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Case No. ____

In the Supreme Court of Texas

In re TEXAS BOARD OF CHIROPRACTIC EXAMINERS and TEXAS CHIROPRACTIC ASSOCIATION

PETITION FOR WRIT OF MANDAMUS

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STATEMENT OF THE CASE

Nature of the Case:	This case concerns a rule challenge, pursuant to Tex. Gov't Code § 2001.038(a), to the Board's rule authorizing licensed chiropractors to use acupuncture. This original proceeding seeks vacation of a trial-court order refusing to limit discovery, despite the limited scope of judicial review in a rule challenge.
Relators:	The Texas Board of Chiropractic Examiners and the Texas Chiropractic Association
Real Party in Interest:	The Texas Association of Acupuncture and Oriental Medicine
Respondent Trial Court:	The Honorable Jan Soifer, Presiding Judge, 345th District Court, Travis County.
Respondent's Action Necessitating Mandamus Relief:	On August 19, 2022, Respondent signed an order refusing to limit discovery to the issues in dispute as required by *Tex. Bd. of Chiropractic Examr's v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). In particular, Respondent failed to prevent the Acupuncture Association from conducting discovery concerning: chiropractors' qualifications to use acupuncture needles; previous and pending complaints against chiropractors who use acupuncture; enforcement of the Board's rules; stakeholder meetings conducted by the Board; and the history of interactions between the parties.
Court of Appeals:	On August 23, 2022, Relators filed a petition for writ of mandamus with the Third Court of Appeals. The petition was denied on August 31, 2022, by a panel consisting of Justices Goodwin, Baker, and Kelly in Case No. 03-22-00520-CV.

STATEMENT OF JURISDICTION

This Court has jurisdiction of this original proceeding pursuant to Texas Government Code section 22.002 and Texas Rule of Appellate Procedure 52.

ISSUES PRESENTED

Issue One: This Court recently emphasized the limited scope of judicial review in rule-challenge cases. *Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 616 S.W.3d 558 (Tex. 2021). A court's review is primarily textual in nature and it must avoid second-guessing or rehashing agency policymaking. Did the trial court abuse its discretion by refusing to limit discovery to issues within that limited scope of review, and as a result, effectively force the Board to litigate the wisdom of its policy decisions?

Issue Two: Do the Board and the Chiropractic Association lack an adequate remedy by appeal?

INTRODUCTION

This Petition raises a novel question of statewide importance: what are the limits on discovery in a case challenging the validity of an agency rule? In recent years, the Court has issued two opinions clarifying the scope of judicial review in such cases. Lower courts had repeatedly exceeded that scope and reopened policy debates that had already been settled by the Legislature and the respective agencies. In response, the Court sent a clear message:

> Judges are experts in statutory analysis, not in healthcare. To prevent expensive and time-consuming usurpations of administrative agencies' policymaking work, the court's inquiry in a § 2001.038(a) suit challenging the validity of an agency rule must be limited. The textual analysis we set out in *Marriage and Family Therapists* ensures that courts will stay in their lane.

Tex. Bd. of Chiropractic Exam'rs v. Tex. Med' Ass'n, 616 S.W.3d 558, 571 (Tex. 2021). Relators now ask the Court to affirm a necessary corollary of this holding: that discovery must be limited, too. Discovery is a significant component of what makes "usurpation" of agency policymaking so expensive and time-consuming.

In this case, the Real Party in Interest (a trade association of acupuncturists) wants extensive discovery about not only the meaning and import of the statutory text, but also about policy considerations such as the education and training of chiropractors and any enforcement actions by the Board. Relators filed a motion to limit discovery, which the trial judge denied. To avoid a rehashing of agency policymaking in this and future cases (with all the concomitant burden on courts and agencies), Relators ask the Court to hold, explicitly, that limits on judicial review require corresponding limits on

discovery, and that, as a result, discovery in this case should be so limited.

STATEMENT OF FACTS

I. The Acupuncture Association is challenging Board rules that authorize limited use of acupuncture.

The Acupuncture Association filed the underlying rule-challenge suit in 2014. MR1. The suit challenged four rules relating to needles and acupuncture. *See* 22 Tex. Admin. Code § 78.1(b)(2) (authorizing the use of needles in the performance of chiropractic, but prohibiting their use for "procedures that are incisive or surgical"); *id.* § 78.1(a)(4) (defining an "incision" as "a cut or surgical wound; also a division of the soft parts made with a knife or hot laser"); *id.* § 78.1(e)(2)(C) (authorizing chiropractors to use acupuncture); and *id.* § 78.14 (governing chiropractors' use of acupuncture).[1] It is undisputed that these rules authorize chiropractors with special training to make limited use of acupuncture. The Acupuncture Association contends that any use of acupuncture is beyond the lawful scope of practice for chiropractors.

II. While this case was pending, this Court clarified the scope of judicial review.

This case been pending for some time due to a long and winding procedural history. The trial court initially granted summary judgment in the Board's favor. *See*

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[1] For the convenience of the Court, references to the Rules in this petition will be to the current Rules. At various points over the years, those same rules have been numbered as follows: (a) Rule 78.1(b)(2) was previously Rule 78.13(b)(2); when the Acupuncture Association filed its original petition, the Rule was 75.17(a)(3); (b) Rule 78.1(a)(4) was previously 78.13(a)(4); when the Acupuncture Association filed its original petition, it was Rule 75.17(b)(4); (c) Rule 78.1(e)(2)(C) was previously 75.17(e)(2)(C); and (d) current Rule 78.14 was previously Rule 75.21.

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.). The court of appeals affirmed in part and reversed in part, upholding two of the four rules but remanding for further proceedings on the other two. *Id.*

After remand, the Acupuncture Association and the Board jointly sought an abatement so that other avenues for resolution could be explored. MR2. The trial court granted the abatement. MR3. This led to a series of stakeholder meetings and ultimately an amendment of the Board's rules. MR4 at 2; MR5, at 2. For various reasons, abatement continued a while longer. MR5 at 3; MR6. Trial was eventually set in 2022 because the parties expected the case to be impacted by this Court's pending decision in *Tex. Bd. of Chiropractic Examiners v. Tex. Med. Ass'n.* MR7; MR9; MR10 at 1 (noting that the parties were "awaiting a Texas Supreme Court opinion that could have an impact on issues in this case").

That decision arrived in early 2021. *See* MR11. In its opinion, this Court emphasized the limited nature of a court's inquiry in a § 2001.038(a) case, setting out the legal issue to be decided not once, but three times. 616 S.W.2d at 569, 570, and 571. And, in the course of conducting the limited review of the rules in that case, the Court gave several examples of issues a court faced with a rule challenge should **NOT** decide, including: (1) whether a health care professional is qualified to perform a procedure authorized by the challenged rule, *id.* at 569; (2) whether the procedure also falls within the scope of a different healthcare profession, *id.* at 570; (3) whether

professionals are actually complying with the rules at issue, *id.* at 572; and (4) whether, as a policy matter, it would be good or wise for the health care provider to engage in a particular activity. *Id.* at 571 and 575.

III. The Acupuncture Association designates experts and propounds discovery on matters that are irrelevant under *Tex. Bd. of Chiropractic Examiners*.

On May 20, 2022, all parties designated experts. MR12 at 12-29 (the Acupuncture Association's designation); and MR13 at 29-53 (Board's conditional designation) and 55-129 (the Chiropractic Association's designation). Contrary to the Court's ruling in *Tex. Bd. of Chiropractic Examiners*, the Acupuncture Association designated experts to testify about:

- whether chiropractors who lack acupuncture licenses have the expertise, training, and knowledge to practice acupuncture safely;
- continuing education requirements for licensed acupuncturists;
- whether there is overlap between training to perform acupuncture and chiropractic training;
- the cost of attending acupuncture school;
- how acupuncture became a regulated profession in Texas;
- alleged instances of misrepresentations (presumably by chiropractors) regarding training and standards for performing acupuncture;
- alleged instances of misleading advertisements by chiropractors who practice acupuncture;
- the Board's good faith (or lack of same) during informal stakeholder meetings that took place before the promulgation of Rule 78.14; and

- how acupuncture, as provided by chiropractors, is supposedly a threat to public safety.

MR12 at 12-21. All four of the Acupuncture Association's experts were also designated to testify about the actual legal issue in the case: whether acupuncture needles – and the practice of acupuncture – is incisive or nonincisive. MR12 at 13 (Levy), 14 (Howlett), 16 (Doggett), and 21 (Schnyer).

After receiving and reviewing these designations, counsel for the Board and Chiropractic Association conferred with counsel for the Acupuncture Association about limiting the scope of discovery in accordance with *Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n.* MR12 at 10. Counsel for the Acupuncture Association asserted that *Tex. Bd. of Chiropractic Exam'rs* does not require any limitations on discovery and refused to agree to the requested limits. *Id.* The following day, the Board and the Chiropractic Association filed a joint motion to limit discovery and the issues to be decided. MR12.

Five days later, the Acupuncture Association served the Board with a second set of requests for production and a second set of interrogatories. MR13 at 131-143.[2] Among other things, the Acupuncture Association sought the production of:

- "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";

- complaints about chiropractors using acupuncture needles and advertising by chiropractors who use acupuncture;

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[2] On the same day, the Acupuncture Association served the Chiropractic Association with a set of discovery requests seeking the same types of information. MR13 at 145-154.

- information about the Board's enforcement proceedings against chiropractors who use acupuncture needles or who advertise their use of acupuncture;

- all communications from chiropractic colleges regarding: the rulemaking preceding adoption of Rule 78.14; the practice of acupuncture by chiropractors; or chiropractors' use of acupuncture needles;

- "all documents or communications supporting or referencing [the Board'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";

- "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"; and

- 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 21".

MR13 at 139-141. The Acupuncture Association also asked that the Board respond to interrogatories inquiring about:

- any situation or case the Board is aware of in which a patient has been injured by a chiropractor performing acupuncture;

- the extent of acupuncture training and education completed by each chiropractor performing acupuncture since the promulgation of Rule 78.14;

- the number of hours of meridian and point-location training chiropractors must complete to practice acupuncture in Texas;

- the number of hours of supervised patient treatment in acupuncture chiropractors must complete to practice acupuncture in Texas;

- the curriculum in acupuncture chiropractors must complete to obtain a permit to practice acupuncture in Texas;

- the "specific clinical training required for a chiropractor to practice acupuncture" in Texas;

- the specific training Texas chiropractic schools require regarding chiropractors' use of acupuncture needles;

- the enforcement actions the Board has initiated against chiropractors based on the chiropractors' advertising that they practice acupuncture or "chiropractic acupuncture"; and

- "the accredited chiropractic curriculum specific to acupuncture" taught at Texas chiropractic schools.

MR13 at 141-143. The Board and Chiropractic Association objected to these requests and interrogatories as exceeding the permissible scope of discovery in a rule challenge, specifically referencing *Tex. Bd. of Chiropractic Exam'rs*. MR13 at 156-172; 176-197.

IV. Respondent and the Third Court of Appeals deny the requested relief.

The trial court heard the motion to limit discovery and issues to be decided on July 28, 2022. On August 19, 2022, the court signed an order denying the motion without providing reasons for the denial. *See* Appendix A to this Petition. Relators promptly filed a petition for writ of mandamus with the Third Court of Appeals, which petition the court denied without opinion. *See* Appendix B to this Petition.

ARGUMENT

In *Texas Board of Chiropractic Examiners v. Texas Medical Association*, the Court emphasized the limited nature of a court's inquiry in a rule-challenge, stating that the inquiry had to be narrow and textually focused "**[t]o prevent expensive and time-consuming usurpations of administrative agencies' policymaking work.**" 616

S.W.3d at 571 (emphasis added). If the court's inquiry in a rule challenge is limited to a textual analysis of the statutes delegating authority to the agency and the agency's rules, then discovery must be limited as well.

In this case, the Acupuncture Association contends that, despite the clear language of *Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n,* the court should evaluate the reasonableness of the rules—an open invitation to judicial policymaking. Although whether a particular procedure "*should* be used by chiropractors is a policy judgment for the Legislature and the Board, not for the courts," 616 S.W.3d at 575, the Acupuncture Association intends to adduce evidence directed to that very issue under the guise of providing "background" for the court. Because the discovery proposed by the Acupuncture Association is inconsistent with the limited scope of review, the Respondent abused her discretion by denying the Board and Chiropractic Association's motion to limit discovery, and mandamus is the appropriate remedy to prevent the harm the Board and the Chiropractic Association would otherwise suffer.

I. Denial of the Motion Forces the Parties to Engage in Expensive and Time-Consuming Discovery About Patently Irrelevant Matters.

A. This Court's decision in *Tex. Bd. of Chiropractic Exam'rs* defines the issues to be decided in the trial court.

The ultimate issue in this case is the validity of the Board's rules authorizing the limited use of acupuncture by specially-trained chiropractors. Under the Court's precedent, this issue requires a two-fold "textual analysis": has the Acupuncture Association shown that either: (1) the rules at issue contravene specific statutory

language in the Chiropractic Act; or (2) those rules run counter to the general objectives of the Chiropractic Act, as those objectives are determined from the Act's language? *Tex. Bd. of Chiropractic Exam'rs*, 616 S.W.3d at 569-71. On both counts, the controlling statutory language is found in the Chiropractic Act, which defines the scope of practice to include "nonincisive procedures" that improve the condition of the musculoskeletal system. Tex. Occ. Code § 201.002(b)(2). Thus, the answer to the ultimate issue turns on whether acupuncture needles are incisive or nonincisive, as those terms are defined in the Board's rules.[3]

This Court has further clarified that, in answering this type of question, certain types of evidence are categorically irrelevant to judicial review. These include:

- The qualifications of the health-care professional. *Tex. Bd. of Exam'rs of Marriage & Family Therapists v. Tex. Med. Ass'n*, 511 S.W.3d 28, 33 (Tex. 2017) ("[W]e must decide this case based on the relevant Texas statutes, not on whether MFTs are qualified to make DSM diagnoses or whether the DSM or other states' laws allow them to."); *see also Tex. Bd. of Chiropractic Exam'rs*,

[3] The issue has been further narrowed by prior rulings in this case. One of the Board's rules defines "incision" to mean a "a cut or surgical wound; also a division of the soft parts made with a knife or hot laser." 22 Tex. Admin. Code § 78.1(a)(4). Earlier in this case, the trial court granted summary judgment upholding this rule, and the court of appeals affirmed. *See Tex. Ass'n of Acupuncture & Oriental Med. v. Tex. Bd. of Chiropractic Exam'rs*, 524 S.W.3d 734, 742 (Tex. App.—Austin 2017, no pet.) (holding that the definition was not "unreasonable or inconsistent with the statutory text"). Thus, as the court of appeals recognized, to resolve the remaining issue of whether acupuncture needles are incisive, the question is whether they make a "cut." *Id.* at 743. As the court of appeals has recognized, some dictionaries distinguish between "cutting," which is done by an edged instrument, and "piercing," which is done by a pointed instrument. *See Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n*, 375 S.W.3d 464, 479-80 (Tex. App.—Austin 2012, pet. denied).

616 S.W.3d at 569.

- Whether some professionals might be engaged in unauthorized practices. *Tex. Bd. of Chiropractic Exam'rs*, 616 S.W.3d at 569-71 ("TMA argues that the danger is that a chiropractor will not make a referral to a neurologist when one is required. But the answer to TMA's concern is in Rule 79, which provides for professional discipline if that were to occur.").
- Whether the rule is good policy. *Tex. Bd. of Chiropractic Exam'rs*, 616 S.W.3d at 569-71 ("Whether VONT *should* be used by chiropractors is a policy judgment for the Legislature and the Board, not for the courts.") (emphasis in original).

These limits all flow from the Court's commitment to a "textual analysis" of agency rules and desire to avoid "expensive and time-consuming usurpations of administrative agencies' policymaking work." *Id.* at 571.

B. The discovery requests seek patently irrelevant information, and the expert disclosures indicate an intent to adduce evidence concerning patently irrelevant topics at trial.

Discovery requests "must show a reasonable expectation of obtaining information that will aid the dispute's resolution." *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding). Stated differently, discovery requests must be "reasonably tailored" to seek discovery of only relevant matters. *Id.* To be relevant, evidence must tend to make a consequential fact more or less probable than it would

be without the evidence. Tex. R. Evid. 401. In this case, that means that discovery should be narrowly tailored to seek information that will make it more or less likely that acupuncture needles are incisive.

To resolve that issue, the Acupuncture Association does not need information about chiropractors' education, training, and knowledge with respect to the use of acupuncture needles. Nothing about a chiropractor's coursework, clinical experience, or knowledge, much less the Board's enforcement proceedings against particular chiropractors, would make it more or less probable that acupuncture needles are incisive. All of this discovery falls under the categorical prohibitions announced by the Court in *Tex. Bd. of Chiropractic Exam'rs* and would not be admissible at trial. Because none of this information would make it more or less likely that acupuncture needles are incisive, it is patently irrelevant to the pending claims and beyond the scope of legitimate discovery.[4]

The extent of a chiropractor's education and training in the use of needles has no bearing on whether acupuncture needles are incisive. The existence (or not) of complaints or enforcement proceedings against chiropractors who use acupuncture to treat patients, or who advertise that they use acupuncture to treat patients, sheds no

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[4] The Acupuncture Association also seeks discovery about the Board's actions during the rulemaking proceeding that resulted in Rule 78.14. But the Acupuncture Association has not alleged that there were procedural irregularities in the process of the rule adoption itself, MR14, and the deadline for amending pleadings in the case has passed. MR 10 at ¶ 4. Thus, any arguments about the rulemaking procedure are legally irrelevant.

light on whether there are non-incisive acupuncture needles. The legal question the trial court must answer is not whether chiropractors' use of acupuncture needles in accordance with Rule 78.14 is a danger to the public. It is, instead, whether the language of the Rule contravenes specific language in the Chiropractic Act or the general objectives of that Act, as determined from the text of the Act. *Id.* at 570.

Evidence of chiropractors' qualifications to use acupuncture is only relevant to one issue: whether chiropractors *should* be allowed to treat their patients using acupuncture. Evidence of the existence (or non-existence) of complaints against chiropractors who use acupuncture is only relevant to one issue: whether chiropractors *should* be allowed to treat their patients using acupuncture. Evidence of Board enforcement actions against chiropractors who use or advertise that they use acupuncture to treat their patients is only relevant to one issue: whether chiropractors *should* be allowed to treat their patients using acupuncture. However, as the Court has clearly said, whether a chiropractor *should* perform a particular procedure is not a question for the court. *Tex. Bd. of Chiropractic Exam'rs*, 616 S.W.3d at 575. It is, instead, a policy judgment to be made by the Legislature and the Board. *Id.* As a result, any evidence offered to convince the court that the Board made the wrong policy decision when it authorized chiropractors to use acupuncture is patently irrelevant.

The Acupuncture Association contends that the information it seeks and the expert testimony it intends to offer would "provide background on the practice of acupuncture by chiropractors." MR13 at 9. This Court observed 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." 616 S.W.3d at 568. Yet a reasonable allowance for "background" must not be used as a back door to judicial policymaking. For the Court's limit on judicial review to have meaning, there must be some corresponding limit on the types of evidence a trial court can consider. A challenger cannot discover and offer the same types of evidence that the Court has said are irrelevant, simply by pretending to offer it for a different reason (much less a generic reason like "background" or "context"). Trial courts that allow rule-challengers to discover and offer improper types of evidence as "background" or "context" are circumventing the Court's limits on their scope of review, thereby ***creating***, rather than preventing, "expensive and time-consuming usurpations of administrative agencies' policymaking work." *Id.* at 571.

The trial court's denial of the motion to limit allows the Acupuncture Association to impose a significant burden on the Board and the Chiropractic Association by requiring them to expend significant state resources to respond to discovery requests and depose experts about patently irrelevant information. Not only is the denial of the motion without reference to the guiding principles set out in *Tex. Bd. of Chiropractic Ass'n*; it is a rejection of those principles. Therefore, the trial court abused its discretion by denying the Board's motion. And because this same problem may recur for agencies across state government facing future challenges to their rules, the issue warrants the Court's intervention.

C. The Board and the Chiropractic Association have participated in and will continue to participate in discovery about the incisiveness of acupuncture needles.

Although the Acupuncture Association argued that the motion to limit discovery was, in essence, a motion to strike its experts, MR13 at 12-13, it was not. The Board and the Chiropractic Association did not move to strike or exclude the Acupuncture Association's experts because all four have been designated to offer the opinion that acupuncture needles are incisive. See MR12 at 13 (Levy), 14 (Howlett), 16 (Doggett), and 21 (Schnyer). Relators intend to depose these experts about those opinions.

Relators have also responded to requests for production and interrogatories concerning acupuncture needles and whether they are incisive. *See, e.g.,* MR13 at 164, 169, and MR14 at 16. That there are so few pages of the responses that relate to the incisiveness of acupuncture needles demonstrates that the bulk of the discovery the Acupuncture Association seeks is patently irrelevant.

II. Mandamus Relief Is The Only Available Remedy.

Mandamus relief is appropriate to correct an order authorizing the discovery of patently irrelevant information. *See In re Colonial Pipeline Co.*, 968 S.W.2d 938, 941 (Tex. 1998) (orig. proceeding). Mandamus is also the appropriate remedy for a discovery order that compels production well outside the bounds of proper discovery. *See In re Contract Freighters, Inc.*, 646 S.W.3d 810, 814 (Tex. 2022).

Here, the trial court's denial of the motion to limit discovery inflicts an injury on the Board, in particular, that cannot be remedied on appeal. If Respondent's denial of

the motion to limit stands, the Board will have to respond to broad discovery requests and depose numerous experts on topics that are patently irrelevant to whether its Rules 78.1(e)(2)(C) and 78.14 are valid. Then, if the Board successfully defends its Rules at trial, it will not have an appeal in which to seek relief. If, instead, the trial court finds the Rules to be invalid, and the Relators prevail in an appeal of that judgment, the appellate court cannot give them back the time and money they have spent responding to discovery about patently irrelevant matters. Once the harm is inflicted, it cannot be remedied. Moreover, in the meantime, the Board will likely be required to budget for additional manpower and technology to enable it to conduct extensive searches of its records and marshal a team of policy experts whenever a rule's validity is challenged. The same will likely be true for other agencies defending rule challenges, with larger agencies having to seek larger budgets.

Because the Acupuncture Association seeks the discovery of patently irrelevant information that is well outside the bounds of proper discovery in a rule challenge, the Board and the Chiropractic Association have no adequate remedy by appeal and are entitled to have Respondent's abuse of discretion corrected by issuance of this Court's writ of mandamus.

CONCLUSION AND PRAYER

This Court has recognized that the Legislature delegated to the Board the task of "clarifying what activities are included within the scope of practice of chiropractic and what activities are outside of that scope." 616 S.W.3d at 571. The Court clearly stated

that decisions about what activities lie within that scope are policy judgments. *Id.* at 575. If those who challenge an agency's rules are allowed to discover significant amounts of information relevant only to a rehashing of the Board's policy judgments – and offer that information as evidence of "background" or "context" at trial – then the Court's effort to prevent "expensive and time-consuming usurpations of agencies' policymaking work" will fail.

Because the Respondent abused her discretion by refusing to place appropriate limits on discovery in the underlying rule challenge, and because Relators have no adequate remedy at law, Relators, the Texas Board of Chiropractic Examiners and the Texas Chiropractic Association, respectfully request that this honorable Court issue a writ of mandamus directing the Respondent to vacate her August 19, 2022, order denying the Board's motion to limit discovery and issues to be decided and, instead, grant the motion to limit discovery – including the presentation of expert opinion testimony – to prevent discovery concerning the following types of information:

- the qualifications of chiropractors to practice acupuncture;
- comparisons of the qualifications of chiropractors and acupuncturists to perform acupuncture;
- the training, education, and knowledge of chiropractors who perform acupuncture;
- the existence (or non-existence) of complaints to the Board about chiropractors who perform acupuncture or advertise that they perform acupuncture; and
- Board enforcement actions (or lack of enforcement actions) against

chiropractors who perform acupuncture or advertise that they perform acupuncture.

Relators also seek such other and further relief to which they have shown themselves to be entitled, either at law or in equity.

Respectfully submitted,

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Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN E. COWLES
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ERNEST C. GARCIA
Chief, Administrative Law Division

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Attorneys for Relators Texas Chiropractic Association

RULE 52.3(j) CERTIFICATION

In compliance with Rule 52.3(j) of the Texas Rules of Appellate Procedure, I certify that I have reviewed the petition for writ of mandamus and have concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

/s/ Karen L. Watkins
Karen L. Watkins
Dated: September 26, 2022

CERTIFICATE OF COMPLIANCE

I certify that the Petition for Writ of Mandamus submitted complies with Texas Rules of Appellate Procedure 9 and the word count of this document is 4,193. The word processing software used to prepare this filing and calculate the word count of the document is Word.

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

CERTIFICATE OF SERVICE

I hereby certify that the above Petition for Writ of Mandamus has been served on this the 26th day of September, 2022, on the following counsel of record and on Respondent via electronic service:

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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

APPENDIX

Appendix A – A true and complete copy of Respondent's August 19, 2022 Order

Appendix B – A true and complete copy of the Third Court of Appeals' August 31, 2022 Memorandum Opinion denying petition for writ of mandamus

APPENDIX A

08/19/2022

ORDER DENYING JOINT MOTION TO LIMIT DISCOVERY AND ISSUES FOR DECISION

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

v.

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

TRAVIS COUNTY, TEXAS

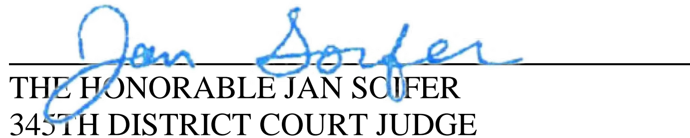
201ST JUDICIAL DISTRICT</td></tr>
</table>

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 SOIFER
345TH DISTRICT COURT JUDGE

AGREED AS TO FORM AND SUBSTANCE:

By: /s/ *Shelby O'Brien*
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Amy L. Prueger (SBN 24041842)
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ATTORNEYS FOR PLAINTIFF
TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE

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ATTORNEY FOR INTERVENOR
TEXAS CHIROPRACTIC ASSOCIATION

APPENDIX B

08/31/2022
MEMORANDUM OPINION
DENYING WRIT OF
MANDAMUS

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

M E M O R A N D U M   O P I N I O N

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

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:

Jeff Lutz on behalf of Karen Watkins
Bar No. 20927425
jeff.lutz@oag.texas.gov
Envelope ID: 68617131
Status as of 9/26/2022 3:59 PM CST

Associated Case Party: Texas Board of Chiropractic Examiners

Name	BarNumber	Email	TimestampSubmitted	Status
Karen Watkins		karen.watkins@oag.texas.gov	9/26/2022 3:09:15 PM	SENT

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Jeff Lutz on behalf of Karen Watkins
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Status as of 9/26/2022 3:59 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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Envelope ID: 68617131
Status as of 9/26/2022 3:59 PM CST

Associated Case Party: Texas Association of Acupuncture and Oriental Medicine

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Envelope ID: 68617131
Status as of 9/26/2022 3:59 PM CST

Associated Case Party: Texas Chiropractic Association

Name	BarNumber	Email	TimestampSubmitted	Status
Matthew Wood	24066306	mwood@wshllp.com	9/26/2022 3:09:15 PM	SENT

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Bar No. 20927425
jeff.lutz@oag.texas.gov
Envelope ID: 68617131
Status as of 9/26/2022 3:59 PM CST

Associated Case Party: Hon. Jan Soifer

Name	BarNumber	Email	TimestampSubmitted	Status
Hon. Jan Soifer		345.Submission@traviscountytx.gov	9/26/2022 3:09:15 PM	SENT