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

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

TEXAS BOARD OF CHIROPRACTIC EXAMINERS' CLOSING ARGUMENT

TO THE HONORABLE JUDGE JAN SOIFER:

The Texas Board of Chiropractic Examiners enacted four rules that, together, clarify that the use of a limited range of acupuncture by chiropractors is within the chiropractic scope of practice. Although the Texas Association of Acupuncture and Oriental Medicine filed this suit to challenge those rules, the Court of Appeals has affirmed a trial court judgment denying the challenge as to two of the rules and now, following a four-day trial, the Acupuncture Association has failed to carry its burden to prove that the remaining two rules are invalid. Therefore, the Chiropractic Board respectfully requests that this honorable Court render judgment declaring its Rules 78.1(e)(2)(C) and 78.14 to be valid and assess court costs against the Acupuncture Association.

THE LEGAL STANDARD

The Board's rules are presumed to be valid; it was the Acupuncture Association's burden to overcome that presumption. *See Tex. State Bd. of Exam'rs of Marriage & Family Therapists*, 511 S.W.3d 28, 33 (Tex. 2017) (hereafter *MFT*); *Brown v. Humble Oil & Refining Co.*, 87 S.W.2d 1069, 1070 (1935). To do so, it had the burden to prove either: (a) that the Rules contravened specific statutory language; or (b) that they ran counter to the general objectives of the underlying statute. *Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558, 570 (Tex. 2021) (hereafter *TBCE I*). Any dispute about

the meaning of Chapter 201 of the Texas Occupations Code (the Chiropractic Act) because of ambiguity in its language must be resolved in favor of the Board's interpretation of the Act, so long as the Board's interpretation is reasonable and consistent with the Act's general objectives. *R.R. Comm'n v. Tex. Citizens for a Safe Future and Clean Water*, 336 S.W.3d 619, 625 (Tex. 2011).

Despite having had ample time to discover and present evidence at trial, however, the Acupuncture Association has failed to prove that the Board's Rules are contrary to either the language or the general objectives of the Chiropractic Act.[1]

THE BOARD'S RULES ARE CONSISTENT WITH THE CHIROPRACTIC ACT'S LANGUAGE BECAUSE ACUPUNCTURE IS A NONINCISIVE PROCEDURE

The parties agree Texas-licensed chiropractors may not use incisive or surgical procedures to treat patients. *See* Tex. Occ. Code § 201.002(c)(1). They disagree about whether acupuncture is a nonincisive procedure. The root of this disagreement is the Acupuncture Association's insistence that all needle insertions are incisive because all needles cut skin, regardless of the size of the needle.

A. *The Third Court of Appeals has already determined that the Board acted reasonably by defining "incision" in a technical manner that does not include punctures or piercings.*

If the Court were writing on a blank slate, it would have to resolve two threshold legal questions to decide whether to defer to the Board's interpretation of the term "incisive or surgical procedures" in Texas Occupations Code § 201.002: (1) is the term ambiguous? and, if so, (2) is the Board's construction reasonable? But the Court does not write on a clean slate. The Court of Appeals has already resolved these questions and found that, although § 201.002 is ambiguous, the Board's interpretation of its language is reasonable.

---

[1] Because the Acupuncture Association now admits Texas Occupations Code § 205.003(a) exempts chiropractors from the Acupuncture Act when they are acting within the scope of their licenses, TAAOM Closing Stmt. at 13, the Acupuncture Act would only be relevant if the Court were to determine that acupuncture is an incisive procedure.

The Third Court of Appeals first considered the meaning of the Chiropractic Act's term "incision" in conjunction with the Texas Medical Association's challenge to the Board's rules authorizing certain chiropractors to use needle electromyography (needle EMG). *Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 375 S.W.3d 464 (Tex. App.—Austin 2012, pet. denied) (hereafter *TMA I*). The appellate court there determined that there are two definitions of "the term 'incision'—i.e., that which characterizes an 'incisive procedure'." *Id.* at 475. Especially in the context of health care, the court noted, "'incisive' is used to refer to the act of cutting, usually tissue." *Id.* at 479. The ordinary definition, by contrast, incorporates "cutting," "piercing" and "penetrating." *Id.* at 480. Although the court recognized that the Board had defined "incision" consistently with the technical definition of "incisive," *id.* at 480, it did not determine whether this construction of the term was reasonable, because the evidence proved that the needles used for EMG would cut and, therefore, be incisive under either definition. *Id.* at 481.

The Third Court of Appeals took up the issue again and actually decided it in the earlier appeal in this case. *See Tex. Ass'n of Acupuncture & Oriental Med. v. Tex. Bd. of Chiropractic Exam'rs*, 524 S.W.3d 734 (Tex. App.—Austin 2017, no pet.) (hereafter *TAAOM I*). The court first addressed the Acupuncture Association's contention that the trial court erred by granting summary judgment affirming the validity of the Board's rules defining "incision" and permitting the use of needles in chiropractic as long as they are not used for incisive or surgical procedures. *Id.* at 741-43. The appellate court reviewed its earlier opinion in *TMA I*, and held:

> As in *TMA I*, our resolution of whether the Chiropractic Board's rules in this case are valid, to the extent they authorize the practice of acupuncture, turns on the Legislature's intended use of the word "incisive" in the Chiropractic Act. The relevant statutory framework has not changed since *TMA I*. Thus, our analysis of whether the practice of acupuncture is "incisive," and thus excluded from the practice of chiropractic under the Act, depends on whether Chiropractic Board Rule [78.1(a)(4)] defining "incision" as a "cut" or "surgical wound," is reasonable and consistent with the statute. This rule provision was not challenged in *TMA I*, and we did not directly decide this issue. We did, however, explain in our opinion that the

> Chiropractic Board's definition of "incision," which recognizes that some needles may be considered "incisive," while other needles may not [be], is consistent with the technical meaning of the term "incisive" and also with the Legislature's view that acupuncture needles are at least capable of being inserted into the body in a "nonincisive" and "nonsurgical" manner. For these reasons, ***we cannot conclude that [the] Chiropractic Board's definition of "incision" as a "cut" or "surgical wound" represents a construction of the term "incisive," as used in the Chiropractic Act, that is unreasonable or inconsistent with the statutory text.***
>
> The Acupuncture Association and the Chiropractic Board each moved for summary judgment on the Association's claims that certain portions of Rule [78.1] are invalid, including subsection (a)(4) defining "incision." ***Because Rule [78.1(a)(4)] is not unreasonable or inconsistent with the Chiropractic Act, the trial court did not err in*** denying the Acupuncture Association's motion for summary judgment and ***granting summary judgment in favor of the Chiropractic Board with respect to the Acupuncture Association's challenge to Rule [78.1(a)(4)]***.

Id. at 742 (citations omitted).

The Third Court of Appeals recognized that the Board read the Chiropractic Act to use the technical definition of "incisive." The appellate court has already determined that the Board's construction of the Act in that respect is reasonable and consistent with the text of the Act. That determination is binding on this Court because it is the law of this case. *Hudson v. Wakefield*, 711 S.W.2d 628, 630 (Tex. 1986) (". . . the law of the case doctrine is intended to achieve uniformity of decision as well as judicial economy and efficiency. . . [and, as a matter of public policy,] is aimed at putting an end to litigation.").

The Acupuncture Association nevertheless argues that the Board's interpretation of the Chiropractic Act to allow chiropractors to use acupuncture within scope should not be entitled to deference because: (a) the Board has no expertise in acupuncture and (b) the Board's interpretation is unreasonable because it would result in chiropractors usurping an entire profession. Both of these contentions are wrong.[2]

---

[2] As an initial matter, these contentions are contrary to the law of the case doctrine. The Court of Appeals has already decided the Board's interpretation is entitled to deference *because* it is not unreasonable. *TAAOM I*, 524 S.W.3d at 742.

First, the Acupuncture Association ignores the Board's relevant expertise. The Board members were appointed, among other things, to exercise their expertise about what is properly within – or outside of – the scope of chiropractic practice. *See, e.g., TBCE I*, 616 S.W.3d at 564 ("Thus, over time, the Legislature has chosen to prescribe chiropractic practice in broad terms undefined by statute and to require the Board to clarify by rules what activities are included and excluded."). Thus, it is well within the Board's expertise to determine whether the use of a limited range of acupuncture is within the proper scope of a Texas chiropractic license.

Second, the Acupuncture Association offered no evidence that, by authorizing chiropractors to use a limited range of acupuncture to treat their patients, the Rules allow any chiropractor to represent that the chiropractor is also an acupuncturist.[3] None of the Acupuncture Association's witnesses testified that they were aware of chiropractors in Texas practicing the full range of acupuncture without having acupuncturist licenses. The Board's rules also do not authorize any chiropractor, including one with an acupuncture permit, to perform all procedures and provide all treatments that a licensed acupuncturist could provide. Read together, the rules limit the scope of chiropractic practice in the same way that the Chiropractic Act does, i.e., to treatment to improve the subluxation complex or the biomechanics of the musculoskeletal system. *Compare* Tex. Occ. Code § 201.002(b)(2) *with* 22 Tex. Admin. Code § 78.1(b)(1)(B).

Neither of the reasons the Acupuncture Association has given are reasons why this Court should disregard the decision the Third Court of Appeals has already made that the Board's interpretation of "incisive" is reasonable and consistent with the Chiropractic Act.

---

[3] The Acupuncture Association's exhibits P-112, P-114, P-115, and P-116 were offered for the limited purpose of "demonstrating that Plaintiff brought its advertising concerns to the attention of the Board during the stakeholder meetings." *See* Joint Exhibit 1 at ¶ 2.f.

B. *The Legislature's use of the word "includes" in Texas Occupations Code § 201.002(a)(3) does not expand the definition of "incision."*

The Acupuncture Association attempts to avoid the determinative nature of the Third Court's decision by arguing that the presence of the word "includes" in Texas Occupations Code § 201.002(a)(3) somehow silently expands the term "incisive" to include piercings and punctures. In other words, the Acupuncture Association argues that, although the Third Court decided the Board reasonably concluded that the Legislature intended the term "incisive" to include only cutting and not punctures or piercings, the use of the term "includes" somehow expands the definition of "incisive procedure" in a manner that should change this Court's view of the Legislature's intent. Even if this Court could ignore the Third Court's decision, the contention is wrong.

It is true that the term "includes" is used to enlarge, not to limit. But use of the word "includes" expands only the examples of items that fall within a category; use of "includes" does not expand the category itself. In the case of § 201.002(a)(3), that means that, if there are any procedures involving surgery or cutting – not piercing or puncturing – that are not described by the words "making an incision into any tissue, cavity, or organ by any person or implement," they should be included within the ambit of "incisive or surgical" procedures. It does ***not*** mean that "incisive" suddenly includes punctures and piercings, rather than only cuttings.

C. *Conclusory expert testimony cannot support a judgment that the Board's Rules are invalid, so that testimony cannot serve as a basis for the Court to ignore the law of the case.*

The Acupuncture Association essentially argues that because its experts have now testified that all needles cut, this Court is not bound by the law of the case and should decide that all needle insertions are incisive, taking acupuncture outside a chiropractor's permissible scope of practice. This argument, too, is incorrect.

Each of the Acupuncture Association's witnesses offered the opinion that all needles cut. None of them testified that they had studied the tips of needles or the interactions between skin cells

and needles with different tips and of various dimensions. Indeed, Dr. Schnyer testified that she had not had a histology class – a course designed to study the microscopic structure of tissues – since her undergraduate days. Mr. Doggett brought a demonstrative exhibit comprised of different types of acupuncture needles but did not indicate that he had studied their tips. He testified only that he had used each type.[4]

Such conclusory expert testimony is irrelevant and incompetent and cannot support a judgment, even if it is not objected to at trial. *Coastal Transport Co., Inc. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 232 (Tex. 2004) ("[A]lthough expert opinion testimony often provides valuable evidence in a case, 'it is the basis of the witness's opinion, and not the witness's qualifications or his bare opinions alone that can settle an issue as a matter of law; a claim will not stand or fall on the mere ipse dixit of a credentialed witness."). The Acupuncture Association's experts' bare opinions that "all needles cut" cannot support a judgment invalidating the Board's rules. And, because the Acupuncture Association offered no other evidence that needles cut, it has failed to carry its burden to prove that acupuncture is an incisive procedure.

Even if the Court could consider the baseless "opinions" of the Acupuncture Association's experts, their testimony that "all needles cut" is disputed. Both Dr. Bronson and Dr. Hanson testified that acupuncture needles are so thin that they slide between the cells of the skin, rather than cutting the skin. Dr. Hanson based his opinion on his experience as both a licensed chiropractor and a

---

[4] The Acupuncture Association claims that "uncontroverted evidence" equated dry needling and acupuncture, but this is not correct. Each Acupuncture Association witness acknowledged the dispute within the health care community about whether dry needling is acupuncture. In addition, Dr. Bronson testified that dry needling is not acupuncture. Dr. Bronson has studied and used acupuncture for many years. In his position on the Board, Dr. Bronson has learned about dry needling. Therefore, Dr. Bronson had sufficient experience with each technique to differentiate between them. Because Plaintiff has failed to prove that dry needling is acupuncture, dry needling is irrelevant to the matters in dispute in this case.

licensed acupuncturist, as well as his treatment of patients with acupuncture. Dr. Bronson[5] also based his opinion on his clinical experience administering acupuncture treatments to patients for more than three decades. Unlike Mr. Doggett, who testified that he had bloody cotton balls all over the floor at the end of his day at his acupuncture clinic, Dr. Bronson testified that bleeding rarely occurred in the proper administration of an acupuncture treatment. If the Acupuncture Association's experts' opinions are given any weight, Dr. Bronson's[6] and Dr. Hanson's opinions should be given weight, as well.

D. *The Acupuncture Association's disdain for its own statute does not render that statute either unreasonable or a nullity.*

Perhaps the most astounding part of the Acupuncture Association's argument is its utter contempt for the Legislature's determination, in the Acupuncture Act, that acupuncture is a nonincisive procedure. *See* Tex. Occ. Code § 205.001(2) ("'Acupuncture' means: (A) the nonsurgical, nonincisive insertion of an acupuncture needle . . .."). Each of the Acupuncture Association's witnesses testified that the Texas Legislature has defined acupuncture in a way that: (a) does not comport with reality (because all needles cut); (b) is absurd; or (c) is nonsensical. But the Legislature's characterization of acupuncture as nonincisive is not a fact up for debate in this case. It is the law.

The Acupuncture Association recognizes that it is bound by the law. As Mr. Doggett testified, the Association has tried multiple times in the last few years to persuade the Legislature to remove the word "nonincisive" from the Acupuncture Act's definition of acupuncture. In fact, none

---

[5] Based on material the Acupuncture Association failed to offer in evidence before closing its case, the Acupuncture Association tries to impugn Dr. Bronson's credibility on an irrelevant issue – the use of dry needling – and speculate about his future actions. TAAOM Closing Stmt. at 10 n.5. Both are improper, and the reference should be disregarded.

[6] Dr. Bronson testified as a lay witness. But the Court may consider his opinions that are based on his perceptions and helpful to determining a fact in issue, i.e., whether acupuncture needles "cut" the skin. *See* Tex. R. Evid. 701.

of the last four bills to propose the removal of the word have passed. *See* Tex. HB 3194, 86th R.S. (2019) (left pending in subcommittee); Tex. SB 1314, 81st R.S. (2009) (left pending in House committee); Tex. HB 1028, 80th R.S. (2007) (bill died in committee); Tex. SB 419, 79th R.S. (2005) (proposed amendment to eliminate "nonincisive" tabled before passage of bill). Consequently, having failed to redefine "acupuncture" legislatively, the Acupuncture Association has come to this Court to seek that redefinition in the form of a judgment invalidating the Board's rules on grounds that acupuncture is an incisive procedure. This Court is a member of the judicial branch, and the Acupuncture Association cannot use this case to change a policy decision the Legislature has made.

Also, if one assumes, for the sake of argument, that the Board's interpretation of its own Act is correct, the Legislature's refusals to amend the Chiropractic Act to expressly authorize the use of acupuncture, as well as its refusals to eliminate "nonincisive" from the definition of "acupuncture" in the Acupuncture Act are both understandable. If the Chiropractic Act already allows chiropractors to use a limited range of acupuncture, the Act does not need to be amended to specifically mention acupuncture. And if the Acupuncture Act correctly defines acupuncture as a nonincisive procedure, it would be wrong for the Legislature to amend the Acupuncture Act to change that.

The Third Court of Appeals has already decided that the Board's interpretation of "incisive" to encompass cutting, but not piercing or puncturing, is reasonable and consistent with the Chiropractic Act and, consequently, that its rules defining "incision" and allowing the use of needles in chiropractic are valid. That decision forecloses the Acupuncture Association's argument that acupuncture is an incisive procedure because all needles cut. Even if it did not, however, the Acupuncture Association has nothing more than the conclusory statements of its experts to support its contention that acupuncture is an incisive procedure forbidden to chiropractors. Because those conclusions are not competent evidence, they cannot overcome the presumption that the Board's rules authorizing chiropractors to use a limited range of acupuncture are valid. And because the

Acupuncture Association is actually attempting to persuade the Court to make a policy change that is actually within the province of the Legislature and the Board, the Court should decline that invitation. The Board's rules are consistent with the language of the Chiropractic Act.

THE BOARD'S RULES ARE CONSISTENT WITH THE OBJECTIVES OF THE CHIROPRACTIC ACT[7]

I. The Acupuncture Association has not proven that the Board's Rules usurp the entire profession of acupuncture.

The Acupuncture Association begins its closing statement by telling the Court that this case is not the usual turf war between two professions about an area of overlap because, according to the Acupuncture Association, the Board's rules "authorize chiropractors to perform not an isolated technique, but the entirely separate profession of acupuncture." TAAOM Closing Stmt. at 2. The Acupuncture Association hyperbolically likens the Board's acupuncture rules to hypothetical rules adopted by the Board of Plumbers authorizing their licensees to perform electrical work. The misleading nature of this analogy underscores the Acupuncture Association's refusal to acknowledge the extent of a chiropractor's education in and knowledge about the human body. Even chiropractors without acupuncture permits are not ignorant of the effects of needles inserted into the skin. They are health care professionals (just like acupuncturists are) who have extensive knowledge of the various systems of the human body, not just the musculoskeletal system.

The evidence, furthermore, does not support this argument. Dr. Bronson was the only chiropractor with an acupuncture permit to testify, and he testified that he only uses acupuncture to alleviate pain after a manipulation. The Acupuncture Association put on no evidence for the purpose of showing that any particular chiropractor with an acupuncture permit has offered or is offering the

[7] Again, the Acupuncture Association failed to list clearly the statutory objectives it alleges the Rules are counter to. As a result, the Board reserves the right to seek the Court's leave to respond to any objectives more clearly identified in the Acupuncture Association's rebuttal.

full range of treatments and assistance that would be provided by a licensed acupuncturist.

In addition, the Board's acupuncture rules do not authorize chiropractors with acupuncture permits to perform the full range of treatments and assistance provided by licensed acupuncturists. While Rule 78.14 does not, itself, contain words limiting chiropractors to using acupuncture solely to improve the subluxation complex or the biomechanics of the musculoskeletal system, the Board's scope of practice rule, Rule 78.1, does. 22 Tex. Admin. Code § 78.1(b)(1)(B). Rule 78.14 should not be read out of context, but together with Rule 78.1. When the two are properly read together, it is clear that even chiropractors with an acupuncture permit may use only a limited range of acupuncture.

Finally, one need only look at the last scope-of-practice dispute involving the Board to see that the Acupuncture Association's "usurpation" argument is not unique. There, two members of the Supreme Court of Texas asserted that allowing chiropractors to administer an eye-movement test for neurological problems (a VONT test) would render the limits on a chiropractor's practice meaningless and make a chiropractor's practice "coextensive with a medical doctor's practice." *TBCE I*, 616 S.W.3d at 579. The majority of the Court rejected that argument, *id.* at 574, just as this Court should reject it in this case.

II. The Acupuncture Association has not proven that the Board's Rules present a public safety risk.

The Acupuncture Association also at least glancingly argues that the challenged Rules threaten the public's safety by stating that the Rules "hand over the keys to the profession [to chiropractors] with only a fraction of the training required by the Legislature." TAAOM Closing Stmt. at 11. They complain that the Rule "plainly authorizes" chiropractors to satisfy their 100-hour coursework requirement with a completely online course. *Id.* at 12. Yet, there is no evidence that the Board has issued an acupuncture permit to any chiropractor who lacked clinical hands-on training in acupuncture. Dr. Bronson was the only chiropractor with an acupuncture permit to testify, and he

testified that there was a great deal of hands-on clinical experience in the training courses he took. There is also no evidence that the Board has approved any 100-hour courses that involve no clinical, hands-on practice in point location and needle insertion. As a result, there is no evidence that the absence of an express requirement for clinical training in Rule 78.14 threatens the public safety.

Having adduced no evidence that any patient has been harmed by a Texas-licensed chiropractor's authorized use of acupuncture, the Acupuncture Association now contends that: (a) it could not possibly have obtained information about patient harm for a variety of reasons, *id*. at 14; and (b) even if chiropractors did have a record of safely treating patients with acupuncture for 25 years, that record cannot place acupuncture within the chiropractic scope of practice if it is not statutorily sanctioned. *Id*. at 15. The Board agrees with the latter proposition, although it is irrelevant because the Court of Appeals has already decided that the Board's interpretation of "incisive" to exclude punctures and piercings is reasonable, and the Acupuncture Association failed to offer competent evidence that acupuncture needles cut, as opposed to piercing or puncturing, the skin.

As to the first proposition, if the motivation for this rule challenge was a desire to protect patients, it remains curious that no patients were willing to use the opportunity presented by this trial to air their grievances.

The Acupuncture Association has failed to carry its burden to show that the Board's rules authorizing certain chiropractors with specialized training to use acupuncture to treat their patients run counter to any of the Chiropractic Act's objectives.

PRAYER

Disdaining the work of both the Legislature and the Third Court of Appeals, the Acupuncture Association came to this Court in a last-ditch effort to accomplish judicially what it cannot accomplish legislatively: preventing chiropractors from using even a limited range of acupuncture to treat their

patients. But whether acupuncture is properly within the scope of a Texas chiropractic matter is an issue of policy for the Legislature and the Board, not this Court. Therefore, in accordance with the Supreme Court of Texas' decision in *Texas Board of Chiropractic Examiners v. Texas Medical Association*, this Court should acknowledge the decisions already made by the Third Court of Appeals, determine whether conically-tipped acupuncture needles "cut" based on the competent evidence admitted at trial, and render judgment declaring the Board's Rules 78.1(e)(2)(C) and 78.14 valid.

For these reasons, the Board respectfully requests that this honorable Court render judgment denying the Acupuncture Association's challenges to the Board's Rules 78.1(e)(2)(C) and 78.14 and declare those Rules valid.[8] The Board also respectfully requests that the Court award the Board all other and further relief, either at law or in equity, to which it has shown itself to be justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

JAMES LLOYD
Acting Deputy Attorney General for Civil Litigation

ERNEST C. GARCIA
Chief, Administrative Law Division

[8] A proposed judgment is attached to this Closing Argument as Exhibit 1.

/s/ Karen L. Watkins
KAREN L. WATKINS
Assistant Attorney General
State Bar No. 20927425
Administrative Law Division
P.O. Box 12548
Austin, Texas 78711-2548
Telephone: (512) 475-4300
Facsimile: (512) 320-0167
Email: karen.watkins@oag.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Closing Argument of Defendant, the Texas Board of Chiropractic Examiners was served on this the 22nd day of September, 2023, to the following counsel of record:

Shelby L. O'Brien — Via electronic service: sobrien@enochkever.com
Craig T. Enoch — cenoch@enochkever.com
Melissa A. Lorber — mlorber@enochkever.com
ENOCH KEVER PLLC
5918 W. Courtyard Drive, Suite 500
Austin, Texas 78730
Telephone: (512) 615-1200
Facsimile: (512) 615-1198

Attorneys for Plaintiff Texas Association of Acupuncture and Oriental Medicine

Matt C. Wood — via electronic service: mwood@wshllp.com
WEISBART SPRINGER HAYES LLP
212 Lavaca Street, Suite 200
Austin, Texas 78701
Telephone: (512) 652-5780
Facsimile: (512) 682-2074

Attorneys for Intervenor Texas Chiropractic Association

/s/Karen L. Watkins
KAREN L. WATKINS

EXHIBIT 1

PROPOSED FINAL JUDGMENT

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

<table>
<tr><td>TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE,
Plaintiff,
v.

TEXAS BOARD OF CHIROPRACTIC EXAMINERS,
Defendant,

TEXAS CHIROPRACTIC ASSOCIATION,
Intervenor.</td><td>§
§
§
§
§
§
§
§
§
§
§
§
§</td><td>IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT</td></tr>
</table>

PROPOSED FINAL JUDGMENT

On August 28, 2023, this case was called for trial. Plaintiff Texas Association of Acupuncture and Oriental Medicine appeared and announced ready for trial. Defendant Texas Board of Chiropractic Examiners appeared and announced ready for trial. Intervenor Texas Chiropractic Association appeared and announced ready for trial. All matters in controversy, legal and factual, were submitted to the Court for its determination. The Court heard and considered the evidence admitted at trial, the arguments submitted by counsel, and all applicable law. Having done so, the Court hereby RENDERS judgment that Defendant Board's Rules 78.1(e)(2)(C) and 78.14 are valid. It is further ORDERED, ADJUDGED, and DECREED that

The challenges Plaintiff Texas Association of Acupuncture & Oriental Medicine asserted against Board Rules 78.1(e)(2)(C) and 78.14 are denied, and Plaintiff shall pay all court costs.

All relief sought by any party but not granted in this final judgment is hereby DENIED. This judgment is intended to dispose of all claims asserted by any party and is final and appealable.

SIGNED this ____ day of September, 2023.

____
HON. JAN SOIFER, Judge Presiding
345th District Court, Travis County

APPROVED AS TO FORM ONLY:

____
Shelby L. O'Brien
State Bar No. 24037203
sobrien@enochkever.com
Amy L. Prueger
aprueger@enochkever.com
State Bar No. 24041842
ENOCH KEVER PLLC
7600 N. Capital of Texas Hwy.
Building B, Suite 200
Austin, Texas 78731

ATTORNEYS FOR PLAINTIFF
TEXAS ASSOCIATION OF ACUPUNCTURE
AND ORIENTAL MEDICINE

APPROVED AS TO BOTH FORM AND SUBSTANCE:

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

JAMES LLOYD
Acting Deputy Attorney General
for Civil Litigation

ERNEST C. GARCIA
Chief, Administrative Law Division

____
KAREN L. WATKINS
Assistant Attorney General
State Bar No. 20927425
Administrative Law Division
OFFICE OF THE ATTORNEY GENERAL
P. O. Box 12548
Austin, Texas 78711-2548
karen.watkins@oag.texas.gov

ATTORNEYS FOR DEFENDANT
TEXAS BOARD OF CHIROPRACTIC
EXAMINERS

____
Matt C. Wood
State Bar No. 24066306
WEISBART SPRINGER HAYES LLP
212 Lavaca Street, Suite 200
Austin, Texas 78701
mwood@wshllp.com

ATTORNEY FOR INTERVENOR
TEXAS CHIROPRACTIC ASSOCIATION