Velva L. Price District Clerk Travis County D-1-GN-14-000355

Sandra Henriquez

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

TEXAS ASSOCIATION OF	§	IN THE DISTRICT COURT OF
ACUPUNCTURE	§	
AND ORIENTAL MEDICINE,	§	
Plaintiff,	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
TEXAS BOARD OF CHIROPRACTIC	§	
EXAMINERS and PATRICIA GILBERT,	§	
in her official capacity as TBCE's	§	
Executive Director ,	§	
Defendants.	§	201ST JUDICIAL DISTRICT

PARTIES' JOINT MOTION TO ABATE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME the parties to this case, Plaintiff, Texas Association of Acupuncture and Oriental Medicine ("the Association") and Defendants, the Texas Board of Chiropractic Examiners and Patricia Gilbert, Executive Director (collectively, "the Board"), in the above styled and numbered cause, by and through their counsel of record, and seek an abatement of this cause. In support of their joint motion, the parties would show the Court the following:

- 1. After the remand of this cause from the Court of Appeals, the parties conferred about the matters at issue in this litigation. As a result of that conference, the Board has elected to proceed with the appointment of a convener, pursuant to Texas Government Code chapter 2008, to determine whether it would be advisable to proceed with negotiated rulemaking as a means of resolving the disagreements between the Board and the Association that gave rise to this litigation.
- 2. If the parties to this lawsuit were to take steps to prepare for the trial contemplated by the appellate court's opinion, that progress could have a detrimental effect on the negotiated

rule-making. Consequently, the parties respectfully request that the Court abate this cause

indefinitely, except for setting a date on which the parties will appear and report on the status of

the rule-making. The parties respectfully suggest that a date six months from the date of the

filing of the joint motion would be reasonable for a status report date.

3. Entering into a negotiated rule-making process is not a guarantee that the parties

will resolve the disagreements that resulted in the filing of this suit through the Board's adoption

of a negotiated rule. Section 2008.054(d) specifically provides, for example, that either a

negotiated rulemaking committee or the state agency that appointed it may abolish the committee

before the agency adopts a rule. Therefore, the parties also would respectfully request that the

Court include in its order abating the case a provision that any party who moves to lift this

abatement must notify the non-moving party of its intent at least sixty days before filing its

motion to lift the abatement.

PRAYER

Wherefore, the parties to this cause respectfully request that this honorable Court:

(1) abate this cause; (2) set a date approximately six months from the date of filing of this motion

on which to receive a status report from the parties; (3) recite in its order that a party that moves

to lift the abatement must notify the non-moving party of its intent to so file at least sixty days

before doing so; and (4) grant the parties such other and further relief to which they have shown

themselves to be entitled, at law or in equity.

Respectfully submitted,

KEN PAXTON

Attorney General of Texas

JEFFREY C. MATEER

First Assistant Attorney General

By: /s/ Craig T. Enoch
CRAIG T. ENOCH
Texas Bar No. 00000026
cenoch@enochkever.com
MELISSA A. LORBER

Texas Bar No. 24032969

Parties' Joint Motion to Abate

Page 2

BRANTLEY STARR Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

NICHOLE BUNKER-HENDERSON Chief, Administrative Law Division

/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 Karen.Watkins@oag.texas.gov

Attorneys for Defendants Texas Board of Chiropractic Examiners and Patricia Gilbert, in her official capacity as Executive Director of TBCE

mlorber@enochkever.com SHELBY L. O'BRIEN Texas Bar No. 24037203 sobrien@enochkever.com

Fax: (512) 615-1198

ENOCH KEVER, PLLC 600 Congress Avenue, Suite 2800 Austin, Texas 78701 Phone: (512) 615-1200

Attorneys for Plaintiff
Texas Association of Acupuncture and
Oriental Medicine

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Motion to Abate was sent as described below on this the 21st day of July, 2017, to the following:

Via electronic service and email

Craig T. Enoch ENOCH KEVER PLLC 600 Congress Avenue **Suite 2800** Austin, Texas 78701 cenoch@enochkever.com Telephone: (512) 615-1200

Facsimile: (512) 615-1198

Attorney for Plaintiff Texas Association of Acupuncture and Oriental Medicine

Copies to the following: mlorber@enochkever.com sobrien@enochkever.com

> /s/ Karen L. Watkins Karen L. Watkins