



Council of Colleges of Acupuncture and Oriental Medicine

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November 20, 2015

Honorable Jeffrey D. Kyle
Clerk, Third Court of Appeals
209 West 14th Street, Room 101
Austin, TX 78701

RE: *Texas Association of Acupuncture and Oriental Medicine v. Texas Board of Chiropractic Examiners*, No. 3-15-00262-CV

Dear Mr. Kyle:

This letter is on behalf of the Council of Colleges of Acupuncture and Oriental Medicine (Council) and in support of the position of the Texas Association of Acupuncture and Oriental Medicine (TAAOM) in the above captioned case.

The Council is a 501(c)(6) nonprofit corporation and since 1982 has been the national membership association for colleges and programs of acupuncture and Oriental medicine (AOM) in the U.S. All of the

Council's member colleges, which are located in 21 states in the U.S., have been accredited or pre-accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), the national agency recognized by the U.S. Department of Education for the accreditation of AOM educational programs. The mission of the Council is to support its member institutions to deliver educational excellence and quality patient care. Three of the Council's 56 member colleges are located in Texas.¹

The Council publishes an acupuncture safety manual entitled *Clean Needle Technique (CNT) Manual—Best Practices for Acupuncture Needle Safety and Related Procedures* (7th ed. 2015).² This manual represents evidenced-based best safety practices in the use of acupuncture needles and related techniques and forms the basis of CNT courses that the Council offers throughout the U.S. to acupuncture students who have been professionally trained at ACAOM-approved AOM programs. Successful completion of the Council's CNT course is

¹ These are the American College of Acupuncture and Oriental Medicine (Houston), AOMA Graduate School of Integrative Medicine (Austin), and Texas Health and Science University (Austin). For a complete list of all member schools of the Council, see <http://www.ccaom.org/members.asp?sort=state>. Concerning the Council generally, see www.ccaom.org.

² See <http://www.ccaom.org/downloads/7thEditionManualEnglishPDFVersion.pdf> [hereinafter cited as *CNT Manual*].

required for any person who wishes to obtain national certification in acupuncture by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM).³ Forty-four states plus the District of Columbia recognize NCCAOM's certification or examinations as a prerequisite for acupuncture licensure.⁴ As noted in TAAOM's brief, an applicant for an acupuncture license in Texas must pass NCCAOM's national certification examinations.⁵ In addition, successful completion of the Council's national CNT course and practical examination is also mandated under Texas law.⁶

In addition to fully supporting the position of the TAAOM, the Council would like to emphasize in the succeeding discussion the importance this court's decision will have upon public safety in Texas for those patients seeking acupuncture treatments from unqualified chiropractors, rather than from professionally trained acupuncturists who

³ See 2015 NCCAOM Certification Handbook p.21, available at <http://www.nccaom.org/wp-content/uploads/pdf/Certification%20Handbook.pdf>.

⁴ See <http://www.nccaom.org/regulatory-affairs/state-licensure-map>. Most recently, North Dakota authorized recognition of the national certification exams of NCCAOM. See N.D. Cent. Code § 43-6105(1)(b), added by Sen. Bill No. 2191 (2015), <https://legiscan.com/ND/text/2191/2015>.

⁵ TAAOM Brief at 30.

⁶ *Id.* at 29.

have completed their education and training at an ACAOM accredited AOM program and who are currently subject to the regulation of the Texas State Board of Acupuncture Examiners.

There is a significant disparity in the training that a chiropractor receives in acupuncture, which is an adjunctive therapy a chiropractor may seek to incorporate into his/her practice, and the amount of training a professionally trained acupuncturist receives. Typically, a chiropractor receives about 100 hours or less in acupuncture instruction.⁷ Under the accreditation standards of ACAOM, the minimum length of a professional acupuncture curriculum must be at least three academic years and composed of at least 705 hours in Oriental medical theory, diagnosis, and treatment techniques in acupuncture and related studies and 660 hours in clinical training.⁸ That is a total minimum of 1,365 hours of education and training *solely in acupuncture*, which is distinct

⁷ *Id.* at 2.

⁸ ACAOM, Accreditation Manual—Structure, Scope, Process, Eligibility Requirements, and Standards 26 (July 2012), Standard 8.1a. *See* http://www.acaom.org/documents/accreditation_manual_712.pdf. The minimum length of an Oriental Medicine curriculum, which includes the study of Chinese herbology in addition to acupuncture, is at least four academic years and consists of at least 2,625 hours of which there are 705 hours in Oriental medical theory, diagnosis, and treatment techniques in acupuncture and related studies; 450 hours in didactic Oriental herbal studies; and 870 hours in integrated acupuncture and herbal clinical training. *Id.*

from additional education in subject areas not directly relating to acupuncture per se, such as the biomedical sciences, counseling, communications, ethics, and practice management that are commonly taught in most health education programs.

The gross disparity in *acupuncture training* between these two health professions makes a difference not only from the perspective of achieving efficacy in treatment, but most importantly in protecting the safety of the public in Texas. As indicated in the Council's authoritative *CNT Manual*, acupuncture is associated with rare, but predictable adverse events.⁹ These include bleeding, bruising, local pain, nerve injury, infections, and organ puncture and pneumothorax caused by needling at an unsafe depth. "Given the nature of acupuncture needling, it is difficult to prevent all bleeding and bruising."¹⁰ In addition, there is a risk that needles may break or become stuck during treatment, or the practitioner may forget to remove the needles from the patient. The arteries and larger veins should be avoided when acupuncture needling

⁹ *CNT Manual* at 3-23.

(<http://www.ccaom.org/downloads/7thEditionManualEnglishPDFVersion.pdf>).

¹⁰ *Id.* at 4.

is performed and special consideration should be given when needling the scalp and pinna/auricle of the ear because bleeding is more common due to the vascular anatomy of these structures. Among the factors that may produce needle site pain is poor technique by the practitioner, needling into dense connective tissue, or needling into a nerve.

The documented presence of bleeding after acupuncture and the risk for nerve injury and pneumothorax indicate that acupuncture involves puncturing body tissues. Accordingly, the studies cited in the *CNT Manual* amply support a conclusion by this court that acupuncture is an **incisive** needling procedure and thus prohibited for chiropractors under Texas law.¹¹

The extensive training in acupuncture that professional acupuncturists in Texas must complete, coupled with the further statutory mandate that acupuncture licensees in Texas must successfully pass the Council's national needle safety course based upon the *CNT Manual*, ensures that proper needle safety protocol is comprehensively

¹¹ As stated in the TAAOM Brief, "...the Chiropractic Chapter limits chiropractic to treatment of the musculoskeletal system and expressly prohibits chiropractors from performing incisive procedures, with only one narrow exception for the use of needles for diagnostic blood draws." TAAOM Brief at 1.

addressed including the risks associated with adverse needling events. This degree of training, however, is not one that chiropractors in the state are currently undertaking because of the Chiropractic Board's contention that chiropractors practicing acupuncture in Texas are not subject to the regulatory jurisdiction of the Texas State Board of Acupuncture Examiners.

In view of the significant public safety issues noted above and for all of the reasons so compelling presented in the TAAOM brief, the Council respectfully requests this court to reverse the judgment of the trial court and render judgment in favor of TAAOM.

Sincerely,

A handwritten signature in cursive script that reads "Jason Wright".

Jason Wright, MS, LAc
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CERTIFICATION OF AMICUS

I certify on behalf of *Amicus Curiae*, that no persons other than *Amicus Curiae* or its counsel made any monetary contribution to the preparation or submission of this *Amicus* letter.



Jason Wright, MS, LAc
President

CERTIFICATION OF COMPLIANCE

I certify on behalf of *Amicus Curiae*, that this *Amicus* letter contains 1,184 words according to the word count feature of the software used to prepare this *Amicus* letter.



Jason Wright, MS, LAc
President

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing *Amicus* letter has been served to all attorneys of record as listed below on November 20, 2015.

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