

Yvette Yarbrough – Executive Director  
Texas Board of Chiropractic Examiners  
333 Guadalupe St.  
Ste. 3-825  
Austin, TX 78701

1/28/2013

Dear Ms. Yarbrough,

These comments are submitted on behalf of Texas Association of Acupuncture and Oriental Medicine (“TAAOM”) in response to the amendment proposed by the Texas Board of Chiropractic Examiners (“Board”) to rule 75.21, published in the Texas Register on December 28, 2012, relating to Acupuncture. We object to the adoption of the proposed amendment, and formally request a public hearing to discuss concerns with the Board’s scope of practice rules and the proposed amendment. We would be pleased to also participate in any other type of meeting or proceedings encouraged for consideration by the Board under Sec. 201.1526, including but not limited to negotiated rulemakings, informal conferences, and advisory committees.

The Board writes in the December 28, 2012 Texas Register posting:

*The amendment is proposed under Texas Occupations Code §201.152, relating to rules, and §201.002, relating to the practice of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.002 defines the practice of chiropractic and the limits of chiropractic scope of practice. Additionally, the amendment is proposed under Texas Occupations Code §205.001, relating to the definition of acupuncture, and §205.003, relating to exemptions from the Acupuncture Act. Section 205.001 defines acupuncture as a nonsurgical, nonincisive procedure. Section 205.003 exempts from the requirements of the Acupuncture Act health care professionals licensed under a statute other than the Acupuncture Act and acting within the scope of their license. (emphasis added)*

TAAOM objects to the Board’s use of Chapter 205 as a basis for rulemaking authority. The Board does not have authority to adopt rules under Sections 205.001 or 205.003 of the Texas Occupations Code, as that authority has been expressly and jointly granted to the Texas Medical Board and the Texas Acupuncture Board.

The Board writes in the December 28, 2012 Texas Register posting:

*The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.21, concerning Acupuncture, to clarify that all therapeutic modalities provided by Doctors of Chiropractic in Texas must comply with the chiropractic scope of practice as defined by the Texas Occupations Code (the Chiropractic Act). (emphasis added)*

*The Board proposes this amendment 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. (emphasis added)*

To achieve the Board goal of being “explicitly clear” as stated in the proposed rule, TAAOM requests that specific issues relating to the Board’s legislatively defined scope of practice be considered in public hearing, particularly provisions of the April 2012 Third Court of Appeals decision that voided a number of the Board’s scope of practice rules. (NO.03-10-00673-CV)

Notably, the Third Court of Appeals ruled void 75.17(a)(3) which reads: "Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical." Despite the fact that the Court of Appeals affirmed the district court ruling that 75.17 (a)(3) was voided, the Board has not taken action to remove this provision from its rules, as it did with other scope of practice rules invalidated in this court case.

We raise for discussion the fact that the repeal of this voided rule 75.17(a)(3) is not a matter of Board discretion, and believe a determination of the Board’s “legislatively defined scope of practice for chiropractic” cannot be made without a full and open review of the impact of the Third Court of Appeals decision.

We further urge the Board to seek additional guidance from stakeholders and from the Opinions Division of the Attorney General’s office, as the recent Third Court of Appeals ruling in NO.03-10-00673-CV clearly undermines assumptions made in the AG opinion issued by Attorney General Dan Morales in 1998( Att’y. Gen.Op. No. DM-471). These issues are integral to the Board’s review of its legislatively defined scope of practice as set out in Section 201.1526. We look forward to working with the Board and its staff as the agency continues to implement Section 201.1526 and to develop proposed revised rules regarding the scope of practice of chiropractic.

Sincerely,



Wally Doggett  
President – Texas Association of Acupuncture and Oriental Medicine