In the Supreme Court of Texas

In re TEXAS BOARD OF CHIROPRACTIC EXAMINERS and TEXAS CHIROPRACTIC ASSOCIATION

MOTION FOR TEMPORARY RELIEF IN CONJUNCTION WITH PREVIOUSLY FILED PETITION FOR WRIT OF MANDAMUS

To the Honorable Supreme Court of Texas:

Relators, the Texas Board of Chiropractic Examiners and the Texas Chiropractic Association, file this motion seeking temporary relief to preserve the Court's ability to rule on their previously filed petition for writ of mandamus. That petition presents novel legal questions about discovery that would impact virtually every administrative agency in the State. After the petition was filed, however, the Texas Association of Acupuncture an Oriental Medicine (the Acupuncture Association), the real party in interest, filed a motion to compel that would moot the petition, and is now seeking a hearing on its motion in early November. Accordingly, temporary relief is needed to preserve the Court's ability to rule on the petition. The need for the requested relief is shown by the following:

1. The underlying case is a challenge to the validity of two Board rules authorizing certain chiropractors with extra training to make limited use of acupuncture.

Relators' petition for writ of mandamus challenges the trial court's order authorizing overly broad discovery in the underlying APA rule challenge.

- 2. The Acupuncture Association had served Relators with requests for production and interrogatories that were not reasonably tailored to seek production of relevant information. As a result, Relators: (a) objected to discovery concerning information that is irrelevant under this Court's recent precedents regarding healthcare scope-of-practice rules; and (b) sought an order limiting discovery and the issues to be resolved in the case. *See* MR 12. The trial court denied the motion, allowing the Acupuncture Association to proceed with vastly overbroad discovery. MR 16.
- 3. Relators sought mandamus relief from the Third Court of Appeals, and that Court denied its petition on August 31, 2022.
- 4. When Relators had not filed their petition for writ of mandamus with this Court by Friday, September 23, counsel for the Acupuncture Association contacted counsel for Relators, seeking amended and supplemental discovery by 5:00 p.m. on September 29 and threatening to file a motion to compel.
- 5. Counsel for the Board immediately responded that she had just received approval to file and that Relators would file their petition for writ of mandamus with this Court early the following week.
- 6. Relators filed their petition for writ of mandamus with this Court on Monday, September 26.
 - 7. Notwithstanding Relators' having proceeded as promptly as possible to

seek this Court's decision about the scope of discovery in APA rule-challenge cases, the Acupuncture Association has now filed a motion to compel production of the disputed discovery. A true and complete copy of that motion is appended to this Motion as Exhibit 1. The Acupuncture Association has also asked for a hearing on the motion to be set on November 9, 2022, at 2:00 p.m. A true and complete copy of counsel's email is appended to this Motion as Exhibit 2. The Acupuncture Association's sole reasons for seeking to compel the discovery are: (1) they contend the disputed discovery is necessary for them to present their rule challenge; (2) they can, because the case is not stayed; and (3) the parties have a February 13, 2023, trial setting.

8. Production of the information would inflict on Relators the very damage they sought to avoid by filing their petition for writ of mandamus. More importantly, Relators' production of the information the Acupuncture Association seeks would moot Relators' mandamus petition and deprive this Court of jurisdiction to act on it. See Elec. Reliability Council of Texas, Inc. v. Panda Power Generation Infrastructure Fund, Inc., 619 S.W.3d 628, 634-35 (Tex. 2021) ("The mootness doctrine – a constitutional limitation founded in the separation of powers between governmental branches – prohibits courts from issuing advisory opinions. A case becomes moot when (1) a justiciable controversy no longer exists between the parties, . . . (3) the court can no longer grant the requested relief or otherwise affect the parties' rights or interests, or (4) any decision would constitute an impermissible advisory opinion." Citations omitted.).

9. The Acupuncture Association contends that they need the contested discovery to proceed with the underlying case. But Relators' pending petition for writ of mandamus raises important legal questions and should not be mooted by artificial deadlines at the trial level, particularly when Relators have diligently sought this Court's review. The Acupuncture Association would not be harmed by a temporary stay because any deadlines, including the trial date, can be adjusted if needed to accommodate the Court's review. The alternative, which is to inflict burdensome and improper discovery on Relators without a legal remedy, would be unjust. Therefore, all proceedings in the underlying case should be stayed until this Court has acted on Relators' petition for writ of mandamus.

CONCLUSION AND PRAYER

Determination of the proper extent of discovery in an APA rule challenge is a matter of significance to the jurisprudence of the State, impacting all administrative agencies that promulgate rules. This Court can *only* answer that question in the context of an original proceeding such as this one. The Acupuncture Association should not be able to prevent the Court from answering this important question by forcing Relators to produce the disputed information and mooting this original proceeding.

Therefore, Relators respectfully request that this honorable Court stay all proceedings in the trial court until such time as the Court acts on Relators' petition for writ of mandamus.

Respectfully submitted,

KEN PAXTON

Attorney General of Texas

BRENT WEBSTER

First Assistant Attorney General

GRANT DORFMAN

Deputy First Assistant Attorney

General

SHAWN E. COWLES

Deputy Attorney General

for Civil Litigation

ERNEST C. GARCIA

Chief, Administrative Law Division

/s/Karen L. Watkins

KAREN L. WATKINS

Assistant Attorney General

State Bar No. 20927425

OFFICE OF THE ATTORNEY GENERAL

Administrative Law Division

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

Telephone: (512) 475-4208

Facsimile: (512) 320-0167

karen.watkins@oag.texas.gov

Counsel for Relator Texas
Board of Chiropractic Examiners

WEISBART SPRINGER HAYES LLP

212 Lavaca Street, Suite 200

Austin, Texas 78701

Telephone: (512) 652-5780

Facsimile: (512) 682-2074

/s/ Matt C. Wood

MATT C. WOOD

State Bar No. 24066306

Email: mwood@wshllp. com

Attorneys for Relator Texas Chiropractic Association

RULE 52.10(a) CERTIFICATION

In compliance with Rule 52.10(a) of the Texas Rules of Appellate Procedure, I certify that I have notified all parties to the underlying proceeding of the filing of this motion for temporary relief by email and by telephone call.

/s/ Karen L. Watkins

Karen L. Watkins

Dated: October 12, 2022

CERTIFICATE OF SERVICE

I hereby certify that the above Motion for Temporary Relief in Connection with Previously-Filed Petition for Writ of Mandamus has been served on this the 12th day of October, 2022, on the following counsel of record and on Respondent via electronic service:

Shelby L. O'Brien Amy L. Prueger ENOCH KEVER PLLC 5918 W. Courtyard Drive, Suite 500 Austin, Texas 78730 Telephone: (512) 615-1200 Eacsimile: (512) 615-1198

Facsimile: (512) 615-1198 sobrien@enochkever.com aprueger@enochkever.com

Attorneys for Real Party in Interest Texas Association of Acupuncture and Oriental Medicine

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

Austin, Texas 78701

Telephone: (512) 652-5780 Facsimile: (512) 682-2074

mwood@wshllp.com

Attorneys for Relator Texas Chiropractic Association

Hon. Jan Soifer Judge Presiding, 345th District Court 1000 Guadalupe, 5th Floor Austin, Texas 78701 Email: 345.Submission@traviscountytx.gov

Respondent

/s/ Karen L. Watkins
KAREN L. WATKINS
Assistant Attorney General

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

TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE,	§ § §	IN THE DISTRICT COURT OF
PLAINTIFF	§	
	§	
v.	§	
	§	
TEXAS BOARD OF CHIROPRACTIC	§	
EXAMINERS,	§	TRAVIS COUNTY, TEXAS
DEFENDANT	§	
	§	
v.	§	
	§	
TEXAS CHIROPRACTIC	§	
ASSOCIATION,	§	
INTERVENOR	Š	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. 1.1 On August 19, 2022, this Court denied their motion. Exhibit A.

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¹ 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.

PRAYER

This Court should grant the Acupuncture Association's Motion to Compel; overrule each of the Chiropractic Defendants' objections to the Acupuncture Association's discovery requests attached as **Exhibits F, G, H,** and **I**; compel the Chiropractic Defendants to fully and properly answer the Acupuncture Association's written discovery and fully produce responsive requested documents by not later than seven days after entry of an order on this Motion to Compel (except for attorney-client privileged and attorney work-product privileged information); and grant any other relief to which the Acupuncture Association is entitled.

Respectfully submitted,

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

CERTICIATE 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 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

/s/ Shelby O'Brien Shelby O'Brien

Exhibit A

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

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

ORDER DENYING DEFENDANT AND INTERVENOR'S JOINT MOTION TO LIMIT DISCOVERY AND ISSUES FOR DECISION

Came on for hearing on July 28, 2022, in the above-styled and number cause was Defendant Texas Board of Chiropractic Examiners and Intervenor Texas Chiropractic Association's (collectively, "Chiropractic Defendants") Joint Motion to Limit Discovery and Issues for Decisions ("Motion"). The Court, having carefully considered the Motion, Plaintiff's Response to the Motion, the arguments of counsel, and the evidence and pleadings properly before it, is of the opinion that the Motion should be **DENIED**.

IT IS THEREFORE ORDERED that the Chiropractic Defendants' Joint Motion to Limit Discovery and Issues for Decisions is hereby in all respects **DENIED**.

SIGNED this 19th day of August, 2022.

THE HONORABLE JAN SCIFER 3451 H DISTRICT COURT JUDGE

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: <u>Karen Watkins</u>

To: Shelby O"Brien; Matt Wood

Cc: <u>Amy Prueger</u>

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: <u>image001.jpg</u>

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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

From: Shelby O'Brien <sobrien@enochkever.com>

Sent: Friday, September 23, 2022 10:40 AM

To: Karen Watkins <Karen.Watkins@oag.texas.gov>; Matt Wood <mwood@wshllp.com>

Cc: Amy Prueger <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

www.enochkever.com



From: Karen Watkins < <u>Karen.Watkins@oag.texas.gov</u>>

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

To: Shelby O'Brien <<u>sobrien@enochkever.com</u>>; Matt Wood <<u>mwood@wshllp.com</u>>

Cc: Amy Prueger 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

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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

From: Shelby O'Brien <<u>sobrien@enochkever.com</u>>

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

To: Karen Watkins < Karen.Watkins@oag.texas.gov >; Matt Wood < mwood@wshllp.com >

Cc: Amy Prueger 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

www.enochkever.com



From: Karen Watkins < <u>Karen.Watkins@oag.texas.gov</u>>

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

To: Shelby O'Brien <<u>sobrien@enochkever.com</u>>; Matt Wood <<u>mwood@wshllp.com</u>>

Cc: Amy Prueger 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

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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

From: Shelby O'Brien <<u>sobrien@enochkever.com</u>>

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

To: Karen Watkins <<u>Karen.Watkins@oag.texas.gov</u>>; Matt Wood <<u>mwood@wshllp.com</u>>

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

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 you 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 < <u>Karen.Watkins@oag.texas.gov</u>>

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

To: Shelby O'Brien <<u>sobrien@enochkever.com</u>>; Matt Wood <<u>mwood@wshllp.com</u>>

Cc: Amy Prueger 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: <u>karen.watkins@oag.texas.gov</u>

From: Shelby O'Brien < <u>sobrien@enochkever.com</u>>

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

To: Karen Watkins < Karen Watkins Karen Watkins@oag.texas.gov>; Matt Wood Mwood@wshllp.com>

Cc: Amy Prueger 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

www.enochkever.com



From: Karen Watkins < <u>Karen.Watkins@oag.texas.gov</u>>

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

To: Shelby O'Brien <<u>sobrien@enochkever.com</u>>; Matt Wood <<u>mwood@wshllp.com</u>>

Cc: Amy Prueger 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

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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

From: Shelby O'Brien < <u>sobrien@enochkever.com</u>>

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

To: Matt Wood < mwood@wshllp.com; Karen Watkins < Karen Watkins@oag.texas.gov>

Cc: Amy Prueger 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

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

www.enochkever.com



From: Shelby O'Brien

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

To: Matt Wood <<u>mwood@wshllp.com</u>>; Karen Watkins (<u>karen.watkins@oag.texas.gov</u>)

< karen.watkins@oag.texas.gov>

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

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

www.enochkever.com



From: Matt Wood <<u>mwood@wshllp.com</u>>
Sent: Tuesday, August 16, 2022 3:32 PM

To: Shelby O'Brien <<u>sobrien@enochkever.com</u>>; Karen Watkins (<u>karen.watkins@oag.texas.gov</u>)

karen.watkins@oag.texas.gov

Cc: Amy Prueger 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 **From:** Shelby O'Brien <<u>sobrien@enochkever.com</u>>

Sent: Tuesday, August 16, 2022 11:20 AM

To: Karen Watkins (<u>karen.watkins@oag.texas.gov</u>) < <u>karen.watkins@oag.texas.gov</u>>; Matt Wood < <u>mwood@wshllp.com</u>>

Cc: Amy Prueger 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
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

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

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

PLAINTIFF'S SECOND REQUEST FOR PRODUCTION AND SECOND SET OF INTERROGATORIES TO TEXAS BOARD OF CHIROPRACTIC EXAMINERS

To: Texas Board of Chiropractic Examiners by and through its counsel of record, Karen Watkins, Assistant Attorney General, Administrative Law Division, P.O. Box 12548, Austin, Texas 78711; karen.watkins@oag.texas.gov.

Under Rules 196 and 197 of the Texas Rules of Civil Procedure, Plaintiff Texas Association of Acupuncture and Oriental Medicine ("Acupuncture Association") serves this second request for production and second set of interrogatories on Defendant Texas Board of Chiropractic Examiners to be answered, separately and fully, within 30 days of service.

Respectfully submitted,

By: /s/ Shelby O'Brien
Shelby L. O'Brien (SBN 24037203)
sobrien@enochkever.com
Amy 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

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 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

/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 Plaintiff's Second Request for Production and Second Set of Interrogatories

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 or 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:

Plaintiff's Second Request for Production and Second Set of Interrogatories

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.

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:

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

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:

<u>INTERROGATORY NO. 3</u>: 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:

<u>INTERROGATORY NO. 4</u>: 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:

<u>INTERROGATORY NO. 7</u>: Describe the curriculum in acupuncture chiropractors are required to complete in order to obtain a "permit" to practice acupuncture under Rule 78.14.

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

RESPONSE:

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

RESPONSE:

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

RESPONSE:

<u>INTERROGATORY NO. 11</u>: 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:

<u>INTERROGATORY NO. 13</u>: 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:

<u>INTERROGATORY NO. 14</u>: 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.

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

RESPONSE:

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

Exhibit E

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

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

PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION AND FIRST SET OF INTERROGATORIES TO TEXAS CHIROPRACTIC ASSOCIATION

To: Texas Chiropractic Association by and through its counsel of record, Matt C. Wood, Weisbart Springer Hayes LLP, 212 Lavaca Street, Suite 200, Austin, Texas 78701; mwood@wshllp.com.

Under Rules 196 and 197 of the Texas Rules of Civil Procedure, Plaintiff Texas Association of Acupuncture and Oriental Medicine ("Acupuncture Association") serves this first request for production and first set of interrogatories on Intervenor Texas Chiropractic Association to be answered, separately and fully, within 30 days of service.

Respectfully submitted,

By: /s/ Shelby O'Brien
Shelby L. O'Brien (SBN 24037203)
sobrien@enochkever.com
Amy 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

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 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

/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 Plaintiff's First Requests for Production and First Set of Interrogatories

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 or 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.

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

<u>INTERROGATORY NO. 1</u>: How many TCA members have a "permit" under Rule 78.14 to practice acupuncture?

RESPONSE:

Plaintiff's First Requests for Production and First Set of Interrogatories

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

RESPONSE:

<u>INTERROGATORY NO. 3</u>: 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:

<u>INTERROGATORY NO. 5</u>: 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:

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

Exhibit F

CAUSE NO. D-1-GN-14-000355 F-SERVICE IN THE DISTRICT COURTSOF TEXAS ASSOCIATION OF 7/13/2022 2:05:48 PM AND ORIENTAL MEDICINE, Plaintiff, 05:00 TEXAS BOARD OF CHIROPRACTIC TRAVIS COUNTY, TEXAS

EXAMINERS. Defendant,

ACUPUNCTURE

v.

TEXAS CHIROPRACTIC ASSOCIATION,

201ST JUDICIAL DISTRICT Intervenor.

TEXAS BOARD OF CHIROPRACTIC EXAMINERS' OBJECTIONS AND RESPONSES TO TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE'S SECOND REQUEST FOR PRODUCTION AND SECOND SET OF **INTERROGATORIES**

TO: Texas Association of Acupuncture and Oriental Medicine by and through its attorneys of record, Shelby L. O'Brien and Amy Prueger, Enoch Kever PLLC, 7600 N. Capital of Texas Hwy., Building B, Suite 200, Austin, Texas 78731; and

Texas Association of Chiropractors, by and through its attorney of record, Matt C. Wood, Weisbart Springer Hayes, LLP, 212 Lavaca Street, Suite 200, Austin, Texas 78701

Defendant, the Texas Board of Chiropractic Examiners, by and through its undersigned counsel of record, hereby serves these objections and responses to the Texas Association of Acupuncture and Oriental Medicine's Second Request for Production and Second Set of Interrogatories.

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

The Board objects to the instruction that it identify all documents withheld by date, author, recipients, and the reason for withholding the document, and that documents withheld under a claim of immunity or privilege be logged in chronological order. Tex. R. Civ. P. 193.3(b) specifically provides that a party seeking discovery may only send a request for a privilege log after receiving a 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 Abott[,] 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 employe 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 coneshaped 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

of Texas Hwy. e 200 8731

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

Attorneys for Intervenor Texas Chiropractic Association Via electronic service: mwood@wshllp.com

Via electronic service: sobrien@enochkever.com

aprueger@enochkever.com

/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 Lindsev		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

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

TEXAS ASSOCIATION OF	§	IN THE DISTRICT COURT
ACUPUNCTURE AND ORIENTAL	§	
MEDICINE,	§	
Plaintiff,	§	
,	§	
	§	
v.	§	
	§	
TEXAS BOARD OF CHIROPRACTIC	§ §	
EXAMINERS,	§	TRAVIS COUNTY, TEXAS
Defendants,	§	
	§	
	§	
V.	§	
	§	
	§	
TEXAS CHIROPRACTIC	§	
ASSOCIATION,	§	
Intervenor.	§	201ST JUDICIAL DISTRICT
	§	

INTERVENOR TEXAS CHIROPRACTIC ASSOCIATION'S RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION

TO: Plaintiff Texas Association of Acupuncture and Oriental Medicine, by and through its counsel of record Shelby L. O'Brien and Amy Prueger, Enoch Kever, PLLC, 7600 N. Capital of Texas Highway, Building B, Suite 200, Austin, Texas 78731.

Pursuant to the Texas Rules of Civil Procedure, Intervenor TEXAS CHIROPRACTIC ASSOCIATION ("Intervenor" or "TCA") hereby objects and responds to Plaintiff TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE's ("Plaintiff" or "TAAOM") First Requests for Production.

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 correto all counsel of record herein by way of:	ect copy of the foregoing document has been forwarded
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.

<u>REQUEST FOR PRODUCTION NO. 3</u>: 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 <kaden@txstatecraft.com>

Austin

Dr. Bill Morgan < WMorgan@parker.edu>

Mon, Apr 8, 2019 at 7:46 AM

To: Jeff Jenkins <exec@chirotexas.org>, tomball chiropractic <tomballchiro@yahoo.com>

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

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?

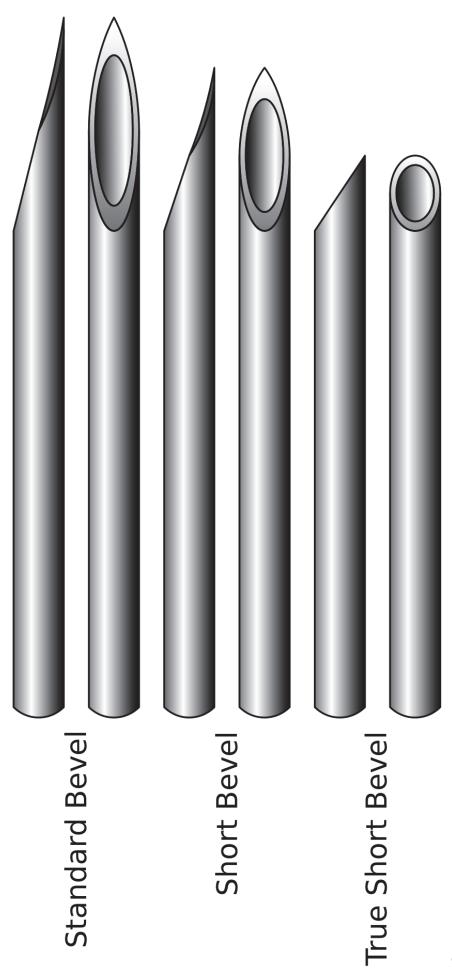
Thank you for all of your hard work.

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





TCA000002 EXHIBIT 1

Exhibit H

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

TEXAS ASSOCIATION OF	§	IN THE DISTRICT COURT
ACUPUNCTURE AND ORIENTAL	§	
MEDICINE,	§	
Plaintiff,	§	
	§	
v.	§	
	§	
TEXAS BOARD OF CHIROPRACTIC	§	TRAVIS COUNTY, TEXAS
EXAMINERS,	§	
Defendants,	§	
	§	
v.	§	
	§	
TEXAS CHIROPRACTIC	§	
ASSOCIATION,	§	
Intervenor.	§	201ST JUDICIAL DISTRICT

INTERVENOR TEXAS CHIROPRACTIC ASSOCIATION'S RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES

TO: Plaintiff Texas Association of Acupuncture and Oriental Medicine, by and through its counsel of record Shelby L. O'Brien and Amy Prueger, Enoch Kever, PLLC, 7600 N. Capital of Texas Highway, Building B, Suite 200, Austin, Texas 78731.

Pursuant to the Texas Rules of Civil Procedure, Intervenor TEXAS CHIROPRACTIC ASSOCIATION ("Intervenor" or "TCA") hereby objects and responds to Plaintiff, TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE's ("Plaintiff" or "TAAOM") First Interrogatories.

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 corre to all counsel of record herein by way of:	ct copy of the foregoing document has been forwarded
 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.

<u>INTERROGATORY NO. 2</u>: 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."

<u>INTERROGATORY NO. 5</u>: 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).

<u>INTERROGATORY NO. 6</u>: 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.

+ 1 4 . Z Z

Date

EXHIBIT 1

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 / Henn - a

7/20/2022

Date

Exhibit I

CAUSE NO. D-1-GN-14-000355 F-SERVICE IN THE DISTRICT COURT 247 TEXAS ASSOCIATION OF 8/5/2022 AND ORIENTAL MEDICINE, 9:24:10 AM Plaintiff, & Serve Texas TRAVIS COUNTY, TEXAS

TEXAS BOARD OF CHIROPRACTIC EXAMINERS.

Defendant,

TEXAS CHIROPRACTIC ASSOCIATION,

ACUPUNCTURE

v.

201ST JUDICIAL DISTRICT Intervenor.

TEXAS BOARD OF CHIROPRACTIC EXAMINERS' FIRST AMENDED OBJECTIONS AND RESPONSES TO TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE'S SECOND SET OF INTERROGATORIES

TO: Texas Association of Acupuncture and Oriental Medicine by and through its attorneys of record, Shelby L. O'Brien and Amy Prueger, Enoch Kever PLLC, 7600 N. Capital of Texas Hwy., Building B, Suite 200, Austin, Texas 78731; and

Texas Association of Chiropractors, by and through its attorney of record, Matt C. Wood, Weisbart Springer Hayes, LLP, 212 Lavaca Street, Suite 200, Austin, Texas 78701

Defendant, the Texas Board of Chiropractic Examiners, by and through its undersigned counsel of record, hereby serves these objections and responses to the Texas Association of Acupuncture and Oriental Medicine's Second Request for Production and Second Set of Interrogatories.

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

The Board objects to the instruction that it identify all documents withheld by date, author, recipients, and the reason for withholding the document, and that, documents withheld under a claim of immunity or privilege be logged in chronological order. Tex. R. Civ. P. 193.3(b) specifically provides that a party seeking discovery may only send a request for a privilege log after receiving a 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 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

TBCE's First Amended Objections and Responses to TAA-OM's Second Set of Interrogatories

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 employe 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 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

Attorneys for Intervenor Texas Chiropractic Association Via electronic service: mwood@wshllp.com

/s/Karen L. Watkins

KAREN L. WATKINS

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

TEXAS ASSOCIATION OF	S	IN THE DISTRICT COURT OF
ACUPUNCTURE	S	
AND ORIENTAL MEDICINE,	S	
Plaintiff,	Š	
v.	S	
	S	
TEXAS BOARD OF CHIROPRACTIC	S	TRAVIS COUNTY, TEXAS
EXAMINERS,	S	
Defendant,	$\mathbb S$	
	S	
TEXAS CHIROPRACTIC	S	
ASSOCIATION,	S	
Intervenor.	Š	201ST JUDICIAL DISTRICT

VERIFICATION/DECLARATION

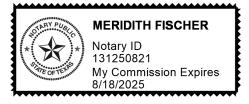
Before me, the undersigned notary public, on this day personally appeared, by means of a two-way interactive audio and video communication, Christopher Burnett, an authorized representative of the Texas Board of Chiropractic Examiners, who being duly sworn on his oath, deposed and said that he is the authorized representative of the Texas Board of Chiropractic Examiners, a defendant in the above styled and numbered case, that he has read the first amended responses to Plaintiff's Second Set of Interrogatories to the Board, and the facts stated in the responses are within his personal knowledge and are true and correct.

Christopher Burnett, Representative for the

8/4/2022 | 2:29 PM CDT

Christopher Burnett, Representative for the Texas Board of Chiropractic Examiners

SUBSCRIBED AND SWORN TO BEFORE ME on this the __ day of August, 2022.



Docusigned by:

Meridith Fischer
8/4/2022 | 2:32 PM CDT

NOTARY PUBLIC, STATE OF TEXAS

Notary Without Bond

Certificate Of Completion

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Template ID Usage Tracking:

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Division Designed Templates: Template ID Usage Tracking - List 2: Division Designed Templates - List 2:

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Signatures: 2 Envelope Originator: Initials: 0 Meridith Fischer PO Box 12548

Austin, TX 78711-2548

Status: Completed

Meridith.Fischer@oag.texas.gov IP Address: 204.64.55.14

Record Tracking

Status: Original Holder: Meridith Fischer

> 8/4/2022 1:52:19 PM Meridith.Fischer@oag.texas.gov

Location: DocuSign

Signer Events

Burnett, Christopher

christopher@tbce.state.tx.us

Security Level: Email, Account Authentication

(None)

Completed

Signature

Using IP Address: 172.2.66.83

Signed using mobile

Timestamp

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Identification Method: Government Issued Id Document

Type of Document: Photo ID Identification Level: ID Only

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Workflow Name: DocuSign ID Verification

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Identification Method: Government Issued Id Document

Type of Document: Photo ID Identification Level: ID Only

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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

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Authentication Details

Signer Events

Signature

Question Details:

Timestamp

ID Check:

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Result: passed Vendor ID: LexisNexis

Type: iAuth

Recipient Name Provided by: Recipient Information Provided for ID Check: Address,

SSN9, SSN4, DOB

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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)

Occusigned by:
Unistoplus Burnett
DTCBE64E220B4E0...

Signature Adoption: Pre-selected Style

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passed property.association.single.real

passed property.county.real

passed person.known.single.fake

passed corporate.association.real

passed county.lived.single.real

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: Meridith

Fischer), Account Authentication (None)

Completed

Using IP Address: 204.64.55.14

Sent: 8/4/2022 2:29:06 PM

Sent: 8/4/2022 2:06:14 PM

Viewed: 8/4/2022 2:06:52 PM

Signed: 8/4/2022 2:29:05 PM

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

Electronic Record and Signature Disclosure:

Accepted: 8/4/2022 2:30:12 PM

In Person Signer Events

ID: 43ed404c-93c2-483d-937f-ed3d511c36cc

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

Notary Name: Meridith Fischer

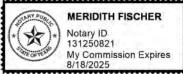
Notary Email: Meridith.Fischer@oag.texas.gov

Notary Address:

Notary Signer: Christopher Burnett
Notary Designated By: Meridith Fischer
Security Level: Email, Account Authentication

(None), Login with SSO

Signature



— Docusigned by:

Meridith Fischer

— DF615E9E50BE4EC.

Using IP Address: 204.64.55.14

Timestamp

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Freeform Signing

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

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Payment Events	Status	Timestamps	
Electronic Record and Signature Disclosure			

CONSUMER DISCLOSURE

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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: https://docucdn-a.akamaihd.net. DocuSign leverages Akamai as a content delivery service to enhance our application's performance.

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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

NameBarNumberEmailTimestampSubmittedStatusLaci LindseyIlindsey@enochkever.com8/5/2022 9:24:19 AMNOT SENTCraig T.Enochcenoch@enochkever.com8/5/2022 9:24:19 AMSENT

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Jeff Lutz on behalf of Karen Watkins

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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

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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

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Laci Lofton on behalf of Shelby O'Brien

Bar No. 24037203

Ilofton@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

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Laci Lofton on behalf of Shelby O'Brien

Bar No. 24037203

Ilofton@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
Lynee 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		Imartino@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

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Laci Lofton on behalf of Shelby O'Brien

Bar No. 24037203

Ilofton@enochkever.com Envelope ID: 68828219

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

Associated Case Party: TEXAS BOARD OF CHIROPRACTIC EXAMINERS

NameBarNumberEmailTimestampSubmittedStatusJoe H.ThrashJoe.Thrash@texasattorneygeneral.gov10/3/2022 11:40:17 AMSENTKaren Watkinskaren.watkins@oag.texas.gov10/3/2022 11:40:17 AMSENT

From: <u>Elizabeth Chipelo</u>

To: Shelby O"Brien; Karen Watkins; Laci Lindsey

Cc: Amy Prueger; Matt Wood

Subject: RE: Cause No. D-1-GN-14-000355; TAAOM"s Motion to Compel - Hearing Availability

Date: Tuesday, October 11, 2022 10:26:55 AM

Thank you for letting me know. I've sent your emails to Judge Soifer for her review. I have y'all tentatively on our calendar just in case the hearing does move forward. Either way, I will let you know.

Best.

Elizabeth Chipelo

Judicial Executive Assistant 345th Judicial District Court The Honorable Jan Soifer P.O. Box 1748, Austin, Texas 78767

P: (512) 854-9712 F: (512) 854-4540

From: Shelby O'Brien <sobrien@enochkever.com>

Sent: Tuesday, October 11, 2022 9:39 AM

To: Karen Watkins < Karen. Watkins@oag.texas.gov>; Elizabeth Chipelo < Elizabeth. Chipelo@traviscountytx.gov>; Laci Lindsey < llindsey@enochkever.com>

Cc: Amy Prueger <aprueger@enochkever.com>; Matt Wood <mwood@wshllp.com>

Subject: [CAUTION EXTERNAL] RE: Cause No. D-1-GN-14-000355; TAAOM's Motion to Compel-Hearing Availability

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Ms. Chipelo, just to reiterate, the Acupuncture Association strongly disputes that it is inappropriate to set a hearing merely because a mandamus petition has been filed, and with no motion to stay trial court proceeding granted (or even filed) in that mandamus proceeding. There mere filing of a mandamus petition does nothing to impact trial court proceedings in the absence of a stay of trial court proceedings. As such, we would appreciate it very much if you could set the hearing. 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 www.enochkever.com [enochkever.com]



From: Karen Watkins < <u>Karen.Watkins@oag.texas.gov</u>>

Sent: Tuesday, October 11, 2022 9:33 AM

To: Shelby O'Brien <<u>sobrien@enochkever.com</u>>; Elizabeth Chipelo

<<u>Elizabeth.Chipelo@traviscountytx.gov</u>>; Laci Lindsey <<u>llindsey@enochkever.com</u>>

Cc: Amy Prueger aprueger@enochkever.com; Matt Wood mwood@wshllp.com>

Subject: RE: Cause No. D-1-GN-14-000355; TAAOM's Motion to Compel - Hearing Availability

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Good morning, Ms. Chipelo.

I am writing to confirm that I have no conflicts on Nov. 9 at 2:00 p.m. I also appreciate Ms. O'Brien conveying our position that it was inappropriate for her to seek a hearing on her motion to compel while the Supreme Court has our mandamus petition under consideration.

If we seek a stay of proceedings from the Supreme Court, we will, of course, serve the Court a copy of that motion.

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: <u>karen.watkins@oag.texas.gov</u>

From: Shelby O'Brien <<u>sobrien@enochkever.com</u>>

Sent: Monday, October 10, 2022 10:57 AM

To: Elizabeth Chipelo <<u>Elizabeth.Chipelo@traviscountytx.gov</u>>; Laci Lindsey

<llindsev@enochkever.com>

Cc: Amy Prueger aprueger@enochkever.com; Matt Wood mwood@wshllp.com; Karen Watkins

< Karen. Watkins@oag.texas.gov>

Subject: RE: Cause No. D-1-GN-14-000355; TAAOM's Motion to Compel - Hearing Availability

Ms. Chipelo, all counsel are available that time and date, so I would appreciate it if you would please schedule the hearing.

I will note that Mr. Wood (counsel for the Texas Chiropractic Association) and Ms. Watkins (counsel for the Texas Board of Chiropractic Examiners) dispute the merits of the Acupuncture Association's Motion to Compel and believe that it is inappropriate to have a hearing on it given their pending mandamus petition at the Texas Supreme Court (but they have indicated they are available that time/date for the hearing). No appellate court, including the Texas Supreme Court, has stayed the trial court proceedings in this case, and we strongly dispute their assertion. In any event, we believe their arguments are merits arguments they should make to Judge Soifer rather than to you in scheduling the hearing.

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

www.enochkever.com



From: Elizabeth Chipelo < <u>Elizabeth.Chipelo@traviscountytx.gov</u>>

Sent: Thursday, October 6, 2022 3:18 PM **To:** Laci Lindsey < lindsey@enochkever.com >

Cc: Shelby O'Brien <<u>sobrien@enochkever.com</u>>; Amy Prueger <<u>aprueger@enochkever.com</u>>; Matt

Wood <<u>mwood@wshllp.com</u>>; Watkins, Karen <<u>Karen.Watkins@oag.texas.gov</u>>

Subject: RE: Cause No. D-1-GN-14-000355; TAAOM's Motion to Compel - Hearing Availability

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Ms. Lindsey,

The only availability the Court has in the first half of November is Wednesday, November 9 at

2:00pm. Please confer with opposing counsel and let me know if that date/time works.

Best,

Elizabeth Chipelo

Judicial Executive Assistant 345th Judicial District Court The Honorable Jan Soifer P.O. Box 1748, Austin, Texas 78767

P: (512) 854-9712 F: (512) 854-4540

From: Laci Lindsey < <u>llindsey@enochkever.com</u>>

Sent: Monday, October 3, 2022 1:50 PM

To: Elizabeth Chipelo < <u>Elizabeth.Chipelo@traviscountytx.gov</u>>

 $\textbf{Cc:} \ \textbf{Shelby O'Brien} < \underline{\textbf{sobrien@enochkever.com}} >; \ \textbf{Amy Prueger} < \underline{\textbf{aprueger@enochkever.com}} >; \ \textbf{Matt}$

Wood < <u>mwood@wshllp.com</u>>; Watkins, Karen < <u>Karen.Watkins@oag.texas.gov</u>>

Subject: [CAUTION EXTERNAL] Cause No. D-1-GN-14-000355; TAAOM's Motion to Compel - Hearing

Availability

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Good afternoon,

Attached is TAAOM's Motion to Compel Discovery Responses which was filed with the Court this morning.

Can you please provide us with Judge Sofier's hearing availability for a 30 minute setting in November? Preferably Early-Mid November?

Thank you, Laci

Laci Lindsey Paralegal



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Jeff Lutz on behalf of Karen Watkins

Bar No. 20927425

jeff.lutz@oag.texas.gov Envelope ID: 69152149

Status as of 10/12/2022 2:26 PM CST

Associated Case Party: Texas Association of Acupuncture and Oriental Medicine

Name	BarNumber	Email	TimestampSubmitted	Status
Amy Prueger	24041842	aprueger@enochkever.com	10/12/2022 2:07:20 PM	SENT
Shelby Leigh O'Brien	24037203	sobrien@enochkever.com	10/12/2022 2:07:20 PM	SENT

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Bar No. 20927425

jeff.lutz@oag.texas.gov Envelope ID: 69152149

Status as of 10/12/2022 2:26 PM CST

Associated Case Party: Texas Chiropractic Association

Name BarNumber Email TimestampSubmitted Status Matthew Wood 24066306 mwood@wshllp.com 10/12/2022 2:07:20 PM SENT

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Jeff Lutz on behalf of Karen Watkins

Bar No. 20927425

jeff.lutz@oag.texas.gov

Envelope ID: 69152149

Status as of 10/12/2022 2:26 PM CST

Case Contacts

Name BarNumber Email TimestampSubmitted Status

Jeff Lutz jeff.lutz@oag.texas.gov 10/12/2022 2:07:20 PM SENT

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Jeff Lutz on behalf of Karen Watkins

Bar No. 20927425

jeff.lutz@oag.texas.gov

Envelope ID: 69152149

Status as of 10/12/2022 2:26 PM CST

Associated Case Party: Texas Board of Chiropractic Examiners

Name BarNumber Email TimestampSubmitted Status Karen Watkins karen.watkins@oag.texas.gov 10/12/2022 2:07:20 PM SENT

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Jeff Lutz on behalf of Karen Watkins

Bar No. 20927425

jeff.lutz@oag.texas.gov

Envelope ID: 69152149

Status as of 10/12/2022 2:26 PM CST Associated Case Party: Hon. Jan Soifer

NameBarNumberEmailTimestampSubmittedStatusHon. Jan Soifer345.Submission@traviscountytx.gov10/12/2022 2:07:20 PMSENT