

No. 22-0841

The Supreme Court of Texas

**IN RE TEXAS BOARD OF CHIROPRACTIC EXAMINERS
AND TEXAS CHIROPRACTIC ASSOCIATION,**

Relators

*Original Proceeding from 345TH District Court, Travis County, Texas
Cause No. D-1-GN-14-000355*

**ACUPUNCTURE ASSOCIATION’S RESPONSE IN OPPOSITION TO
RELATORS’ MOTION FOR TEMPORARY RELIEF IN CONJUNCTION
WITH PREVIOUSLY FILED PETITION FOR WRIT OF MANDAMUS**

Real Party in Interest/Plaintiff Texas Association of Acupuncture and Oriental Medicine (“Acupuncture Association”) files this response in opposition to Relators/Defendants Texas Board of Chiropractic Examiners and Texas Chiropractic Association’s (collectively, “Chiropractic Defendants”) Motion for Temporary Relief.¹ Though framed as a discovery dispute impacting state agencies across the state, the Chiropractic Defendants’ Motion for Temporary Relief and corresponding mandamus petition ask this Court to interfere in a procedurally and

¹ “Chiropractic Board” refers to the Texas Board of Chiropractic Examiners, and “Chiropractic Association” refers to the Texas Chiropractic Association.

factually unique case that was already resolved on summary judgment (i.e., as a matter of law) and was reversed and remanded by the court of appeals. Further, unlike most “scope of practice” disputes that concern discrete procedures, the Chiropractic Board here is usurping an entire profession (the profession of acupuncture) that is regulated by a separate administrative agency. The trial court’s refusal to limit discovery and issues in dispute in the manner requested by the Chiropractic Defendants is correct and does not warrant this Court’s review. Thus, it is not “just” to grant temporary relief as required by the rules. *See* TEX. R. APP. P. 52.10(b). This Court should deny the Chiropractic Defendants’ Motion for Temporary Relief and allow this case to proceed to trial.

INTRODUCTION

The Chiropractic Board has a long history of reaching beyond its statutory scope of practice and usurping practices that clearly are not chiropractic. The Chiropractic Board’s acupuncture rules, however, go far beyond that. The Legislature has determined that acupuncture should be a separate, regulated profession under the supervision of the Texas State Board of Acupuncture Examiners and the Texas Medical Board.² The Legislature requires extensive training and education **in acupuncture** for a person to be licensed to practice this

² The Texas Medical Board oversees the Texas State Board of Acupuncture Examiners (“Acupuncture Board”). TEX. OCC. CODE § 205.101.

profession. The Chiropractic Board’s rules authorizing chiropractors to practice acupuncture do not just enable chiropractors to practice a healthcare procedure that is not chiropractic—they authorize chiropractors to practice a separate, regulated profession without undergoing any of the training or education the Legislature mandates. Consequently, the Acupuncture Association has challenged the Chiropractic Board’s rules authorizing chiropractors to practice acupuncture without a license issued by the Acupuncture Board.

The Chiropractic Board’s complete usurpation of a separate regulated profession is unique among state agencies and raises several issues for adjudication at trial. Yet the Chiropractic Defendants claim that the sole issue in dispute is the shape of acupuncture needles—and not just their shape, but the shape of their tips. As such, their mandamus petition (like their underlying Motion to Limit Discovery and Issues for Decision that the trial court denied) is premised on their stance that there are “few if any factual findings” required in this case and so virtually no discovery is necessary. Mandamus Record (“MR”) Tab 12 at 1. This stance is nonsensical under this Court’s precedent and the procedural history of this case.

This case was already decided on summary judgment (i.e., as a matter of law) back in 2015, but was remanded by the Third Court of Appeals to the trial court because summary judgment could not properly be granted to either party. Specifically, in early 2015, the trial court granted the Chiropractic Board’s

summary judgment motion and denied the Acupuncture Association's competing summary judgment motion. *See* Supplemental Mandamus Record ("Supp. MR") at Tab 19; *Tex. Ass'n. of Acupuncture & Oriental Med. v. Tex. Bd. of Chiropractic Exam'rs*, 524 S.W.3d 734, 736 (Tex. App.—Austin 2017, no pet.) (op. on rehearing). The Acupuncture Association appealed to the Third Court of Appeals, which reversed and remanded the case to the trial court. *See Tex. Ass'n of Acupuncture & Oriental Med.*, 524 S.W.3d at 736, 745-46. Had the Third Court believed there were no fact disputes to be resolved at a trial, it easily could have affirmed for the Chiropractic Board or reversed and rendered for the Acupuncture Association. It did neither. And nothing in the Third Court's opinion suggests that the sole issue to be determined on remand is the shape of acupuncture needles. What was remanded is the broader issue of whether the Chiropractic Board's acupuncture rules are valid or not. MR Tab 13 at Exhibits A, B.

As the Acupuncture Association explained in the trial court, it does not envision the need for a lengthy trial. MR Tab 13 at 2. And the Acupuncture Association seeks only limited discovery, which it is undisputedly entitled to under the rules and the discovery control plan the parties agreed to in this case. This would include obtaining responses to the written discovery requests it has served (*id.* Tab 13 at Exhibits F & G), deposing two of the three experts designated by the

Chiropractic Defendants (*id.* Tab 13 at Exhibits D & E),³ and deposing a representative from the Chiropractic Board (*id.* Tab 13 at 2). The Acupuncture Association agrees that this case does not warrant extensive discovery. But the limited discovery the Acupuncture Association seeks is warranted and permissible.⁴

The Court should deny the Chiropractic Defendants' Motion for Temporary Relief, also deny their Petition for Writ of Mandamus, and allow for discovery to be completed promptly ahead of the scheduled February 13, 2023 trial.⁵

BACKGROUND

This case concerns the validity of the Chiropractic Board's rules authorizing chiropractors to practice acupuncture without obtaining a license from the Acupuncture Board. MR Tab 14. This case has been pending for nearly a decade. In 2015, the trial court granted the Chiropractic Board's motion for summary judgment and denied the Acupuncture Association's competing motion. Supp. MR Tab 19. The Acupuncture Association appealed, and the Third Court of Appeals

³ One of the Chiropractic Defendants' experts was solely retained to magnify acupuncture needles. The Chiropractic Defendants consented to this expert being deposed, and this deposition has already occurred.

⁴ As noted in the trial court, the Chiropractic Association served written discovery requests on the Acupuncture Association as well, which the Acupuncture Association substantively responded to. MR Tab 13 at 3.

⁵ As noted in the Chiropractic Defendants' Motion for Temporary Relief, the Acupuncture Association has been forced to file a Motion to Compel in order to get the basic discovery it needs ahead of trial.

reversed and remanded. *See Tex. Ass'n of Acupuncture & Oriental Med.*, 524 S.W.3d at 736, 745-46. It held that neither party was entitled to judgment as a matter of law. *Id.*

Once remanded, the case was abated while the parties sought legislative resolution, a negotiated rulemaking process (that ultimately did not happen), and informal stakeholder meetings—all in an attempt to resolve the fundamental issue regarding the practice of acupuncture by chiropractors. MR Tabs 2-6. These attempts were unsuccessful. The COVID-19 pandemic then created further delays. *Id.* Tab 9-11. The parties agreed on a scheduling order and discovery control plan that that did not include the discovery limitations the Chiropractic Defendants now seek. *Id.* Tab 10.

At this juncture, the parties have designated experts, and the deadlines for amending pleadings have passed. *Id.*⁶ A bench trial is scheduled for February 13, 2023—a date the Chiropractic Defendants agreed to. The trial court correctly determined that the Acupuncture Association is permitted to conduct discovery prior to trial.

⁶ The scheduling order still in place also provides that the discovery cut off is August 17, 2022. MR Tab 10. The parties have agreed to extend that deadline given the current discovery dispute and the continued trial date, but, to date, the Chiropractic Defendants have declined to agree to a supplemental scheduling order in light of the new trial date.

ARGUMENT

In their Motion for Temporary Relief and mandamus petition, the Chiropractic Defendants claim that the sole issue in dispute in the underlying case is the shape of acupuncture needles, and they contend that discovery should be limited to this issue. For several reasons, they are wrong.

A. This Court’s precedent does not support the limitations on discovery and issues for decision asserted by the Chiropractic Defendants.

The Chiropractic Defendants rely primarily on this Court’s cases that they claim dictate that the sole issue in dispute is the shape of acupuncture needles. Referring to this Court’s somewhat case involving the Chiropractic Board, they claim that this Court has instructed courts to engage solely in a “limited, textual review of the agency’s rules” in rule challenges. MR Tab 12 at 1. These opinions do not limit this dispute in the manner the Chiropractic Defendants assert.

1. Applicable Case Law

The primary case the Chiropractic Defendants rely on is *Texas Board of Chiropractic Examiners v. Texas Medical Association*. See 616 S.W.3d 558 (Tex. 2021). There, this Court considered the Texas Medical Association’s challenge to Chiropractic Board rules. At issue was whether Chiropractic Board rules defining “musculoskeletal system” and “subluxation complex” and a rule allowing chiropractors to perform VONT (Vestibular-Ocular-Nystagmus Testing) were valid. *Id.* at 568. This Court observed that “the question whether the Board

exceeded its authority by adopting rules that conflict with the [Chiropractic Chapter] is a legal one.” *Id.* This Court applied general rules of statutory construction in determining whether the Chiropractic Board’s definitions and rules are consistent with the meaning of the terms in the Chiropractic Chapter. *Id.* at 568-69. This Court explained:

The challenger’s ultimate burden is to demonstrate that the rule’s provisions are not in harmony with the general objectives of the act involved, which we discern from the statute’s plain text. The challenger can meet that burden by showing that the challenged rule: (1) contravenes specific statutory language; (2) runs counter to the general objectives of the statute; or (3) imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions.

Id. at 569 (citations and quotations omitted).

This Court also explained (as it has in previous cases) that agency rules are presumed valid. *Id.* at 570-71. This Court criticized the trial court for weighing evidence and stated: “The proper question for the court was whether, despite Rule 78.1’s presumption of validity, the rule contravenes the [Chiropractic Chapter’s] specific text or runs counter to its purpose as a matter of law.” *Id.* at 571.

Notably, nowhere in the opinion did this Court state that there is no room for expert testimony or evidence in a lawsuit such as this one—nor did this Court conclude that there could never be a fact dispute in the context of a rule challenge. Indeed, this Court observed, even in the context of that case, that “it was not improper for the trial court to allow evidence to be offered as background

describing medical and chiropractic practice and placing the case in context[.]” *Id.* at 568. Additionally, in determining whether the VONT rule in particular exceeded the statutory scope of chiropractic, this Court discussed the evidence, including expert testimony, that had been offered at trial. *Id.* at 573-74.

Further, this Court did not overrule any of its previous decisions, nor articulate a new standard of review for rule challenges under the Administrative Procedure Act. For instance, this Court relied on its *Texas State Board of Examiners of Marriage and Family Therapists v. Texas Medical Association* opinion, which set forth an identical standard to the *Texas Board of Chiropractic Examiners* case. 511 S.W.3d 28, 33-34 (Tex. 2017) (citing cases dating back to 1991 and observing that agency rules are presumed valid, and a challenging party must show that a rule contravenes specific statutory language or runs counter to the general objectives of the statute). This Court did not overrule general rules of statutory construction, including that statutory construction is generally a question of law, but that canons of statutory construction are appropriate when a statute is ambiguous. *Id.* at 41. And this Court did not discount decisions that require courts to evaluate the **reasonableness** of agency action when a governing statute is ambiguous. See *R.R. Comm’n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 625 (Tex. 2011) (courts generally uphold an agency’s interpretation of a statute it is charged with enforcing, “so long as the construction

is reasonable and does not contradict the plain language of the statute”); *Finance Comm’n of Tex. v. Norwood*, 418 S.W.3d 566, 585 (Tex. 2013) (in context of rule challenge, stating that “[c]onstruction of a statute by the administrative agency charged with its enforcement is entitled to serious consideration, so long as the construction is reasonable and does not contradict the plain language of the statute” (citation omitted)); *Sirius XM Radio, Inc. v. Hegar*, 643 S.W.3d 402, 407 (Tex. 2022) (same).

2. Application to the Acupuncture Association’s Claims

The Acupuncture Association has challenged the Chiropractic Defendants’ rules authorizing chiropractors to practice acupuncture without a license issued by the Acupuncture Board. 22 TEX. ADMIN. CODE §§ 78.1(e)(2)(C), 78.14; MR Tab 14. This rule challenge raises the following issues, which the Acupuncture Association anticipates will be the subject of the trial:

- whether acupuncture needles are incisive within the Chiropractic Board’s definition of incision as a “cut or a surgical wound,” TEX. OCC. CODE § 201.002 (prohibiting chiropractors from performing incisive procedures, with a single exception for needles used for diagnostic blood draws); 22 TEX. ADMIN. CODE § 78.1(a)(4) (defining “incision” as a “cut or a surgical wound”);
- more generally, whether the Chiropractic Board’s acupuncture rules exceed the statutory scope and objectives of the Chiropractic Chapter and the objectives of the Legislature’s statutory scheme regulating acupuncture and chiropractic as separate professions; and

- assuming there is ambiguity in the governing law, which the court of appeals implicitly concluded was true when it remanded the case, whether the Chiropractic Board’s interpretation of the Chiropractic Chapter as including acupuncture in its statutory scope is entitled to deference and is reasonable.

Nothing in this Court’s *Texas Board of Chiropractic Examiners* decision dictates that discovery and evidence are improper in the context of a rule challenge such as this one—even if the question of whether the Chiropractic Board’s acupuncture rules exceed the statutory scope of chiropractic is generally an issue of law. Unlike some of the previous suits brought by the Texas Medical Association against the Chiropractic Board, which related to various discrete medical procedures, the Chiropractic Board here is usurping an entire profession that is regulated by a separate regulatory board. *Compare* TEX. OCC. CODE ch. 201 (Chiropractic Chapter), *with id.* ch. 205 (Acupuncture Chapter). The Legislature has determined that a person must complete extensive educational and training requirements to practice acupuncture. *E.g., id.* §§ 205.203, 205.206. Yet the Chiropractic Board has adopted rules authorizing chiropractors to practice acupuncture without obtaining a license issued by the Acupuncture Board or completing the extensive training and education required by the Legislature. *See* 22 TEX. ADMIN. CODE § 78.14.

The Chiropractic Board’s acupuncture rules are invalid if they contravene statutory text **or** the objectives of the Chiropractic Chapter and Acupuncture

Chapter. *Texas Bd. of Chiropractic Exam'rs*, 616 S.W.3d at 569. Additionally, when a statute is ambiguous, canons of statutory construction apply, expert testimony becomes necessary to assist the court in construing statutory terms, and the reasonableness of an agency's construction of a statute becomes relevant. Thus, evidence is necessary to evaluate the issue of whether the Chiropractic Board's acupuncture rules are reasonable. *See, e.g., Sirius XM Radio, Inc.*, 643 S.W.3d at 407. At a minimum, evidence will provide background on the practice of acupuncture by chiropractors, which will aid the trial court's decision in this dispute. *See Texas Bd. of Chiropractic Examr's*, 616 S.W.3d at 568.

Thus, in addition to evidence regarding whether acupuncture or solid filiform needles⁷ are incisive (which the Chiropractic Defendants seem to concede is appropriate), evidence regarding the following will also be relevant at trial:

- the amount of training and education in acupuncture chiropractors must engage in to practice acupuncture compared to acupuncturists;
- the historical context of acupuncture becoming a separate regulated profession in Texas;
- scientific differences between the practice of acupuncture and chiropractic;

⁷ The Chiropractic Board's acupuncture rule defines acupuncture as the "insertion of acupuncture needles or solid filiform needles." 22 TEX. ADMIN. CODE § 78.14. Thus, several of the Acupuncture Association's requests concern the insertion of solid filiform needles, including "dry needling."

- the manner in which the Chiropractic Board is actually regulating the practice of acupuncture by chiropractors; and
- other evidence related to the Chiropractic Board's adoption and implementation of its acupuncture rules.

The Acupuncture Association solely seeks discovery related to these issues. MR Tab 13 at Exhibits F & G; *see also id.* at Exhibit C.

Notably, the court of appeals has already concluded that this dispute cannot be determined as a matter of law. As explained, the trial court granted the Chiropractic Board's traditional motion for summary judgment and denied the Acupuncture Association's competing traditional motion for summary judgment. Supp. MR Tab 19. As such, the trial court determined that the Acupuncture Association's rule challenge could be determined as a matter of law. *See* TEX. R. CIV. P. 166a(c) (authorizing a court to grant summary judgment if "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law"). This ruling was reversed and remanded by the court of appeals. If the court of appeals had agreed that this rule challenge could be decided as a matter of law, or that "no genuine issue as to any material fact" existed, it would have affirmed for the Chiropractic Board or reversed and rendered for the Acupuncture Association. It did neither. The court of appeals envisioned a fact dispute exists that requires the trial court's resolution. *Texas Ass'n of Acupuncture & Oriental Med.*, 524 S.W.3d at 74.

B. The court of appeals remanded the broader issue of whether the Chiropractic Board’s acupuncture rules are valid—not merely the issue of the shape of acupuncture needles.

The Chiropractic Defendants’ assertion that the court of appeals solely remanded the issue of the shape of acupuncture needles is also incorrect. Certainly, the court of appeals discussed whether acupuncture needles are incisive or not as a matter of law, which was the primary summary judgment issue before the court. *Id.* at 743, 745. The court of appeals concluded that neither side had met its summary judgment burden on the issue of the validity of the Chiropractic Board’s acupuncture rules. *Id.* But the court did not limit remand to the sole issue of whether acupuncture needles are incisive or not—and certainly not to the issue of the shape of acupuncture needles. *See generally id.* Instead, the court of appeals’ mandate and judgment broadly state:

[T]he Court holds that there was reversible error in the portion of the judgment dismissing the Texas Association of Acupuncture and Oriental Medicine’s challenge to the Texas Board of Chiropractic Examiners’ **rules expressly authorizing acupuncture**. Therefore, the Court reverses that portion of the judgment and remands the cause to the trial court **for further proceedings on that issue**.

MR Tab 13 at Exhibit A (court of appeals’ mandate) & B (court of appeals’ judgment) (emphasis added).

Thus, what was remanded is the issue of whether the Chiropractic Board’s acupuncture rules are valid or not. *See Phillips v. Bramlett*, 407 S.W.3d 229, 234 (Tex. 2013) (“When an appellate court reverses a lower court’s judgment and

remands the case to the trial court ..., the trial court is authorized to take all actions that are necessary to give full effect to the appellate court's judgment and mandate.").

Additionally, while the court of appeals discussed that a distinction might exist between "incisive" and "nonincisive" needles, the court did not state that acupuncture needles are "nonincisive." Nor did the court opine that only needles with beveled tips are "incisive." Instead, relying on the Chiropractic Board's rule defining "incision" as a "cut," the court of appeals stated that needles that are capable of "cutting" are "incisive," and that acupuncture needles would need to be not capable of cutting to be "nonincisive." *Texas Ass'n of Acupuncture & Oriental Med.*, 524 S.W.3d at 743. The court did not state that only needles with beveled tips are capable of cutting.⁸

In short, the shape of needles is not the sole determinative fact issue at trial. And the court of appeals did not limit this Court to determining the validity of the Chiropractic Board's acupuncture rules solely based on whether acupuncture needles have beveled tips. The Acupuncture Association should be authorized to

⁸ It is untrue that the Acupuncture Association's burden on remand is to "conclusively" prove that "all" acupuncture needles "cut," as argued by the Chiropractic Defendants in the trial court. The only reason the court of appeals discussed whether the Acupuncture Association had proven "conclusively" that acupuncture needles are incisive was because it was appealing the denial of its competing summary judgment motion (as well as the grant of the Chiropractic Board's summary judgment motion). When a party seeks summary judgment on its own claim, it must conclusively prove that claim to obtain summary judgment. See *ACI Design Build Contractors, Inc. v. Loadholt*, 605 S.W.3d 515, 517 (Tex. App.—Austin 2020, pet. denied).

prove its claims with the discovery it is entitled to under the rules, as has been ordered by the trial court.

C. The Chiropractic Defendants agreed to a scheduling order and discovery control plan that authorizes the Acupuncture Association to conduct discovery in accordance with the Texas Rules of Civil Procedure.

Additionally, the trial court signed a Second Amended Agreed Pretrial Scheduling Order and Discovery Control Plan in the underlying case on July 16, 2021. The Scheduling Order and Discovery Control Plan provides that the limitations governing discovery in this lawsuit on remand shall be governed by Level 2, Texas Rule of Civil Procedure 190.3 (unless otherwise set forth in the Order). MR Tab 10 at ¶¶ 6, 7, and 9. The Chiropractic Defendants **agreed as to form and substance** to this Scheduling Order and Discovery Control Plan. Nothing in this agreed order suggests that discovery in this case is limited to the sole issue of the shape of acupuncture needles or that discovery is otherwise restricted. Notably, the Chiropractic Defendants agreed to this Scheduling Order and Discovery Control Plan **six months** after this Court issued its *Texas Board of Chiropractic Examiners v. Texas Medical Association* opinion, which the Chiropractic Defendants now claim mandates restricted discovery in this case. *See* 616 S.W.3d 558 (opinion issued January 29, 2021). The Acupuncture Association was blindsided when the Chiropractic Defendants suddenly filed their Motion to Limit Discovery in June 2022, three months before the then-scheduled trial.

As explained, the Acupuncture Association seeks limited discovery in this case—and certainly nothing outside the scope of permissible discovery under the rules. *See* TEX. R. CIV. P. 190.3 (authorizing 25 written interrogatories and 50 hours in oral depositions per side);⁹ *id.* R. 192.3 (“a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action”). The Acupuncture Association has served Requests for Production and Interrogatories on each of the Chiropractic Defendants (not in an amount that exceeds what is authorized under the rules). As noted, the Acupuncture Association has deposed one of the Chiropractic Defendants’ experts who solely was retained to magnify certain acupuncture needle tips, but it wishes to depose the remaining two experts designated by the Chiropractic Defendants and a Chiropractic Board representative.

The Acupuncture Association has not requested discovery on any topics outside the scope of the Chiropractic Board’s acupuncture rule and the practice of acupuncture and use of acupuncture needles (and solid filiform needles, which, as explained, is specifically described in the Chiropractic Board’s acupuncture rule) by chiropractors. Given that the Acupuncture Association is challenging the

⁹ The Chiropractic Board incorrectly objected that the 25 interrogatories limit had been exceeded, even though the Second Amended Scheduling Order and Discovery Control Plan provides that any discovery exchanged before the court of appeals’ remand does not count against these discovery limitations. MR Tab 10. The Chiropractic Board has since amended its responses to remove that objection.

Chiropractic Board’s acupuncture rules, it is difficult to see how its limited discovery requests are overbroad, irrelevant, or somehow outside the permissible scope of discovery.¹⁰

D. Because the Chiropractic Defendants’ mandamus petition lacks merit, this Court should decline to grant the Motion for Temporary Relief.

Rule 52.10 authorizes this Court to grant “any just relief pending the court’s action on the petition.” TEX. R. APP. P. 52.10(b). For the reasons outlined above, it is not “just” to stay the underlying case here.

To the extent the Court determines that further briefing is warranted for it to evaluate the merits of the Chiropractic Defendants’ mandamus petition, however, the Acupuncture Association agrees that a stay of the underlying case is warranted. *See In re LCS SP, LLC*, 640 S.W.3d 848, 855 (Tex. 2022) (orig. proceeding) (a stay is a proper exercise of an appellate court’s authority to preserve its jurisdiction). Trial is scheduled for February 13, 2023—in less than four months, with the holidays occurring in between. The Acupuncture Association cannot

¹⁰ It is also noteworthy that the Chiropractic Defendants filed a Motion for Summary Judgment in the trial court that relied on affidavits from their experts. The Chiropractic Defendants pulled down the hearing on their summary judgment motion when the trial court denied their Motion to Limit Discovery. The Chiropractic Defendants did not attempt to withdraw their summary judgment motion, though, so they may still reset it for hearing. It is ironic—and troubling—that the Chiropractic Defendants essentially assert that most of the planned expert testimony from the Acupuncture Association’s expert witnesses is inappropriate while relying on their own experts to support their dispositive motion. They cannot on one hand rely on expert testimony in their dispositive motion while attempting to essentially exclude most of the Acupuncture Association’s expert testimony.

adequately prepare for trial without obtaining the basic discovery and depositions it is requesting, and which the Chiropractic Defendants are refusing to provide. To provide certainty to the parties and the trial court regarding the February 2023 trial date, the Acupuncture Association respectfully submits that this Court should either (1) deny the Motion for Temporary Relief and corresponding mandamus petition, or (2) grant a stay pending further briefing in the mandamus proceeding. As explained above, the Acupuncture Association believes a stay is not warranted because the Chiropractic Defendants' mandamus petition should be denied.

PRAYER

The Acupuncture Association respectfully prays that this Court deny the Chiropractic Defendants' Motion for Temporary Relief, deny the Chiropractic Defendants' corresponding Petition for Writ of Mandamus, and award it all further relief to which it may be justly 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 TEXAS ASSOCIATION OF
ACUPUNCTURE AND ORIENTAL MEDICINE***

CERTIFICATE OF SERVICE

I hereby certify that, on October 21, 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

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

/s/ Shelby O'Brien _____
Shelby O'Brien

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:

Laci Lofton on behalf of Shelby O'Brien
Bar No. 24037203
llofton@enochkever.com
Envelope ID: 69463690
Status as of 10/21/2022 3:17 PM CST

Associated Case Party: Texas Board of Chiropractic Examiners

Name	BarNumber	Email	TimestampSubmitted	Status
Karen Watkins		karen.watkins@oag.texas.gov	10/21/2022 2:58:58 PM	SENT

Associated Case Party: Texas Association of Acupuncture and Oriental Medicine

Name	BarNumber	Email	TimestampSubmitted	Status
Amy Prueger	24041842	aprueger@enochkever.com	10/21/2022 2:58:58 PM	SENT
Shelby Leigh O'Brien	24037203	sobrien@enochkever.com	10/21/2022 2:58:58 PM	SENT

Associated Case Party: Texas Chiropractic Association

Name	BarNumber	Email	TimestampSubmitted	Status
Matthew Wood	24066306	mwood@wshllp.com	10/21/2022 2:58:58 PM	SENT

Associated Case Party: Hon. Jan Soifer

Name	BarNumber	Email	TimestampSubmitted	Status
Hon. Jan Soifer		345.Submission@traviscountytexas.gov	10/21/2022 2:58:58 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jeff Lutz		jeff.lutz@oag.texas.gov	10/21/2022 2:58:58 PM	SENT