlimited in time. Subject to and without waiving the foregoing objection, the Board is producing true and complete copies of the requested information electronically on the same day that it is serving these objections and responses.

**REQUEST FOR PRODUCTION NO. 22:** Produce all documents or communications from or to Patricia Gilbert related to the 2017-2020 rulemaking proceedings.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because, as the term “2017-2020 rulemaking proceedings” is defined, the request fails properly to specify a category of documents for production. Subject to and without waiving the foregoing objection and construing the term “rulemaking proceeding” to refer to the proceeding described in the APA, the Board will produce electronically any responsive information on a mutually agreeable date.

**REQUEST FOR PRODUCTION NO. 23:** Produce all documents or communications concerning any situation or case TBCE is aware of in which a patient has been injured by a chiropractor performing acupuncture.

**OBJECTIONS AND RESPONSE:** The Board objects to this request because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not produce the requested information until after its Motion to Limit has been heard and finally determined.

## **OBJECTIONS AND RESPONSES TO SPECIFIC INTERROGATORIES**

**INTERROGATORY NO. 1:** How many chiropractors are or have been practicing acupuncture in Texas each year since Rule 78.14 was adopted?

**OBJECTION AND RESPONSE:** The following numbers of chiropractors had active acupuncture permits for the referenced years:

2018: 57

2019: 291

2020: 342

2021: 384

2022: 399

**INTERROGATORY NO. 2:** On average, how much acupuncture-specific training and education have [sic] been completed by the chiropractors performing acupuncture in Texas each year since Rule 78.14 was adopted?

**OBJECTION AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 3:** Of the chiropractors performing acupuncture in Texas since Rule 78.14 was adopted, how many are doing so with no more than the 100 hours of acupuncture training required by Rule 78.14?

**OBJECTION AD RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 4:** How many hours of meridian and point location training are chiropractors required to complete to practice acupuncture in Texas under Rule 78.14?

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 5:** How many hours of supervised patient treatment in acupuncture are chiropractors required to complete to practice acupuncture in Texas under Rule 78.14?

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 6:** How are chiropractors who practice acupuncture in Texas authorized to represent themselves to the public as practitioners of acupuncture under Rule 78.14?

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory as being vague and ambiguous because, as worded, it is not possible to determine whether the interrogatory seeks information about a process by which chiropractors are authorized to represent themselves to the public as practitioners of acupuncture under Rule 78.14, the manner in which chiropractors who employ the acupuncture modality may permissibly represent themselves as offering that modality pursuant to Rule 78.14, or some other subject. Subject to and without waiving this objection and assuming the interrogatory seeks information about the manner in which chiropractors who employ the acupuncture modality are permitted to represent themselves to the public as offering that modality

of treatment, the Board responds that Texas chiropractors with acupuncture permits may represent themselves to the public as using that modality only in conformity with Board Rules 78.14(h) and (i).

**INTERROGATORY NO. 7:** Describe the curriculum in acupuncture chiropractors are required to complete in order to obtain a “permit” to practice acupuncture under Rule 78.14.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 8:** Describe the specific clinical training required for a chiropractor to practice acupuncture under Rule 78.14.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021).

As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 9:** Describe the specific training required at Texas chiropractic schools regarding the use of needles by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021).

As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 10:** Describe the specific training required at Texas chiropractic schools regarding the use of acupuncture needles or solid filiform needles by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 11:** Describe how a chiropractor can determine whether a particular needle is incisive or not.

**RESPONSE:** Because an incisive needle has a beveled edge or blade that can cut skin, a chiropractor can tell that a needle is non-incisive either by looking to see that it has a point or cone-shaped end for piercing skin, or by testing it to determine the needle pierces, rather than cuts, skin.

**INTERROGATORY NO. 12:** Describe how TBCE ensures that chiropractors are only using “nonincisive” needles when practicing acupuncture and any enforcement actions brought by TBCE against chiropractors for using “incisive” needles.

**OBJECTION AND RESPONSE:** The Board objects to this interrogatory to the extent that it inquires about enforcement actions brought by TBCE against chiropractors using “incisive” needles because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, to that extent, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined. Subject to and without waiving this objection, the Board responds that the limited scope of chiropractic practice is laid out in the Rules found at 22 Tex. Admin. Code chs. 73, 75, 78, and 79. If a complaint is filed contending that a chiropractor is exceeding the scope of practice, the Board investigates and takes appropriate action.

**INTERROGATORY NO. 13:** Describe the number and type of enforcement actions brought by TBCE against chiropractors regarding advertising by chiropractors regarding the practice of acupuncture or “chiropractic acupuncture.”

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory to the extent that it inquires about enforcement actions brought by TBCE against chiropractors because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). The Board further objects to this interrogatory and will not respond to it because it exceeds the 25-interrogatory limit imposed by Tex. R. Civ. P. 190.3(b)(3).

**INTERROGATORY NO. 14:** Describe the accredited chiropractic curriculum specific to acupuncture or the use of solid filiform needles that is taught at Texas chiropractic schools.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory to the extent that it inquires about enforcement actions brought by TBCE against chiropractors because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). The Board also objects to this interrogatory and will not respond to it because it exceeds the 25-interrogatory limit imposed by Tex. R. Civ. P. 190.3(b)(3).

**INTERROGATORY NO. 15:** Describe TBCE’s position on the training required for a chiropractor to use of [sic] or solid filiform needles for dry needling.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory to the extent that it inquires about enforcement actions brought by TBCE against chiropractors because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). The Board also objects to this interrogatory and will not respond to it because it exceeds the 25-interrogatory limit imposed by Tex. R. Civ. P. 190.3(b)(3).

**INTERROGATORY NO. 16:** Describe any situation or case TBCE is aware of in which a patient has been injured by a chiropractor performing acupuncture.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory and will not respond to it because it exceeds the 25-interrogatory limit imposed by Tex. R. Civ. P. 190.3(b)(3). The Board further objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, to that extent, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 17:** Explain how acupuncture needles or solid filiform needles are capable of being inserted into the body in a nonincisive manner.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory and will not respond to it because it exceeds the 25-interrogatory limit imposed by Tex. R. Civ. P. 190.3(b)(3).

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Objections and Responses to Texas Association of Acupuncture and Oriental Medicine's Second Request for Production and Second Set of Interrogatories was sent to the following counsel of record as described below on this the 13th day of July, 2022:

Shelby L. O'Brien  
Amy L. Prueger  
ENOCH KEVER PLLC  
7600 N. Capital of Texas Hwy.  
Building B, Suite 200  
Austin, Texas 78731  
Telephone: (512) 615-1200  
Facsimile: (512) 615-1198

Via electronic service: [sobrien@enochkever.com](mailto:sobrien@enochkever.com)  
[aprueger@enochkever.com](mailto:aprueger@enochkever.com)

Attorneys for Plaintiff Texas Association of  
Acupuncture and Oriental Medicine

Matt C. Wood  
WEISBART SPRINGER HAYES LLP  
212 Lavaca Street, Suite 200  
Austin, Texas 78701

Via electronic service: [mwood@wshllp.com](mailto:mwood@wshllp.com)

Attorneys for Intervenor  
Texas Chiropractic Association

*/s/ Karen L. Watkins*  
KAREN L. WATKINS

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jeff Lutz on behalf of Karen Watkins  
Bar No. 20927425  
jeff.lutz@oag.texas.gov  
Envelope ID: 66282892  
Status as of 7/13/2022 2:06 PM CST

Associated Case Party: TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE

Name	BarNumber	Email	TimestampSubmitted	Status
Craig T. Enoch		cenoch@enochkever.com	7/13/2022 2:05:58 PM	SENT
Laci Lindsey		llindsey@enochkever.com	7/13/2022 2:05:58 PM	SENT

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Lori Perez		lperez@wshllp.com	7/13/2022 2:05:58 PM	SENT
Melissa Lorber		mlorber@enochkever.com	7/13/2022 2:05:58 PM	SENT
Shelby O'Brien		sobrien@enochkever.com	7/13/2022 2:05:58 PM	SENT
Amy L. Prueger		aprueger@enochkever.com	7/13/2022 2:05:58 PM	SENT
Matt C. Wood		mwood@wshllp.com	7/13/2022 2:05:58 PM	SENT
Leah Martino		lmartino@wshllp.com	7/13/2022 2:05:58 PM	SENT
Roxanne Mares		rmares@wshllp.com	7/13/2022 2:05:58 PM	SENT
Jeff Lutz		jeff.lutz@oag.texas.gov	7/13/2022 2:05:58 PM	SENT

Associated Case Party: TEXAS BOARD OF CHIROPRACTIC EXAMINERS

Name	BarNumber	Email	TimestampSubmitted	Status
Karen Watkins		karen.watkins@oag.texas.gov	7/13/2022 2:05:58 PM	SENT

# Exhibit G



Respectfully submitted,

**WEISBART SPRINGER HAYES LLP**  
212 Lavaca Street, Suite 200  
Austin, Texas 78701  
512.652.5780  
512.682.2074 fax

By: /s/ Matt C. Wood  
Matt C. Wood  
State Bar No. 24066306  
mwood@wshllp.com

**ATTORNEYS FOR INTERVENOR, TEXAS  
CHIROPRACTIC ASSOCIATION**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by way of:

- U.S. Mail, First Class
- Certified Mail
- Facsimile
- Federal Express
- Hand Delivery
- E-Service

on this 20th day of July 2022, to wit:

Shelby L. O'Brien  
Craig T. Enoch  
Melissa A. Lorber  
ENOCH KEVER PLLC  
7600 N. Capital of Texas Hwy  
Building B, Suite 200  
Austin, Texas 78731  
512.615.1200  
512.615.1198 fax  
sobrien@enochkever.com  
cenoch@enochkever.com  
mlorber@enochkever.com

**ATTORNEYS FOR PLAINTIFF TEXAS  
ASSOCIATION OF ACUPUNCTURE AND  
ORIENTAL MEDICINE**

Karen Watkins  
Assistant Attorney General  
Administrative Law Division  
OFFICE OF THE TEXAS ATTORNEY  
GENERAL  
P.O. Box 12548  
Austin, Texas 78711  
512.475.4300  
512.320.0167 fax  
karen.watkins@oag.texas.gov

**ATTORNEY FOR DEFENDANT TEXAS BOARD  
OF CHIROPRACTIC EXAMINERS**

/s/ Matt C. Wood  
Matt C. Wood

## **GENERAL OBJECTIONS**

1. TCA generally objects to the requests to the extent they seek information that is not properly subject to discovery as explained in Defendant and Intervenor's Joint Motion to Limit Discovery and Issues for Decision, which is incorporated herein by reference in full for all purposes. As further explained in Defendant and Intervenor's Traditional Motion for Summary Judgment (including any amendment thereto), the only issue that is relevant to a decision on TAAOM's rule challenges in this case is the shape of acupuncture needles and whether they are "incisive" (or "cut"). Discovery into matters such as the qualifications of chiropractors, procedural history of the rules at issue, or the actual practices of chiropractors in Texas are all irrelevant based on Texas Supreme Court precedent, particularly given the very narrow issues involved in this case. Should the Motion to Limit Discovery and Issues for Decision be overruled in whole or part, TCA will reconsider its objections as appropriate in light of such ruling and intends to supplement its responses as may be necessary.

2. TCA objects to any instruction or definition to the extent it seeks responses or information beyond that required by the Texas Rules of Civil Procedure. For example, TCA objects to the instruction that would require identification of extensive information regarding lost or destroyed documents as beyond the scope of a required response to requests for production under Texas Rules of Civil Procedure 196.

## **RESPONSES TO REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Produce all communications with the Office of the Texas Governor, Greg Abbott regarding the 2017-2020 rulemaking proceedings, Rule 78.14, or the practice of acupuncture by chiropractors.

**RESPONSE:** TCA objects to this request as grossly overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks a broad fishing expedition into essentially any communications regarding the practice of acupuncture by chiropractors, including matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type (such as the qualifications and training of chiropractors or unauthorized practices). Moreover, TAAOM has not raised a procedural challenge to the validity of rules, so communications related to rulemaking proceedings are likewise irrelevant unless they touch on specific factual matters legitimately in dispute.

Subject to and without waiving these objections, TCA is willing to confer with TAAOM about a narrower scope of production that is reasonably tailored to relevant factual matters in dispute.

**REQUEST FOR PRODUCTION NO. 2:** Produce all communications with TBCE regarding the 2017-2020 rulemaking proceedings, Rule 78.14, or the practice of acupuncture by chiropractors.

**RESPONSE:** TCA objects to this request as grossly overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks a broad fishing expedition into essentially any communications regarding the practice of acupuncture by chiropractors, including matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type (such as the qualifications and training of chiropractors or unauthorized practices). Moreover, TAAOM has not raised a procedural challenge to the validity of rules, so communications related to rulemaking proceedings are likewise irrelevant unless they touch on specific factual matters legitimately in dispute.

Subject to and without waiving these objections, TCA is willing to confer with TAAOM about a narrower scope of production that is reasonably tailored to relevant factual matters in dispute.

**REQUEST FOR PRODUCTION NO. 3:** Produce all communications with TAAOM during the 2017-2020 rulemaking proceedings.

**RESPONSE:** TCA objects to this request as grossly overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks a broad fishing expedition into any communications with TAAOM about any subject

whatsoever, presumably also including matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type (such as the qualifications and training of chiropractors or unauthorized practices). Moreover, TAAOM has not raised a procedural challenge to the validity of rules, so communications related to rulemaking proceedings are likewise irrelevant unless they touch on specific factual matters legitimately in dispute.

Subject to and without waiving these objections, TCA is willing to confer with TAAOM about a narrower scope of production that is reasonably tailored to relevant factual matters in dispute.

**REQUEST FOR PRODUCTION NO. 4:** Produce all documents or communications received from Parker University or Texas Chiropractic College regarding the 2017-2020 rulemaking proceedings, Rule 78.14, the practice of acupuncture by chiropractors, or the use of acupuncture needles by chiropractors.

**RESPONSE:** TCA objects to this request as grossly overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks a broad fishing expedition into essentially any communications regarding the practice of acupuncture by chiropractors, including matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type (such as the qualifications and training of chiropractors or unauthorized practices). Moreover, TAAOM has not raised a procedural challenge to the validity of rules, so communications related to rulemaking proceedings are likewise irrelevant unless they touch on specific factual matters legitimately in dispute.

Subject to and without waiving these objections, TCA is willing to confer with TAAOM about a narrower scope of production that is reasonably tailored to relevant factual matters in dispute.

**REQUEST FOR PRODUCTION NO. 5:** Produce all documents or communications supporting or referencing TBCE’s decision to reduce acupuncture training requirements from 200 hours in its proposed Rule 78.14 to 100 hours in the adopted Rule 78.14.

**RESPONSE:** TCA objects to this request as irrelevant and/or overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks information about matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type including the qualifications and training of chiropractors. TCA also objects to this request to the extent it seeks privileged attorney-client communications or protected work product.

**REQUEST FOR PRODUCTION NO. 6:** Produce all documents or communications supporting, referencing, or arguing that 100 hours of training in acupuncture is sufficient for the safe and effective practice of acupuncture.

**RESPONSE:** TCA objects to this request as irrelevant and/or overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks information about matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type including the qualifications and training of chiropractors. TCA also objects to this request to the extent it seeks privileged attorney-client communications or protected work product.

**REQUEST FOR PRODUCTION NO. 7:** Produce all documents or communications supporting, referencing, or arguing that chiropractors are capable of practicing acupuncture in a manner that is within the scope of practice set forth in Texas Occupations Code, Chapter 201.

**RESPONSE:** TCA objects to the phrase “capable of” as ambiguous, for example by not specifying whether it means factually capable (i.e., qualified) or legally capable (i.e., authorized). TCA also objects to this request as overbroad under some interpretations because it would seek information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request appears to seek information about matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type such as the qualifications and training of chiropractors. In the alternative, the request appears to improperly seek factual discovery about a pure question of law and/or would require TCA to marshal its evidence for trial during discovery. TCA further objects to this request to the extent it seeks privileged attorney-client communications or protected work product.

Subject to and without waiving these objections, TCA is willing to confer with TAAOM about a narrower scope of production that is reasonably tailored to relevant factual matters in dispute.

**REQUEST FOR PRODUCTION NO. 8:** Produce all documents or communications supporting, referencing, or arguing that acupuncture needles are nonincisive or nonsurgical.

**RESPONSE:** TCA objects to this request to the extent it seeks privileged attorney-client communications or protected work product. TCA further objects to this request as overbroad to the extent it seeks irrelevant information about whether needles are “nonsurgical” which is beyond the scope of TAAOM’s pleadings. In the alternative, the request appears to improperly seek factual discovery about a pure question of law and/or would require TCA to marshal its evidence for trial during discovery.

Subject to and without waiving these objections, TCA will produce responsive, non-privileged documents, if any, referencing or arguing that acupuncture needles are nonincisive. See also TCA’s prior production of materials from its expert witnesses Christopher Palenik and Dr. Mark Hanson.

**REQUEST FOR PRODUCTION NO. 9:** Produce all documents or communications in which TCA or any member or employee of TCA has acknowledged that acupuncture is incisive.

**RESPONSE:** TCA objects to this request to the extent it assumes a fact not in evidence, namely that acupuncture is incisive. TCA would also point out that it does not have possession, custody, or control of all communications by its members, who are third parties.

Subject to and without waiving these objections, TCA will produce responsive, non-privileged documents, if any, stating that acupuncture is incisive. At this time, TCA has not located any such documents.

**REQUEST FOR PRODUCTION NO. 10:** Produce any communications between TCA and any member of the Texas Legislature regarding the practice of acupuncture by chiropractors.

**RESPONSE:** TCA objects to this request as grossly overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks a broad fishing expedition into any communications regarding the practice of acupuncture by chiropractors, including matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type (such as the qualifications and training of chiropractors or unauthorized practices).

**REQUEST FOR PRODUCTION NO. 11:** Produce all documents or communications concerning any situation or case TCA is aware of in which a patient has been injured by a chiropractor performing acupuncture.

**RESPONSE:** TCA objects to this request as irrelevant and/or overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks information regarding matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type, including policy matters and/or unauthorized practices.

**REQUEST FOR PRODUCTION NO. 12:** Produce all TCA news articles, including as posted on the TCA website, regarding the performance of acupuncture by chiropractors in Texas.

**RESPONSE:** TCA objects to this request as irrelevant and/or overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks any articles regarding the practice of acupuncture by chiropractors, including matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type (such as the qualifications and training of chiropractors or unauthorized practices).

Subject to and without waiving these objections, TCA will produce responsive, non-privileged articles, if any, regarding the shape of acupuncture needles or whether such needles are “incisive” or “cut.” At this time, TCA has not located any such documents.



Kaden Norton &lt;kaden@txstatecraft.com&gt;

---

**Austin**

---

**Dr. Bill Morgan** <WMorgan@parker.edu>

Mon, Apr 8, 2019 at 7:46 AM

To: Jeff Jenkins &lt;exec@chirotx.org&gt;, tomball chiropractic &lt;tomballchiro@yahoo.com&gt;

Cc: Kaden Norton &lt;kaden@txstatecraft.com&gt;, Joshua Massingill &lt;josh@txstatecraft.com&gt;, Dean McWilliams &lt;dean@mcwilliamstexas.com&gt;, Angela Klement &lt;aklement@parker.edu&gt;, Patrick Bodnar &lt;PBodnar@parker.edu&gt;

All,

Thank you all for scrambling last week. It is hard to imagine that this time last week our house bills were dying on the vine. Hopefully we can keep them alive and get them passed.

I felt we did very well in making our case for HB2733, but we failed to make our case for HB3194. In fact, the traditional acupuncturists did a much better job than we did at defining our position, though Alyana did a great job when she spoke.

While I am not an expert in acupuncture, I have been trained to know the differences in needles. Hypodermic needles (see attachment) are created to cut (incise), acupuncture needles are designed to puncture (hence the name acuPUNCTURE). I am looking for references on this, but have confirmed this with Dr. Rosenbaum who is a neurosurgeon and medical acupuncturist. He is researching this further.

When we find the references for the definitions of an incisive needle (hypodermic needles), versus puncture needles, we may want to include them in future testimonies.

If we have earlier notice on when we are to testify next, we may be able to have Dr. Rosenbaum testify for both the neurology bill and the acupuncture bill.

But either way we need to ensure that our witnesses can clearly refute the incorrect redefining of what constitutes an incisive needle. What I was particularly concerned with was that our witnesses did not connect the changing of the definition to the restriction of our scope. In fact, most of our testimonies were confusing.

Will we be testifying again on acupuncture? If so, will we ensure our witnesses are better prepared and can communicate our narrative clearly?

Thank you for all of your hard work.

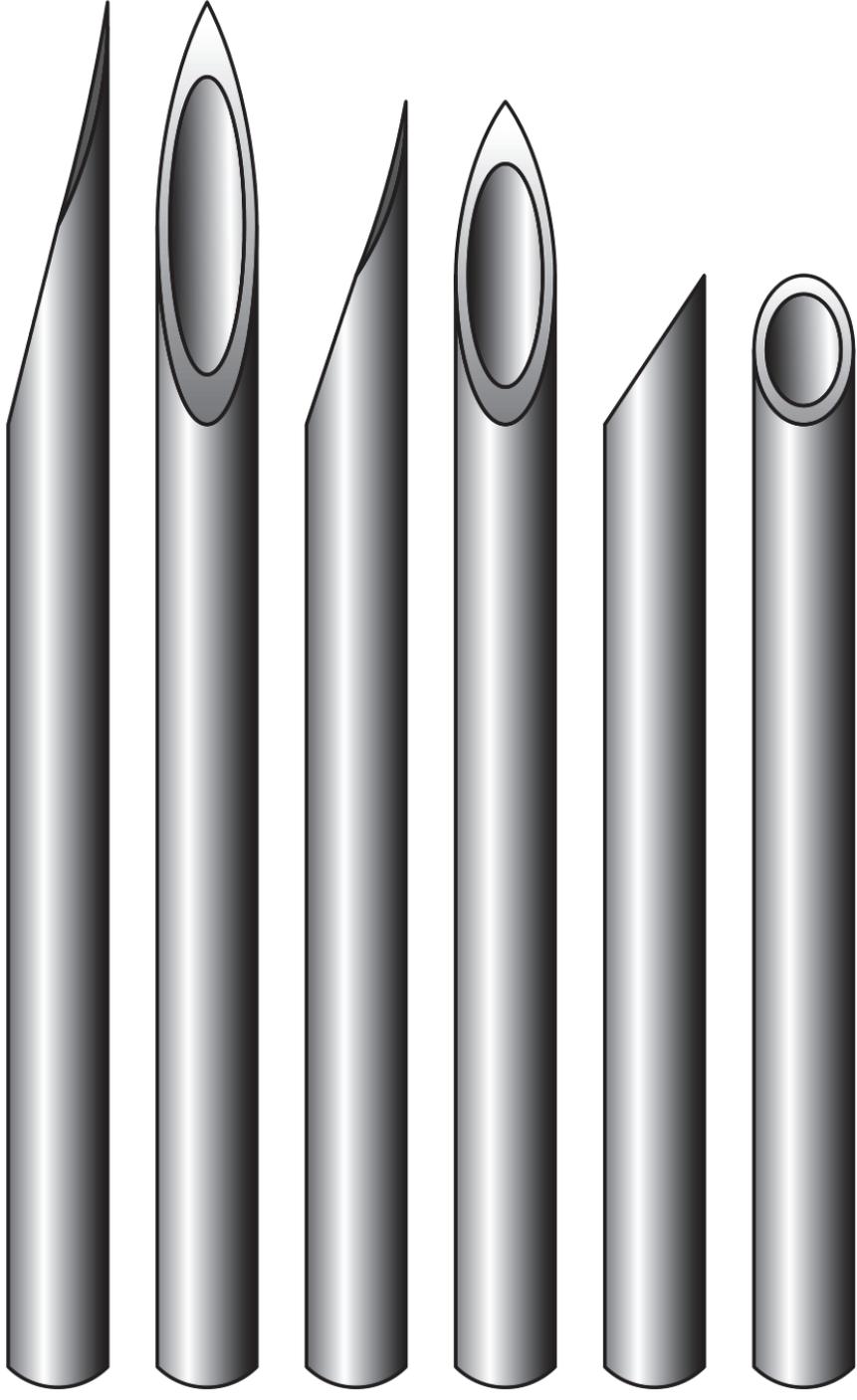
Bill

William E. Morgan  
President Parker University

"I don't know what your destiny will be, but one thing I know: the only ones among you who will be really happy are those who have sought and found how to serve."  
Albert Schweitzer

---

 **Needles.pdf**  
65K**TCA000001**



Standard Bevel

Short Bevel

True Short Bevel

# Exhibit H



Respectfully submitted,

**WEISBART SPRINGER HAYES LLP**  
212 Lavaca Street, Suite 200  
Austin, Texas 78701  
512.652.5780  
512.682.2074 fax

By: /s/ Matt C. Wood  
Matt C. Wood  
State Bar No. 24066306  
mwood@wshllp.com

**ATTORNEYS FOR INTERVENOR, TEXAS  
CHIROPRACTIC ASSOCIATION**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by way of:

- U.S. Mail, First Class
- Certified Mail
- Facsimile
- Federal Express
- Hand Delivery
- E-Service

on this 20th day of July 2022, to wit:

Shelby L. O'Brien  
Craig T. Enoch  
Melissa A. Lorber  
ENOCH KEVER PLLC  
7600 N. Capital of Texas Hwy  
Building B, Suite 200  
Austin, Texas 78731  
512.615.1200  
512.615.1198 fax  
sobrien@enochkever.com  
cenoch@enochkever.com  
mlorber@enochkever.com

**ATTORNEYS FOR PLAINTIFF TEXAS  
ASSOCIATION OF ACUPUNCTURE AND  
ORIENTAL MEDICINE**

Karen Watkins  
Assistant Attorney General  
Administrative Law Division  
OFFICE OF THE TEXAS ATTORNEY  
GENERAL  
P.O. Box 12548  
Austin, Texas 78711  
512.475.4300  
512.320.0167 fax  
karen.watkins@oag.texas.gov

**ATTORNEY FOR DEFENDANT TEXAS BOARD  
OF CHIROPRACTIC EXAMINERS**

/s/ Matt C. Wood

Matt C. Wood

## **GENERAL OBJECTIONS**

1. TCA generally objects to the requests to the extent they seek information that is not properly subject to discovery as explained in Defendant and Intervenor’s Joint Motion to Limit Discovery and Issues for Decision, which is incorporated herein by reference in full for all purposes. As further explained in Defendant and Intervenor’s First Amended Traditional Motion for Summary Judgment, the only factual issue that is relevant to a decision on TAAOM’s rule challenges in this case is the shape of acupuncture needles and whether they are “incisive” (or “cut”). Discovery into matters such as the qualifications of chiropractors, procedural history of the rules at issue, or the actual practices of chiropractors in Texas (including complaints or enforcement proceedings) are all irrelevant under Texas Supreme Court precedent, particularly given the narrow issues involved in this case. Should the Motion to Limit Discovery and Issues for Decision be overruled in whole or part, TCA will reconsider its objections as appropriate in light of such ruling and intends to supplement and/or amend its responses as may be necessary.

2. TCA objects to any instruction or definition to the extent it seeks responses or information beyond that required by the Texas Rules of Civil Procedure, such as the identification of information concerning documents that have been lost, or production of a privilege log before the time when such a log can be requested.

## **RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 1:** How many TCA members have a “permit” under Rule 78.14 to practice acupuncture?

**RESPONSE:** TCA objects to this request as irrelevant and/or overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Moreover, such information is not within TCA’s possession, custody, or control but would reside within the knowledge of individual members, who are third parties. To the extent the request seeks to have TCA contact its members to determine the answer, the request exceeds TCA’s obligations under the rules of procedure and is unduly burdensome and disproportional to the needs of the case because TCA does not track such information and could not gather it without considerable time and expense which is not justified by the negligible, if any, probative value. In the alternative, information regarding permits is more readily available from TBCE which is charged with issuing such permits, and the number of permits specifically held by TCA members is irrelevant to the issues in this case.

Subject to and without waiving these objections, and solely for the purpose of establishing standing to intervene, TCA answers as follows:

Some of TCA’s members have a permit from TBCE to use acupuncture within the lawful scope of practice, although TCA does not know the exact number.

**INTERROGATORY NO. 2:** How many TCA members are practicing acupuncture in Texas without obtaining a permit under Rule 78.14?

**RESPONSE:** TCA objects to this request as irrelevant and/or overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks information regarding matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type (such as unauthorized practices). Moreover, any such information is not within TCA’s possession, custody, or control but would reside within the knowledge of individual members, who are third parties. To the extent the request seeks to have TCA contact its members to determine the answer, the request exceeds TCA’s obligations under the rules of procedure and is unduly burdensome and disproportional to the needs of the case because TCA does not track such information and could not gather it without considerable time and expense which is not justified by the negligible, if any, probative value.

**INTERROGATORY NO. 3:** Describe how a chiropractor can determine whether a particular needle is incisive or not.

**RESPONSE:** TCA contends that needles with a pointed or conical tip, as distinguished from an edged or beveled tip, do not make a cut and therefore are not incisive. A

chiropractor can visually inspect an acupuncture needle to determine its shape. If desired, a chiropractor could also use a magnifying instrument such as a simple magnifying glass to see the shape of the needle more clearly (although magnification is not strictly necessary). Other methods may also be possible, such as information provided in training or continuing education or by industry or regulatory sources.

**INTERROGATORY NO. 4:** Describe TCA’s position on the training required for a chiropractor to use acupuncture or solid filiform needles for dry needling.

**RESPONSE:** TCA objects to this request as irrelevant and/or overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks information regarding matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type (such as qualifications and training). In addition, it appears that this request seeks information about matters not properly raised by TAAOM’s pleadings, as “dry needling” does not appear anywhere therein, nor do needles other than acupuncture needles appear to be at issue in this case. In addition, the word “required” is ambiguous, as it is unclear whether the request intends a meaning of “required to be competent” or “required by law.”

**INTERROGATORY NO. 5:** Explain the “few instances of patients who have been injured by a chiropractor performing acupuncture” referenced in the TCA article entitled “TCA to Fight for Right of Chiropractors to Perform Acupuncture” dated October 17, 2019.

**RESPONSE:** TCA objects to this request as irrelevant and/or overbroad because it seeks information that is irrelevant to the narrow question at issue in this case (i.e., the shape of acupuncture needles and whether they are “incisive” or “cut”). Instead, the request seeks information regarding matters the Texas Supreme Court has held are irrelevant in a rule challenge of this type (such as unauthorized practices).

**INTERROGATORY NO. 6:** Explain how acupuncture needles or solid filiform needles are capable of being inserted into the body in a nonincisive manner.

**RESPONSE:** TCA contends that needles with a pointed or conical tip, as distinguished from an edged or beveled tip, do not make a cut and are therefore not incisive. See Defendant and Intervenor’s First Amended Motion for Summary Judgment for more detail about TCA’s contentions.

**VERIFICATION**

I, Dr. William Lawson, declare under penalty of perjury that the factual answer to **Interrogatory No. 1** in Texas Chiropractic Association's Responses to Plaintiff's First Interrogatories is true and correct.

  
Signature

7.19.22  
Date

**VERIFICATION**

I, Dr. Mark Hanson, declare under penalty of perjury that the factual answer to **Interrogatory No. 3** in Texas Chiropractic Association's Responses to Plaintiff's First Interrogatories is true and correct.



\_\_\_\_\_  
Signature

7/20/2022

\_\_\_\_\_  
Date

# Exhibit I



P. 193.3(b).

The Board also objects to TAAOM's attempt to require it to create written statements describing documents that once were, but no longer are, in the Board's possession, custody or control because a request for production cannot be used to require a responding party to create a document, and because it requires a near-impossibility, i.e., having a governmental entity with significant staff turnover during the life of this suit to remember documents that do not exist in sufficient detail to identify the nature of the document and its contents, its author and intended recipient, specifies the date the nonexistent document was created, and relates how that document was destroyed.

The Board objects to the definition of the terms "Defendant," "you," "your," and "TBCE" to include the Board's "other agents, employees, and representatives," because defining these terms in this way would necessarily include the Board's attorneys, both in-house and at the Office of the Attorney General. As a result, the requests and interrogatories using those terms would, in each instance, require the disclosure of attorney-client communications and attorney work product. The Board will not produce or provide privileged information.

### **OBJECTIONS AND RESPONSES TO SPECIFIC INTERROGATORIES**

**INTERROGATORY NO. 1:** How many chiropractors are or have been practicing acupuncture in Texas each year since Rule 78.14 was adopted?

**OBJECTION AND RESPONSE:** The following numbers of chiropractors had active acupuncture permits for the referenced years:

2018: 57

2019: 291

2020: 342

2021: 384

2022: 399

**INTERROGATORY NO. 2:** On average, how much acupuncture-specific training and education have [sic] been completed by the chiropractors performing acupuncture in Texas each year since Rule 78.14 was adopted?

**OBJECTION AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 3:** Of the chiropractors performing acupuncture in Texas since Rule 78.14 was adopted, how many are doing so with no more than the 100 hours of acupuncture training required by Rule 78.14?

**OBJECTION AD RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 4:** How many hours of meridian and point location training are chiropractors required to complete to practice acupuncture in Texas under Rule 78.14?

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 5:** How many hours of supervised patient treatment in acupuncture are chiropractors required to complete to practice acupuncture in Texas under Rule 78.14?

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 6:** How are chiropractors who practice acupuncture in Texas authorized to represent themselves to the public as practitioners of acupuncture under Rule 78.14?

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory as being vague and ambiguous because, as worded, it is not possible to determine whether the interrogatory seeks information about a process by which chiropractors are authorized to represent themselves to the public as practitioners of acupuncture under Rule 78.14, the manner in which chiropractors who employ the acupuncture modality may permissibly represent themselves as offering that modality pursuant to Rule 78.14, or some other subject. Subject to and without waiving this objection and assuming the interrogatory seeks information about the manner in which chiropractors who employ the acupuncture modality are permitted to represent themselves to the public as offering that modality of treatment, the Board responds that Texas chiropractors with acupuncture permits may represent themselves to the public as using that modality only in conformity with Board Rules 78.14(h) and (i).

**INTERROGATORY NO. 7:** Describe the curriculum in acupuncture chiropractors are required to complete in order to obtain a “permit” to practice acupuncture under Rule 78.14.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 8:** Describe the specific clinical training required for a chiropractor to practice acupuncture under Rule 78.14.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021).

As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 9:** Describe the specific training required at Texas chiropractic schools regarding the use of needles by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021).

As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 10:** Describe the specific training required at Texas chiropractic schools regarding the use of acupuncture needles or solid filiform needles by chiropractors.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021).

As a result, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 11:** Describe how a chiropractor can determine whether a particular needle is incisive or not.

**RESPONSE:** A chiropractor can tell that a needle is non-incisive either by looking to see that it has a point or cone-shaped end for piercing skin, or by testing it to determine the needle pierces, rather than cuts, skin.

**INTERROGATORY NO. 12:** Describe how TBCE ensures that chiropractors are only using “nonincisive” needles when practicing acupuncture and any enforcement actions brought by TBCE against chiropractors for using “incisive” needles.

**OBJECTION AND RESPONSE:** The Board objects to this interrogatory to the extent that it inquires about enforcement actions brought by TBCE against chiropractors using “incisive” needles because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021). As a result, to that extent, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined. Subject to and without waiving this objection, the Board responds that the limited scope of chiropractic practice is laid out in the Rules found at 22 Tex. Admin. Code chs. 73, 75, 78, and 79. If a complaint is filed contending that a chiropractor is exceeding the scope of practice, the Board investigates and takes appropriate action.

**INTERROGATORY NO. 13:** Describe the number and type of enforcement actions brought by TBCE against chiropractors regarding advertising by chiropractors regarding the practice of acupuncture or “chiropractic acupuncture.”

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory to the extent that it inquires about enforcement actions brought by TBCE against chiropractors because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021).

**INTERROGATORY NO. 14:** Describe the accredited chiropractic curriculum specific to acupuncture or the use of solid filiform needles that is taught at Texas chiropractic schools.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory to the extent that it inquires about enforcement actions brought by TBCE against chiropractors because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov’t Code § 2001.038. *See Tex. Bd. of Chiropractic Exam’rs v. Tex. Med. Ass’n*, 616 S.W.3d 558 (Tex. 2021).

**INTERROGATORY NO. 15:** Describe TBCE’s position on the training required for a chiropractor to use of [sic] or solid filiform needles for dry needling.

**OBJECTIONS AND RESPONSE:** The Board objects to this interrogatory to the extent that it inquires about enforcement actions brought by TBCE against chiropractors because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021).

**INTERROGATORY NO. 16:** Describe any situation or case TBCE is aware of in which a patient has been injured by a chiropractor performing acupuncture.

**OBJECTIONS AND RESPONSE:** The Board further objects to this interrogatory because it is beyond the proper scope of discovery in a suit challenging the validity of a rule pursuant to Tex. Gov't Code § 2001.038. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). As a result, to that extent, the Board will not respond to the interrogatory until after its Motion to Limit has been heard and finally determined.

**INTERROGATORY NO. 17:** Explain how acupuncture needles or solid filiform needles are capable of being inserted into the body in a nonincisive manner.

**RESPONSE:** Acupuncture needles or solid filiform needles that a chiropractor is authorized to use must be pointed or have a needle-head with a conical shape. Chiropractors may not use acupuncture needles or solid filiform needles (if any exist) that have a beveled or cutting edge because chiropractors are not authorized to perform incisive (cutting) or surgical procedures. Pointed or conical-headed needles can be used without cutting the skin because they pierce or puncture it instead. Pointed or conical-headed needles do not cut the skin because they lack a cutting edge and are very small, being barely greater in diameter than a human hair.

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Objections and Responses to Texas Association of Acupuncture and Oriental Medicine's Second Request for Production and Second Set of Interrogatories was sent to the following counsel of record as described below on this the 5th day of August 2022:

Shelby L. O'Brien  
Amy L. Prueger  
ENOCH KEVER PLLC  
7600 N. Capital of Texas Hwy.  
Building B, Suite 200  
Austin, Texas 78731  
Telephone: (512) 615-1200  
Facsimile: (512) 615-1198

Via electronic service: [sobrien@enochkever.com](mailto:sobrien@enochkever.com)  
[aprueger@enochkever.com](mailto:aprueger@enochkever.com)

Attorneys for Plaintiff Texas Association of  
Acupuncture and Oriental Medicine

Matt C. Wood  
WEISBART SPRINGER HAYES LLP  
212 Lavaca Street, Suite 200  
Austin, Texas 78701

Via electronic service: [mwood@wshllp.com](mailto:mwood@wshllp.com)

Attorneys for Intervenor  
Texas Chiropractic Association

*/s/ Karen L. Watkins*  
KAREN L. WATKINS



**Certificate Of Completion**

Envelope Id: 65F8A814C3354785A030C2C1DED77C11	Status: Completed
Subject: Step 1: Customer/Signer- ID verify	
Template ID:	
Template ID Usage Tracking:	
EPMO_Template_18	
Division Designed Templates:	
Template ID Usage Tracking - List 2:	
Division Designed Templates - List 2:	
Source Envelope:	
Document Pages: 1	Signatures: 2
Certificate Pages: 7	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Disabled	Meridith Fischer
Time Zone: (UTC-06:00) Central Time (US & Canada)	PO Box 12548
	Austin, TX 78711-2548
	Meridith.Fischer@oag.texas.gov
	IP Address: 204.64.55.14

**Record Tracking**

Status: Original	Holder: Meridith Fischer	Location: DocuSign
8/4/2022 1:52:19 PM	Meridith.Fischer@oag.texas.gov	

**Signer Events**

Burnett, Christopher  
 christopher@tbce.state.tx.us  
 Security Level: Email, Account Authentication (None)

**Signature**

**Completed**  
 Using IP Address: 172.2.66.83  
 Signed using mobile

**Timestamp**

Sent: 8/4/2022 1:58:48 PM  
 Viewed: 8/4/2022 2:03:49 PM  
 Signed: 8/4/2022 2:03:54 PM

**Authentication Details**

Identity Verification Details:  
 Workflow ID: d4c7afed-313e-4382-8f81-1e59ee010b95  
 Workflow Name: DocuSign ID Verification  
 Workflow Description: The signer will need to identify themselves with a valid government ID.  
 Identification Method: Government Issued Id Document  
 Type of Document: Photo ID  
 Identification Level: ID Only  
 Transaction Unique ID: 8d380bc3-7a6b-555b-8a6f-259e6d9e5dfa  
 Country or Region of ID: US  
 Result: Failed  
 Performed: 8/4/2022 2:01:57 PM

Identity Verification Details:  
 Workflow ID: d4c7afed-313e-4382-8f81-1e59ee010b95  
 Workflow Name: DocuSign ID Verification  
 Workflow Description: The signer will need to identify themselves with a valid government ID.  
 Identification Method: Government Issued Id Document  
 Type of Document: Photo ID  
 Identification Level: ID Only  
 Transaction Unique ID: 8d380bc3-7a6b-555b-8a6f-259e6d9e5dfa  
 Country or Region of ID: US  
 Result: Passed  
 Performed: 8/4/2022 2:03:01 PM

**Electronic Record and Signature Disclosure:**

Accepted: 8/4/2022 2:03:49 PM  
 ID: 655a7831-c717-465c-9554-81ded1ed6fb7

Burnett, Christopher  
 christopher@tbce.state.tx.us  
 Security Level: Email, Account Authentication (None), Authentication

**Completed**

Using IP Address: 172.2.66.83  
 Signed using mobile

Sent: 8/4/2022 2:03:56 PM  
 Viewed: 8/4/2022 2:05:55 PM  
 Signed: 8/4/2022 2:06:12 PM

**Authentication Details**

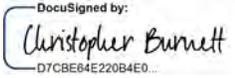
Signer Events	Signature	Timestamp
---------------	-----------	-----------

ID Check:  
 Transaction: 31017267570075  
 Result: passed  
 Vendor ID: LexisNexis  
 Type: iAuth  
 Recipient Name Provided by: Recipient  
 Information Provided for ID Check: Address, SSN9, SSN4, DOB  
 Performed: 8/4/2022 2:05:44 PM

Question Details:  
 passed vehicle.historical.association.real  
 passed property.county.real  
 passed person.known.single.fake  
 passed property.association.single.real  
 passed corporate.association.real  
 passed county.lived.single.real

**Electronic Record and Signature Disclosure:**  
 Accepted: 8/4/2022 2:05:55 PM  
 ID: fef6c96c-482f-424f-9b1d-fe9b2322be9a

Christopher Burnett  
 christopher@tbce.state.tx.us  
 Security Level: Email, Account Authentication (None)



Sent: 8/4/2022 2:06:14 PM  
 Viewed: 8/4/2022 2:06:52 PM  
 Signed: 8/4/2022 2:29:05 PM

Signature Adoption: Pre-selected Style  
 Using IP Address: 172.2.66.83

**Electronic Record and Signature Disclosure:**  
 Accepted: 8/4/2022 2:06:52 PM  
 ID: f1ba8e3a-7b8c-40b2-8141-42f2649a9351

Christopher Burnett  
 christopher@tbce.state.tx.us  
 Security Level: Notarized Signing (Notary: Meredith Fischer), Account Authentication (None)

**Completed**

Sent: 8/4/2022 2:29:06 PM  
 Viewed: 8/4/2022 2:30:12 PM  
 Signed: 8/4/2022 2:30:26 PM

Using IP Address: 204.64.55.14

**Electronic Record and Signature Disclosure:**  
 Accepted: 8/4/2022 2:30:12 PM  
 ID: 43ed404c-93c2-483d-937f-ed3d511c36cc

In Person Signer Events	Signature	Timestamp
-------------------------	-----------	-----------

Editor Delivery Events	Status	Timestamp
------------------------	--------	-----------

Agent Delivery Events	Status	Timestamp
-----------------------	--------	-----------

Intermediary Delivery Events	Status	Timestamp
------------------------------	--------	-----------

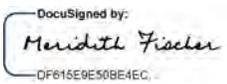
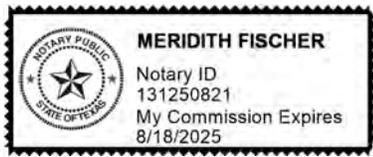
Certified Delivery Events	Status	Timestamp
---------------------------	--------	-----------

Carbon Copy Events	Status	Timestamp
--------------------	--------	-----------

Witness Events	Signature	Timestamp
----------------	-----------	-----------

Notary Events	Signature	Timestamp
---------------	-----------	-----------

Notary Name: Meredith Fischer  
 Notary Email: Meredith.Fischer@oag.texas.gov  
 Notary Address:  
 Notary Signer: Christopher Burnett  
 Notary Designated By: Meredith Fischer  
 Security Level: Email, Account Authentication (None), Login with SSO



Sent: 8/4/2022 2:29:06 PM  
 Viewed: 8/4/2022 2:31:07 PM  
 Signed: 8/4/2022 2:32:20 PM  
 Freeform Signing

Using IP Address: 204.64.55.14

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
Envelope Sent	Hashed/Encrypted	8/4/2022 1:58:49 PM
Certified Delivered	Security Checked	8/4/2022 2:30:12 PM
Signing Complete	Security Checked	8/4/2022 2:30:26 PM
Completed	Security Checked	8/4/2022 2:32:20 PM

<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
-----------------------	---------------	-------------------

<b>Electronic Record and Signature Disclosure</b>
---

## **CONSUMER DISCLOSURE**

From time to time, Office of the Attorney General (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Electronic signature**

An electronic signature is an electronic identifier, created by a computer, attached to or logically associated with an electronic record, executed or adopted by a person with the intent and with the actual authority to sign the record. Your electronic signature has the same legal force and effect as a manual signature. Your electronic signature constitutes your signature, acceptance, and agreement as if you signed in writing.

### **Security standards**

DocuSign provides security assurance with enterprise-wide ISO 27001:2013 certification, xDTM compliance, as well as SSAE 16, SOC 1 Type 2, SOC 2 Type 2 reports. DocuSign delivers data confidentiality with application level AES 256 bit encryption.

### **Sending information to and receiving information from us**

The Public Information Act, chapter 552 of the Texas Government Code, applies to all information we send and receive. The Public Information Act protects information from public disclosure if it is confidential by any law or rule. If we receive a written request for information, the Public Information Act requires us to publicly disclose requested information that is not confidential by law or rule or otherwise excepted from public disclosure. If you receive any information from us in error, you are not authorized to read, print, retain, copy, or disseminate the information. Any information you receive in error may be confidential information that cannot be disclosed without violating the criminal provisions of the Public Information Act or Texas Penal Code section 39.06. If you receive information in error, please immediately send an e-mail to [servicedesk@oag.texas.gov](mailto:servicedesk@oag.texas.gov) to notify us of the error and delete all copies of the information you received.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record we provided or made available electronically to you through the DocuSign system. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign ‘Withdraw Consent’ form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

**All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact Office of the Attorney General**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [servicedesk@oag.texas.gov](mailto:servicedesk@oag.texas.gov)

**To advise Office of the Attorney General of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [servicedesk@oag.texas.gov](mailto:servicedesk@oag.texas.gov) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address.

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

**To request paper copies from Office of the Attorney General**

To request delivery from us of paper copies of the notices and disclosures we previously provided to you electronically, you must send us an e-mail to [servicedesk@oag.texas.gov](mailto:servicedesk@oag.texas.gov) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with Office of the Attorney General**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [servicedesk@oag.texas.gov](mailto:servicedesk@oag.texas.gov) and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent. The consequences of your withdrawing consent for online documents will be that transactions may take longer time to process.

### Required hardware and software

Supported Browsers:	DocuSign supports the latest stable release (except where noted) of the following browsers: Chrome, Firefox, Safari, Internet Explorer 11+, Windows Edge
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	1024 x 768 minimum (for desktops and laptops)
Enabled Security Settings:	Allow per session cookies. Users accessing the Internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection. Firewall settings must allow access to the following server: <a href="https://docucdn-a.akamaihd.net">https://docucdn-a.akamaihd.net</a> . DocuSign leverages Akamai as a content delivery service to enhance our application's performance.

\*\* These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

### Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Office of the Attorney General as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made

available to me by Office of the Attorney General during the course of my relationship with you.

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jeff Lutz on behalf of Karen Watkins

Bar No. 20927425

jeff.lutz@oag.texas.gov

Envelope ID: 66998418

Status as of 8/5/2022 9:24 AM CST

Associated Case Party: TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE

Name	BarNumber	Email	TimestampSubmitted	Status
Laci Lindsey		llindsey@enochkever.com	8/5/2022 9:24:19 AM	NOT SENT
Craig T.Enoch		cenoch@enochkever.com	8/5/2022 9:24:19 AM	SENT

## Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jeff Lutz on behalf of Karen Watkins

Bar No. 20927425

jeff.lutz@oag.texas.gov

Envelope ID: 66998418

Status as of 8/5/2022 9:24 AM CST

### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jeff Lutz		jeff.lutz@oag.texas.gov	8/5/2022 9:24:19 AM	NOT SENT
Lori Perez		lperez@wshllp.com	8/5/2022 9:24:19 AM	SENT
Matt C. Wood		mwood@wshllp.com	8/5/2022 9:24:19 AM	NOT SENT
Roxanne Mares		rmares@wshllp.com	8/5/2022 9:24:19 AM	NOT SENT
Melissa Lorber		mlorber@enochkever.com	8/5/2022 9:24:19 AM	SENT
Shelby O'Brien		sobrien@enochkever.com	8/5/2022 9:24:19 AM	SENT
Warren Paxton	15649200	Kenneth.Paxton@oag.texas.gov	8/5/2022 9:24:19 AM	SENT
Leah Martino		lmartino@wshllp.com	8/5/2022 9:24:19 AM	SENT
Amy L. Prueger		aprueger@enochkever.com	8/5/2022 9:24:19 AM	SENT

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jeff Lutz on behalf of Karen Watkins

Bar No. 20927425

jeff.lutz@oag.texas.gov

Envelope ID: 66998418

Status as of 8/5/2022 9:24 AM CST

Associated Case Party: TEXAS BOARD OF CHIROPRACTIC EXAMINERS

Name	BarNumber	Email	TimestampSubmitted	Status
Karen Watkins		karen.watkins@oag.texas.gov	8/5/2022 9:24:19 AM	SENT

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Laci Lofton on behalf of Shelby O'Brien

Bar No. 24037203

llofton@enochkever.com

Envelope ID: 68828219

Status as of 10/3/2022 2:18 PM CST

Associated Case Party: TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE

Name	BarNumber	Email	TimestampSubmitted	Status
Craig T.Enoch		cenoch@enochkever.com	10/3/2022 11:40:17 AM	SENT
Laci Lindsey		llindsey@enochkever.com	10/3/2022 11:40:17 AM	SENT

## Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Laci Lofton on behalf of Shelby O'Brien

Bar No. 24037203

llofton@enochkever.com

Envelope ID: 68828219

Status as of 10/3/2022 2:18 PM CST

### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Lori Perez		lperez@wshllp.com	10/3/2022 11:40:17 AM	SENT
Melissa Lorber		mlorber@enochkever.com	10/3/2022 11:40:17 AM	SENT
Shelby O'Brien		sobrien@enochkever.com	10/3/2022 11:40:17 AM	SENT
Warren Paxton	15649200	Kenneth.Paxton@oag.texas.gov	10/3/2022 11:40:17 AM	SENT
Shannon Benson		shannon.benson@oag.texas.gov	10/3/2022 11:40:17 AM	SENT
Lynne Pearson		lynee.pearson@oag.texas.gov	10/3/2022 11:40:17 AM	SENT
Meridith Fischer		meridith.fischer@oag.texas.gov	10/3/2022 11:40:17 AM	SENT
Leah Martino		lmartino@wshllp.com	10/3/2022 11:40:17 AM	SENT
Amy L.Prueger		aprueger@enochkever.com	10/3/2022 11:40:17 AM	SENT
Jeff Lutz		jeff.lutz@oag.texas.gov	10/3/2022 11:40:17 AM	SENT
Matt C.Wood		mwood@wshllp.com	10/3/2022 11:40:17 AM	SENT
Roxanne Mares		rmares@wshllp.com	10/3/2022 11:40:17 AM	SENT

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Laci Lofton on behalf of Shelby O'Brien

Bar No. 24037203

llofton@enochkever.com

Envelope ID: 68828219

Status as of 10/3/2022 2:18 PM CST

Associated Case Party: TEXAS BOARD OF CHIROPRACTIC EXAMINERS

Name	BarNumber	Email	TimestampSubmitted	Status
Joe H.Thrash		Joe.Thrash@texasattorneygeneral.gov	10/3/2022 11:40:17 AM	SENT
Karen Watkins		karen.watkins@oag.texas.gov	10/3/2022 11:40:17 AM	SENT