

2/19/2013

Testimony before Texas State Board of Chiropractic Examiners

By Wally Doggett, L.Ac. – representing the Texas Association of Acupuncture and Oriental Medicine

On behalf of the TAAOM I appreciate the Texas Board of Chiropractic Examiners (Board) scheduling this public hearing on the proposed amendment to 75.21.

I would first like to address stakeholder proceedings as envisioned by the Legislature in Section 201.1526 of your statute. You will please note, your statute prescribes early stakeholder input before publishing in the Texas Register. And so, I just want to check in on this – is there a process involving stakeholders I am unaware of? Because thus far, it is only after rules are made around acupuncture that we acupuncturists are included in the process. Which leads me to the question: what is the position of the TBCE on Licensed Acupuncturists and TBCE rulemaking around acupuncture? Are we considered stakeholders?

As such, we urge the Board to conduct more inclusive stakeholder meetings *prior* to rule making and rule publishing – and to the extent that rulemaking involves acupuncture, we ask you include us as stakeholders. We are glad to engage in the process.

Secondly, regarding the rule relating to acupuncture before us today - as stated in my letter opposing the rule - on the surface one would be hard pressed to oppose a board for clarifying scope of practice. It is our position, however, that the Third Court of Appeals Opinion in NO. 03-10-00673-CV issued on April 5, 2012, raises questions that warrant a fresh look at TBCE rule making around the use of needles, and hence acupuncture as well:

The Courts voided section 75.17 (a)(3) of TBCE rules, which pertains to the use of needles by chiropractors under standards set by the chiropractic board. TAAOM notes that while all other voided language was removed from rules, or appropriately amended, in the case of 75.17(a)(3) the entirety of the rule was not removed as ordered by the court, but only it's subsections A & B.

We believe the Board has an obligation to first take formal action to remove Rule 75.17(a)(3) as directed by the Third Court of Appeals, and that the voided rule should be removed prior to the adoption of any additional rule(s) dealing with a chiropractor's scope of practice under Chapter 201 of the Occupations Code. That said, we hereby petition the board to strike 75.17(a)(3).

By striking rule 75.17 (a)(3) which was voided by the District Court ruling and affirmed by the Third Court of Appeals decision, the Board would be conforming its rules to Third Court of Appeals decision and would be acting consistently with actions the Board has taken to remove all other rules voided by the Third Court of Appeals.

To the extent the Board maintains that rule 75.17(a)(3) is somehow not subject to the provisions in the Third Court of Appeals decision that void the rule, we ask that the Board provide it's rationale for that position.

The Third Court of Appeal's decision, consideration of the legislative history, and a clear reading of the relevant statutes suggest there is a compelling need for a more current, comprehensive review and clarification of the statutes and rules in question.

This could result in better policy outcomes – and could avoid the potential of litigation often associated with issues relating to scope of practice authority. Such an effort would be consistent with statutory directives to the Board to make a concerted effort to “clarify” the legislatively defined scope of chiropractic practice.

It is worth noting that the word acupuncture does not appear in Chapter 201 of the Occupations Code, which provides the exclusive authority to the Board to adopt rules. (The Board has no statutory authority to adopt rules under Chapter 205 of the Occupations Code.), and we object to the Board's use of rulemaking authority under Chapter 205 of the Occupations Code, which governs acupuncture.

The only allowable use of a needle set out in Chapter 201 provides an exception that allows a chiropractor to use a needle to draw blood. The Third Court of Appeals decision recognized these basic facts when it affirmed the district court's finding that rule 75.17 (a)(3) was void.

Those who provide chiropractic services and those who provide acupuncture services would benefit from a “fresh look” analysis of the statutory provisions and legal decisions surrounding this proposed rule. But more important are those who seek these services – they would be the real beneficiaries of this analysis and this effort.

It is without question of clear benefit to individual members of the public – and to the health, safety, and welfare of all those seeking treatments licensed by the state – to know that when they seek treatment in a clinical or medical setting, the person performing that treatment has been educated and trained according to specific educational and training standards set out in state statute. This is not the case today.

In closing, we petition the Board to conform its rules to the Third Court of Appeals decision and to remove all provisions of voided rule 75.17(a)(3).

TAAOM objects to the adoption of the proposed amendments to rule 75.21, and ask that the Board refrain from voting to adopt the proposed amendments to 75.21 at its upcoming Board meeting on February 21, 2013.

And last, we urge the Board to seek clarity regarding the legislatively authorized scope of practice of chiropractic and to conduct the types of stakeholder proceedings envisioned by the Legislature in Section 201.1526.