

November 10th, 2015

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

Re: Texas Association of Acupuncture and Oriental Medicine v. Texas Board of Chiropractic Examiners and Yvette Yarborough, Executive Director in Her Official Capacity, No. 3-15-00262-CV

To the Honorable Members of the Third Court of Appeals:

Both the American College of Acupuncture and Oriental Medicine based in Houston and AOMA Graduate School of Integrative Medicine in Austin are respected as leading institutions of higher education in the field of acupuncture and Oriental Medicine in the United States, and both are regionally accredited by the Southern Association of Colleges and Schools Commission on Colleges and programmatically accredited by the Accreditation Commission for Acupuncture and Oriental Medicine, offering entry level four year Master's programs as well as Doctorate programs in Acupuncture and Oriental Medicine.

This amicus curiae letter is submitted jointly on behalf of the student associations of both institutions. As the leaders of our respective student organizations we humbly request that the Third Court of Appeals reverse the

decision by the 201st District Court and render judgement in favor of the Texas Association of Acupuncture and Oriental Medicine.

The State of Texas has established requirements for licensure in acupuncture to ensure safe and capable practice. The fulfillment of these requirements represents a sizable commitment of time and financial resources, with tuition for acupuncture school running upwards of \$70,000 and many students emerging from their graduate training with debt loads of \$100,000 or more.

From the perspective of those who make such a sizable investment of time and money for the privilege of becoming licensed to practice acupuncture in Texas, the current situation of chiropractors being allowed to perform acupuncture, much less with a bare minimum of instruction (100 hours and no clinical training) undermines the integrity of the acupuncture license and the public trust. The general public has no way to know such a disparity in acupuncture training exists. Patients also likely have no understanding of the limits of chiropractic scope of practice in regards to acupuncture.

Section 201.002 of the Occupations Code defines the practice of chiropractic as follows.

“A person practices chiropractic under this chapter if the person:

(1) uses objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body;

(2) performs nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.”

In 2013 the Chiropractic Board amended its acupuncture rule “to make explicitly clear that any acupuncture, acupressure and meridian therapy (in addition to any other therapeutic modality) must be done in accordance with the legislatively defined scope of practice for chiropractic.”¹

And yet a brief internet search immediately yields an example of a chiropractic clinic offering acupuncture for infertility and allergies². Or, in another example, a chiropractor represents himself both as “physician” and as “A Licensed Professional, Certified Acupuncturist specializing in facial acupuncture” (sic)³. It is difficult to reconcile the discrepancy between how acupuncture is being practiced by chiropractors and what the Chiropractic statute and Board rules

¹ See Texas Register, Preamble of amendment to §75.21 (concerning acupuncture) available at [http://texreg.sos.state.tx.us/public/regviewer\\$ext.RegPage?sl=T&app=2&p_dir=N&p_rloc=263634&p_tloc=-](http://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=T&app=2&p_dir=N&p_rloc=263634&p_tloc=-)

[1&p_ploc=&pg=1&p_reg=201206437&z_chk=50959&z_contains=acupuncture^^^](http://www.friscorehab.com/allergies-and-acupuncture.php).

² See Frisco Spinal Rehabilitation, Infertility, available at <http://www.friscorehab.com/fertility-and-acupuncture.php>. See also Frisco Spinal Rehabilitation, Allergies and Acupuncture, available at <http://www.friscorehab.com/allergies-and-acupuncture.php>.

³ See Ranger Chiropractic Clinic, Physicians, available at <http://www.ranger-chiropractic.com/#!/physicians/cipy>. See also [22 TEX. ADMIN. CODE §78.15\(b\)\(3\)\(D\)](#) (Indicating “cosmetic treatments” are outside the scope of chiropractic and thus prohibited.)

represent. While the examples provided come from just two clinic websites, no doubt more such examples can easily be found around the state.

The issue of how chiropractors practicing acupuncture represent themselves came to the fore in 2012 when the Chiropractic Board attempted to adopt a “recognized specialty” rule related to acupuncture.⁴ The rule was subsequently withdrawn, but much confusion over the credentialing and representation of chiropractors practicing acupuncture remains.

The above referenced clinic represents their doctors as “*trained experts* of Acupuncture Therapy” while providing no acupuncture credentials, for example.⁵ In contrast, when a Licensed Acupuncturist represents themselves with the credential ‘Diplomate in Acupuncture,’ this signifies NCCAOM certification which can only be conferred upon completion of a Masters level program of accredited study and by passing the NCCAOM board exams.⁶ Simultaneously there are some organizations that train chiropractors in acupuncture and also confer “diplomate” status, but with substantially less training than is required by

⁴ See Texas Register, proposed changes to §71.15 Recognized Specialties (withdrawn 5/30/2012), available at [http://texreg.sos.state.tx.us/public/regviewer\\$ext.RegPage?sl=R&app=1&p_dir=&p_rloc=248435&p_tloc=&p_ploc=&pg=1&p_reg=248435&ti=22&pt=3&ch=71&rl=15&issue=02/17/2012&z_chk=1604469&z_contains=acupuncture^^^](http://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=R&app=1&p_dir=&p_rloc=248435&p_tloc=&p_ploc=&pg=1&p_reg=248435&ti=22&pt=3&ch=71&rl=15&issue=02/17/2012&z_chk=1604469&z_contains=acupuncture^^^).

⁵ Frisco Spinal Rehabilitation, Acupuncture Therapy, available at <http://www.friscorehab.com/acupuncture-therapy.php>.

⁶ National Certification Commission for Acupuncture and Oriental Medicine, Eligibility Requirements, available at <http://www.nccaom.org/applicants/eligibility-requirements>.

NCCAOM.⁷ For students of acupuncture and Oriental medicine and professionals alike it is particularly concerning to see short diplomate courses offered for chiropractors encompassing not just acupuncture, but acupuncture *and* Chinese herbology – all taught in a mere 300 hours.⁸ Because there are no uniform standards of training for chiropractors to practice acupuncture under Board rules, and because the Chiropractic Board does not regulate the practice of acupuncture by chiropractors, there is real concern that what training chiropractors have, and how that training (or lack thereof) is represented, has the potential to be inherently misleading to the public.

The Chiropractic Board has a well-documented “history of acting unilaterally to expand scope of practice in a way that seems to indicate a greater interest in promoting the profession than following the law and protecting patients.”⁹ In the broadest sense, it is not too strong a sentiment to express that today’s acupuncture

⁷ Council of Chiropractic Acupuncture, Diplomat Information, available at <http://www.councilofchiropracticacupuncture.com/index.php/certification/aba-information-for-certification> (Indicating a 300 hour standard of training). See also, Council of Chiropractic Acupuncture, Acupuncture Classes, available at <http://www.councilofchiropracticacupuncture.com/index.php/education/acupuncture-classes>.

⁸ See International Academy of Chiropractic Acupuncture, Syllabus Advanced 200, available at <http://www.iaca.cc/id9.html>. (Indicating training in both acupuncture *and* Chinese herbology).

⁹ See Sunset Advisory Commission, Texas Board of Chiropractic Examiners, Staff Report February 2004, available at <https://www.sunset.texas.gov/public/uploads/files/reports/Board%20of%20Chiropractic%20Examiners%20Staff%20Report%202004%2079th%20Leg.pdf>.

students (and future licensees), along with current Licensed Acupuncturists, hold the perception that their profession has been co-opted by the Chiropractic Board, despite the Chiropractic Board having no expertise in acupuncture or Oriental medicine.

In the field, Licensed Acupuncturists enter practice after investing years of their lives and several tens of thousands of dollars to meet the requirements set forth by the Legislature for the practice of acupuncture only to find that chiropractors too are now in the business of being acupuncturists. It is in this context that we humbly request, as representatives of the student associations of both the American College of Acupuncture and Oriental Medicine and AOMA Graduate School of Integrative Medicine, that the Court reverse the lower court's judgment and render judgment in favor of the Texas Association of Acupuncture and Oriental Medicine.

Respectfully,

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Certificate of Amicus

Pursuant to Rule 11 of the Texas Rules of Appellate Procedure, this will confirm that neither the American College of Acupuncture and Oriental Medicine or AOMA Graduate School of Integrative Medicine has incurred any legal fees related to the drafting of this letter. The undersigned are students and student association leaders at their respective institutions and neither the American College of Acupuncture and Oriental Medicine or AOMA Graduate School of Integrative Medicine have received or will receive any direct compensation for the drafting or submission of this amicus letter.

/s/ Linda Henderson and Gene Kuntz II
Linda Henderson and Gene Kuntz II

Certificate of Compliance

I certify on behalf of *Amicus Curiae*, that this *Amicus* letter contains 1074 words according to the word count feature of the software used to prepare this amicus letter.

/s/ Linda Henderson and Gene Kuntz II
Linda Henderson and Gene Kuntz II

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 10th, 2015.

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