

No. 3-15-00262-CV

*In the Court of Appeals
Third District of Texas — Austin*

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3rd COURT OF APPEALS
AUSTIN, TEXAS
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JEFFREY D. KYLE
Clerk

TEXAS ASSOCIATION OF ACUPUNCTURE AND ORIENTAL MEDICINE,

Appellant,

v.

**TEXAS BOARD OF CHIROPRACTICE EXAMINERS AND YVETTE
YARBROUGH, EXECUTIVE DIRECTOR IN HER OFFICIAL CAPACITY,**

Appellees.

*On Appeal from 201st District Court, Travis County, Texas
Cause No. D-1-GN-14-000355*

**ACUPUNCTURE ASSOCIATION'S RESPONSE TO THE
CHIROPRACTIC BOARD'S MOTION TO STRIKE**

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Appellant Texas Association of Acupuncture and Oriental Medicine (“Acupuncture Association”) files this response to Appellees Texas Board of Chiropractic Examiners and Yvette Yarbrough, in her Official Capacity as Executive Director of the Chiropractic Board’s (“Chiropractic Board”) motion to strike. The Acupuncture Association requests for the Court to deny the motion.

The Chiropractic Board asks the Court to strike a laundry list of footnotes in the Acupuncture Association’s brief: specifically, footnotes 29, 32-36, and 38-39. These footnotes simply reference websites that are readily available to the public on the internet. But the Chiropractic Board claims that because the cited websites are not in the clerk’s or reporter’s records, the Acupuncture Association may not cite them in its brief.

Links to these websites were included in the Acupuncture Association’s brief for the Court’s reference, if the Court wishes to consult them. The question before this Court is one of law, not one of fact that is dependent on evidence. The Acupuncture Association is not attempting to put new evidence into the record by attaching copies of documents to its appendix.¹ Referencing internet websites in

¹ See *Burke v. Ins. Auto Auctions Corp.*, 169 S.W.3d 771, 775 (Tex. App.—Dallas 2005, pet. denied) (“an appellate court cannot consider documents or hearings that are cited in the brief *and* attached as appendices if they are not formally included in the record on appeal”) (emphasis added); *In re Estate of Bendtsen*, 230 S.W.3d 823, 830 (Tex. App.—Dallas 2007, pet. denied) (a court should not consider evidence attached to a brief that is not included in the appellate record—such as new affidavits).

appellate briefs—even if hard copies of the linked documents were not put into evidence in the trial court—is a common practice, one that the Office of the Attorney General routinely follows.²

Further, a court may take judicial notice of a fact that is not subject to reasonable dispute because it “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” TEX. R. EVID. 201(b). A court may take judicial notice at any state in a proceeding. *Id.* 201(d); *see also Pub. Util. Counsel v. Pub. Util. Comm’n of Tex.*, 878 S.W.2d 598, 600 (Tex. 1994). Here, it cannot reasonably be questioned that these internet websites say what they say. Indeed, the Chiropractic Board does not even attempt to question these websites’ accuracy. The cited websites are mostly those of accrediting bodies that are expressly referenced in Acupuncture Board and Chiropractic Board rules. Thus, the Court may take judicial notice of these websites.

² See *Glenn Hegar, in his Official capacity as Texas Comptroller, and Ken Paxton, in his Official Capacity as Texas Attorney General v. Texas Small Tobacco Coalition*, Petitioner’s Brief on the Merits, at 8, 10, 12, 18-19, 24-25, 59, available at: <http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=bc596889-bf61-4627-9d27-aabddbfb9bb9&coa=cossup&DT=BRIEFS&MediaID=19589422-da99-407a-81c1-61f33732e971>.

PRAYER

Appellant Texas Association of Acupuncture and Oriental Medicine respectfully prays that this Court deny the Chiropractic Board's motion to strike. The Acupuncture Association further requests any other relief to which it may be entitled.

Respectfully submitted,

By: /s/ Craig T. Enoch

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CERTIFICATE OF SERVICE

I hereby certify that, on October 29, 2015, the Acupuncture Association's Response to the Chiropractic Board's Motion to Strike was served via electronic service on the following:

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