

TEXAS MEDICAL ASSOCIATION

Vs.

TEXAS BOARD OF CHIROPRACTIC EXAMINERS and GLENN PARKER, Executive Director

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250 JUDICIAL DISTRICT

FILED  
06 SEP 14 AM 0:50  
Glenn Parker  
T.M.A. BOARD

**PLAINTIFF'S ORIGINAL PETITION  
FOR DECLARATORY JUDGMENT  
and APPLICATION FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF THE DISTRICT COURT:

Texas Medical Association ("TMA"), plaintiff, files this Original Petition for Declaratory Judgment and Application for Injunctive Relief against the Texas Board of Chiropractic Examiners ("the Board") and its Executive Director, Glenn Parker, defendants, and as grounds for this lawsuit will show the following:

***Discovery control plan***

1. This lawsuit is governed by Level 2 discovery as set forth in Tex. R. Civ. P. 190.3.

***Service of Process***

2. (a) The Texas Board of Chiropractic Examiners and its Executive Director, Glenn Parker, may be served with process by serving Glenn Parker at the Board's office which is located at 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701.

(b) Because of the alternative constitutional challenge to a statute which is contained in this petition, pursuant to Tex. Civ. Prac. & Rem. Code § 37.006(b), the Attorney General of Texas may be served with process by serving the Honorable Greg Abbott, Price Daniel Sr. Building, Austin, Texas.

### ***Statutory authority for injunction and declaratory judgment***

3. This suit for a declaratory judgment is brought pursuant to Tex. Gov't Code § 2001.038 as a challenge to the validity of a state agency rule which, as described below, interferes with or impairs, and threatens to interfere with and impair, a legal right and privilege of the members of TMA.

4. This suit for injunctive relief (temporary and permanent) is brought pursuant to Tex. R. Civ. P. 681 *et seq.* and Tex. Civ. Prac. & Rem. Code § 65.001 *et seq.*

### ***Purposes of suit***

5. This suit is a substantive challenge, by declaratory judgment and injunction, to the validity of certain provisions of the "Scope of Practice" rule adopted by the Board which was published for comment at 22 Tex. Admin. Code § 75.17. The rule was adopted by the Board on May 11, 2006.

### ***Standing***

6. Physicians who are members of TMA are licensed to practice medicine in Texas so long as they comply with the requirements and regulations of the Texas Medical Practice Act, Tex. Occ. Code § 151.001-165.160. This statute provides that the practice of medicine is a privilege and it regulates the granting of that privilege in order to protect the public's interest. Licensed chiropractors are exempt from complying with the Act as long as they strictly engage in the practice of chiropractic as defined by law. Tex. Occ. Code § 151.052(a)(3).

7. The provisions of the rule which are challenged below expand the practice of chiropractic beyond its statutory limits and into the practice of medicine. Individual physicians have standing to seek a determination of the extent to which chiropractors may engage in the

practice of medicine in light of the Board's rule. Chiropractors have no legal right to engage in the practice of medicine, and allowing them to do so undermines the purposes of the Texas Medical Practice Act; which are, in part, to set requirements for those who wish to practice medicine, thereby safeguarding patients who receive medical care. If, as alleged, the provisions of the rule in question grant to chiropractors the right to perform procedures that otherwise would be considered the practice of medicine, the privilege of practicing medicine is diminished in quality and standards because chiropractors are neither licensed nor trained to practice medicine.

8. The interests that TMA seeks to protect through this lawsuit are germane to its organizational purpose. One mission of TMA—in fact, its primary mission—is to improve the health of all Texans by being an advocate for patients and the profession of medicine. In this lawsuit, TMA is seeking to protect the value of its members' right to practice medicine. The question of who has the right to practice medicine is directly related to the quality of the care provided.

9. Neither the claims asserted in this lawsuit nor the relief requested requires the participation of TMA's individual members in this lawsuit. The ground on which the provisions of the rule in question is challenged, *i.e.* that the rule's provisions exceed the Board's statutory authority, is a question of law; and, the relief sought is a declaratory ruling and injunction that would be applied uniformly to physicians and chiropractors.

10. Attached to this petition is the affidavit of Ladon W. Homer, M.D. providing evidence of the interests of TMA in this litigation and the reasons why it is entitled to represent its members in this lawsuit. The attached affidavit is incorporated at this point as if fully set forth.

11. For all of the reasons set forth in paragraphs 6 through 10, TMA has standing to bring this lawsuit. *Texas Ass'n of Business v. Texas Air Control Board*, 852 S.W.2d 440, 443 (Tex. 1993); *Hunt v. Washington State Advertising Commission*, 432 U. S. 333, 343 (1977).

***The practice of medicine and chiropractic***

12. The practice of medicine is regulated heavily by the State, as reflected in the Medical Practice Act, Tex. Occ. Code § 151.001' *et seq.* The regulation of those who practice medicine is so important to the people of Texas that the Texas Constitution prevents the legislature (and any state agency) from enacting laws or regulations that allow a person to practice medicine unless that person satisfies the same requirements and standards applicable to all others who practice medicine in Texas. Tex. Constitution, Art. 16 § 31. In other words, a chiropractor's license does not entitle that person to practice medicine, and any law that permits him or her to do so is unconstitutional.

13. The practice of medicine is defined by state law:

“‘Practicing medicine’ means the diagnosis, treatment or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who: (A) publicly professes to be a physician or surgeon; or (B) directly or indirectly charges money or other compensation for those services.”

Tex. Occ. Code § 151.002(a)(13).

14. The practice of chiropractic also is defined by state law:

“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; (3) represents to the public that the person is a chiropractor; or (4) uses the term ‘chiropractor,’ ‘doctor of chiropractic,’ ‘D.C.,’ or any derivative of those terms or initials in connection with the person’s name.”

Tex. Occ. Code § 201.022(b). This statute and any regulations promulgated by the Board are constitutional only if they authorize chiropractors to do things that are not unique to the practice of medicine. *See e.g. Ex parte Halstead*, 182 S.W.2d 479, 487-488 (Tex. Crim.1944).

15. In keeping with the constitutional mandate that the practice of medicine be excluded from the practice of chiropractic, the law governing the practice of chiropractic expressly prohibits chiropractors from engaging in certain activities:

“The practice of chiropractic does not include: (1) incisive or surgical procedures; (2) the prescription of controlled substances, dangerous drugs, or any other drug that requires prescription; or (3) the use of x-ray therapy or therapy that exposes the body to radioactive materials.”

Tex. Occ. Code § 201.022(c). Similarly, as shown above, the definitions of the practice of medicine and chiropractic carefully distinguish between the two: physicians can “diagnose” and “treat” any diseases and disorders; chiropractors can “analyze, examine or evaluate” the spine and musculoskeletal system, and manipulate the body to “improve the subluxation complex” or the body’s biomechanics.

16. As the facts set forth below demonstrate, certain provisions of the Scope of Practice rule adopted by the Board unlawfully authorize chiropractors to practice medicine and to engage in activities that are beyond the statute’s definition of the practice of chiropractic.

#### ***Electromyography***

17. Electromyography, also known as clinical needle EMG, is an incisive and invasive diagnostic medical procedure during which the physician inserts an electrode into a patient’s muscles to diagnose the cause of neuromuscular disease. Needle EMG, and its companion test, a Nerve Conduction Velocity study (NCV), allow a physician to distinguish a wide range of conditions from carpal tunnel syndrome to ALS (Lou Gehrig’s Disease).

18. The results of needle EMG are used to make critical medical decisions regarding the need for surgery, further testing such as MRI, medications and the determination of disability. Misdiagnosis can mean delayed or inappropriate treatment (including unnecessary surgery) and diminished quality of life for patients. Because of the *diagnostic* nature of the procedure, needle EMG exclusively falls within the practice of medicine.

19. The diagnostic interpretation of the needle EMG exam takes place during the performance of the test. The proper sites and methods of introducing the needle electrode are determined as the test is in progress and depend on real time, visual, tactile and audio observations of the examiner. The process requires extensive training and experience and involves complex medical decisions that can be made only during the actual performance of the test. For this reason, it is not possible for physicians to independently assess and verify the accuracy of tests performed by non-physicians.

20. The Scope of Practice rule expressly and unlawfully authorizes chiropractors to perform electromyography. 22 Tex. Admin. Code § 75.17(c)(2). In fact, the rule goes even further in that it allows this diagnostic procedure to be performed by a clinic employee even if a chiropractor is not in the room.<sup>1</sup>

### ***Manipulation under anesthesia***

21. Spinal manipulation under anesthesia (MUA) formerly was used by doctors of osteopathy and to a much lesser degree by orthopedists to treat spinal and joint dysfunction. More recently, chiropractors, with the assistance of anesthesiologists, have employed this

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<sup>1</sup> The rule says that “[t]he *professional component* [undefined] of these procedures may not be delegated to a technician and must be directly performed by a qualified and licensed doctor of chiropractic who must be *on-sight* during the technical component of the procedures.” (Emphasis added). 22 Tex. Admin. Code § 75.17(c)(3)(A)(ii). “On-site” is defined by the rule to mean, “the presence of a licensed chiropractor in the clinic but not necessarily in the room, while a patient is undergoing an examination, treatment or service.” 22 Tex. Admin. Code § 75.17(b)(3).

technique supposedly to alleviate acute and chronic neck and back pain. MUA is a surgical procedure and is the practice of medicine.

22. The apparent rationale for the treatment is that fibrotic changes in the soft tissues in and around the spine, shoulder and other joints which hinder movement sometimes require a patient to be anesthetized in order to reduce muscle tone and protective reflex mechanisms so that the spine, shoulder or other joints can be manipulated effectively. This maneuver supposedly will break up adhesions and stretch the fibrotic tissue to a length compatible with motion, thereby increasing joint function and reducing pain.

23. The Board concedes that its Scope of Practice rule does not prohibit chiropractors from performing manipulations under anesthesia even though the practice is considered a *surgical* procedure, *i.e.* it is listed under the surgical codes of the CMS CPT codebook. As noted above, the Chiropractic statute prohibits chiropractors from performing any type of surgical procedure. Tex. Occ. Code § 201.022(b)(2).

#### ***The diagnosis of medical conditions***

24. Under Texas law, only physicians can *diagnose* medical conditions. As noted above, the practice of medicine is defined, in part, as “the diagnosis...of physical disease or disorder or a physical deformity or injury[.]” Tex. Occ. Code § 151.002(a)(13). By contrast, the practice of chiropractic is defined, in pertinent part, as the use of “objective or subjective means to *analyze, examine or evaluate* the biomechanical condition of the spine and musculoskeletal system[.]” Tex. Occ. Code § 201.022(b)(1). Because the *diagnosis* of medical conditions is the practice of medicine, the term was carefully and intentionally omitted from the definition of chiropractic. Section 75.17(d) of the Scope of Practice rule expressly authorizes chiropractors to

diagnose medical conditions and by doing so unlawfully expands the practice of chiropractic into the practice of medicine.

*Challenges to specific provisions of the Rule*

25. TMA challenges the following specific provisions of the Rule for the reasons stated:

(a) 22 Tex. Admin. Code § 75.17(a)(3): “Needles may be used in the practice of chiropractic under standards set by the Board but may not be used for procedures that are incisive or surgical. (A) The use of a needle for a procedure is incisive *if the procedure results in the removal of tissue* other than for the purpose of drawing blood”. (Emphasis added). TMA objects to this provision because the statute only authorizes chiropractors to use needles to draw blood for testing, and the rule’s definition of the “incisive” use of a needle is in conflict with and expands significantly the definition of the same concept in the underlying statute, Tex. Occ. Code § 201.022(a): “‘incisive or surgical procedure’ includes making an incision into any tissue, cavity or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood.” For this reason, the rule exceeds that statutory authority of the agency to promulgate it. Among other things, the Board expanded the statute’s restriction on the use of needles to unlawfully enable chiropractors to practice medicine by performing needle electromyography, a medical procedure, which requires medical knowledge to administer and interpret the test properly.

(b) 22 Tex. Admin. Code § 75.17(d)(1): “In the practice of chiropractic, licensees may render an analysis, *diagnosis*, or other opinion regarding the findings of examinations and evaluations. Such opinions include, but are not limited to, the following: (A) An analysis, *diagnosis*, or other opinion regarding the biomechanical condition of the spine or

musculoskeletal system”. (Emphasis added). TMA challenges the validity of this provision of the rule (and any others) which allows chiropractors to make a *diagnosis* of a patient’s medical condition, including but not limited to “the health and integrity of the structures of the system”, “the existence of structural pathology, functional pathology or other abnormality of the system” and similar such conditions. TMA objects to this provision because the underlying statute does not authorize chiropractors to *diagnose*, but instead restricts them to the use of objective or subjective information to “analyze, examine, or evaluate” the biomechanical condition of the spine and musculoskeletal system of the body. Tex. Occ. Code § 201.022. The diagnosis of health problems, whether in the biomechanical condition of the spine, the musculoskeletal system of the body or elsewhere, is reserved by the Texas Medical Practice Act exclusively to the practice of medicine. Tex. Occ. Code § 151.002(a)(13).

(c) 22 Tex. Admin. Code § 75.17(a)(2): “The practice of chiropractic does not include: (A) incisive or surgical procedures; (B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription; or (C) the use of x-ray therapy or therapy that exposes the body to radioactive materials.” TMA objects to this provision because the rule purports to list the limitations on the scope of the practice of chiropractic and yet fails to exclude specific medical procedures which are known by the Board to be commonly practiced by some chiropractors, including but not limited to manipulation under anesthesia (“MUA”) which the rule’s reasoned justification acknowledges to be commonly practiced but which is, in fact, a medical and surgical procedure. Chiropractors are prohibited by law from performing surgical procedures or practicing medicine.

***Alternative constitutional challenge***

26. In the unlikely event that the Court determines that Tex. Occup. Code § 201.002 et seq. authorizes the Board to promulgate the specific provisions of the Scope of Practice Rule which are the subject of this lawsuit, then the statute is unconstitutional in violation of Tex. Constitution, Art. 16 § 31.

***Grounds for injunctive relief***

27. Although some affidavits are attached, a verified petition is not required because TMA seeks a temporary injunction after a full evidentiary hearing on evidence independent of this petition. Town of Palm Valley v. Johnson, 17 S.W.3d 281, 288 (Tex. App. – Corpus Christi 2000) *pet. denied*, 87 S.W.3d 110 (Tex. 2001).

28. The provisions of the Scope of Practice rule set forth above define the activities in which chiropractors ostensibly can engage. By authorizing chiropractors to practice medicine, the rule provisions diminish the value of the medical license held by TMA's members. Because the Scope of Practice rule expands the activities in which chiropractors can engage when treating their patients so as to authorize them to practice medicine, there is an irreparable injury as a matter of law.

29. As demonstrated by the facts alleged in this petition and which will be shown at the evidentiary hearing, TMA has shown (and will show) a probably right to recovery.

30. TMA has no adequate remedy at law because the only remedy against an invalid state agency rule is an injunction.

***Request for temporary injunction***

31. TMA asks the Court to set its application for temporary injunction for hearing, and after hearing, issue a temporary injunction against Glenn Parker, Executive Director and the

Texas Board of Chiropractic Examiners restraining and enjoining the provisions of the Rules of Practice set forth above. TMA also requests a permanent injunction after final trial.

***Request for declaratory judgment***

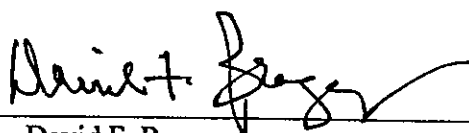
32. After final trial, TMA also asks the Court for a declaratory judgment that the provisions of the Rules of Practice set forth above exceed the statutory authority of the Board and are therefore invalid. In the unlikely event that the Court holds that the rules do not exceed the Board's statutory authority, then TMA seeks a declaratory judgment that Tex. Occup. Code § 201.002 et seq. is unconstitutional, and an injunction against application of the statute.

***Request for other relief***

33. TMA requests such other relief to which it may be entitled.

Respectfully submitted,

**BRAGG CHUMLEA McQUALITY**  
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(512) 370-1300 / (512) 370-1636 (fax)

STATE OF TEXAS  
COUNTY OF TRAVIS

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**AFFIDAVIT**

**BEFORE ME**, the undersigned authority, on this day appeared Ladon W. Homer, M.D., who after having been by me duly cautioned and sworn did state to me upon his oath as follows:

My name is Ladon W. Homer. I am over the age of eighteen, a licensed Texas physician, and President of Texas Medical Association (“TMA”). The statements made in this affidavit are within my personal knowledge and true and correct.

1. The TMA was organized by 35 physicians in 1853 to serve the people of Texas by working to improve medical care, prevent and cure disease and improve public health. The organization has grown through the years so that today there are more than 41,000 physician and medical student members. The mission of the TMA is the same today as when it first was organized.


2. Physicians who are licensed to practice medicine in Texas must comply with the Texas Medical Practice Act. We recognize that the practice of medicine is a licensed privilege and is regulated by the State in order to protect the public’s interest, including health and safety. It is my understanding that licensed chiropractors are exempt from complying the Medical Practice Act as long as they limit their practice to chiropractic and do not engage in the practice of medicine. I and other Texas physicians, acting individually and through the TMA, recognize that one of our duties is to protect the integrity of our licenses to practice because licensure is the primary method by which we can be assured that only those who are properly educated and trained in medicine are allowed to engage in the practice of medicine.

3. The Texas Board of Chiropractic Examiners adopted a new rule dealing with the Scope of Practice of chiropractic. The rule is described in the petition to which this affidavit is

attached. As I read the rule, it authorizes chiropractors to (a) diagnose a variety of medical conditions, (b) perform needle electromyography and (c) perform manipulations under anesthesia, among other things. In my experience and training, each of these activities is the practice of medicine. By law, only licensed physicians can diagnose medical conditions; needle electromyography is a diagnostic procedure and is an incisive procedure involving a use of needles that is not authorized by the chiropractor's statute; and, manipulation under anesthesia is classified as a surgical procedure which chiropractors are forbidden to perform. By authorizing these activities, the rule expands the practice of chiropractic beyond its statutory limits and into the practice of medicine. I and other physicians have an abiding interest in preventing chiropractors from engaging in the practice of medicine because of our right, privilege and duty to protect the integrity and value of our medical licenses. Chiropractors have no legal right to engage in the practice of medicine, and allowing them to do so undermines the purposes of the Texas Medical Practice Act and the value and integrity of the medical license. If the rule in question grants to chiropractors the right to perform procedures that are the practice of medicine, as it does, the privilege of practicing medicine is diminished because chiropractors are neither licensed nor trained to practice medicine.

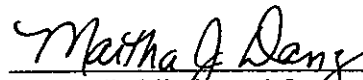
4. The interests that TMA seeks to protect through this lawsuit are germane to its organizational purpose. One mission of TMA—in fact, its primary mission—is to improve the health of all Texans by being an advocate for patients and the profession of medicine. In this lawsuit, TMA is seeking to protect the value of its members' right and privilege to practice medicine and the integrity of their licenses. The question of who has the right to practice medicine is directly related to the quality of the medical care provided.

5. Neither the claims asserted in this lawsuit nor the relief requested requires the participation of TMA's individual members in this lawsuit. The primary ground on which the provisions of the rule in question is challenged, *i.e.* that the rule's provisions exceed the Board's statutory authority, is a question of law; and, the relief sought is a declaratory ruling and injunction that would be applied uniformly to physicians and chiropractors.

  
Ladon W. Homer, M.D.

**SUBSCRIBED AND SWORN TO** before me on this 2<sup>nd</sup> day of August, 2006, to certify which witness my hand and official seal.



  
Notary Public in and for the State of Texas

STATE OF TEXAS

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**AFFIDAVIT**

COUNTY OF JEFFERSON

BEFORE ME the undersigned authority on this day personally appeared David Teuscher, M.D., known to me to be the person whose name is subscribed below who after having been by me duly cautioned and sworn did state to me upon his oath as follows:

1. My name is David Teuscher. I am over the age of eighteen and am competent to make this affidavit. Each of the statements made in this affidavit is based on my own personal knowledge and experience.

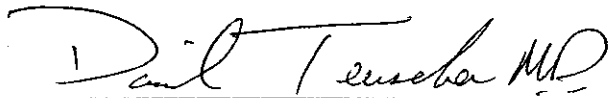
2. I am a medical doctor, licensed by the State of Texas, and my license is in good standing. I obtained my medical degree from the University of Texas Medical School at San Antonio in 1984, which was followed by an internship in 1985 and residency from 1987 to 1991 at Brooke Army Medical Center, Fort Sam Houston, Texas. I have been Board Certified by the American Board of Orthopaedic Surgery since 1993. I specialize in orthopaedic surgery.

3. I am the President of the Texas Orthopedic Association, and am a Past-President of the Jefferson County Medical Society. I also am a member of the American Medical Association, the American Academy of Orthopaedic Surgeons, the American Orthopaedic Foot and Ankle Society, the American Orthopaedic Society for Sports Medicine and the Texas Medical Association, among others.


4. Spinal manipulation under anesthesia (MUA) formerly was used by doctors of osteopathy and to a much lesser degree by orthopaedists to treat spinal dysfunction. Manipulation under anesthesia of the joints of the appendicular skeleton (upper and lower extremities) is an important but uncommonly used technique where orthopaedists seek to restore functional range of motion to the extremity joints (i.e. shoulders and knees) under anesthesia. More recently, chiropractors, with the assistance of someone providing anesthesia, have reportedly employed these techniques supposedly to alleviate acute and chronic neck and back pain.

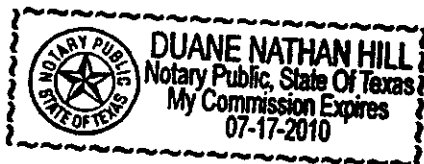
5. The rationale for the treatment is that fibrotic changes in the soft tissues in and around the spine, shoulder and other joints which hinder movement sometimes require a patient to be anesthetized in order to reduce muscle tone and protective reflex mechanisms so that the spine, shoulder or other joints can be manipulated effectively. This maneuver is intended to break up adhesions and stretch the fibrotic tissue to a length compatible with motion, thereby increasing joint function and reducing pain. For example, MUA frequently is used to treat the medical condition of adhesive capsulitis of the shoulder, commonly known as "frozen shoulder". The manipulation of the shoulder joint, including necessary tearing of contracted tissue, would be unbearable for a conscious patient; consequently, the patient is anesthetized so the procedure can be performed.

6. I have used MUA in my practice for a number of years in appropriate cases. MUA is considered to be a surgical procedure and is designated as such in the CPT codes that all health care providers, insurers, and the government use. There are risks of significant medical consequences and serious potential complications associated with these procedures which include, among others; internal bleeding, unintended tearing of other soft tissue structures, detachment of ligaments and tendons, bone fractures, dislocation of joints, herniation of spinal discs, and the devastating potential of spinal cord or neural compression with resulting paralysis. For these obvious reasons, MUA is conducted only those surgical specialists able to immediately evaluate the presence of a complication, and to promptly and properly treat the iatrogenic injury (created by the manipulation) immediately after the procedure. In many cases, the proper evaluation of the manipulated area include the use of arthroscopy to fully assess the joint and to further remove adhesions broken down by the manipulation. In my opinion, a person licensed as a chiropractor is not qualified to perform an MUA because it is an operative procedure, which may require invasive surgical intervention. Furthermore, chiropractors are neither trained nor licensed to make the pre-operative and post-operative diagnoses, nor deal with the potentially disabling complications of this radical form of operative treatment.

  
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DAVID TEUSCHER, M.D.

SUBSCRIBED AND SWORN TO before me on this 21<sup>st</sup> day of August, 2006, to certify which witness my hand and official seal.

  
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Notary Public in and for the State of Texas



STATE OF TEXAS

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AFFIDAVIT

COUNTY OF TRAVIS

BEFORE ME the undersigned authority on this day personally appeared Sara Austin, known to me to be the person whose name is subscribed below who after having been by me duly cautioned and sworn did state to me upon her oath as follows:

1. My name is Sara Austin. I am over the age of eighteen and a licensed Texas physician. I have completed an internship, a neurology residency, and a neurological fellowship in electromyography. I am board certified by the American Board of Neurology and Psychiatry and the American Board of Electrodiagnostic Medicine. The statements made in this affidavit are within my personal knowledge and true and correct.

2. I am a member and serve on the board of directors of the Texas Neurological Society. It has over 400 member neurologists. I am also a member of the American Academy of Neurology which has 18,000 members nationwide. The majority of the statements made in this affidavit about EMG are directly quoted from position papers from both societies which I fully agree with (Texas Neurological Society Position Statement: Electromyography as the Practice of Medicine. American Academy of Neurology: AAN Position Statement; Diagnostic Electromyography is the Practice of Medicine).

3. Electromyography (EMG) is the practice of medicine. EMG involves the use of inciseive needle electrodes to examine the integrity of the peripheral nervous system (the nerves leaving the spinal cord and brain and traveling to the face, trunk, arms, and legs; and the muscles which they innervate). It is a purely diagnostic test, it has no therapeutic value. The diagnostic interpretation of the test takes place during the examination and cannot be recorded or reviewed. The proper sites and methods of introducing the needle electrode are determined as the test is in progress and depends upon the real time observations of the examiner. This process requires extensive training and experience and involves complex medical decisions that can only be made during the actual performance of the test.

4. The diseases that EMG diagnoses are purely neurological and include:
- a. Focal neuropathies or compressive lesions such as carpal tunnel syndrome, ulnar neuropathies, or root lesions for localization.
  - b. Traumatic nerve lesions for diagnosis and prognosis
  - c. Diagnosis or confirmation of suspected generalized neuropathies, such as diabetic, uremic, metabolic, inflammatory, or immune. This includes motor neuron diseases, such as Werdnig-Hoffman disease and ALS (Lou Gehrig's disease).
  - d. Repetitive nerve stimulation in diagnosis of neuromuscular junction disorders such as myasthenia gravis and myasthenic syndromes.

e. Primary muscle diseases such as muscular dystrophy (Duchenne's muscular dystrophy would be an example), and the inflammatory myopathies.

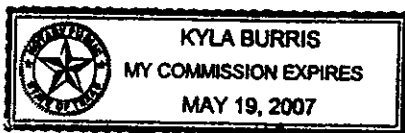
5. Results of these tests are used to base critical medical decisions regarding the need for surgery and further testing. Many of these diseases or injuries require surgery or the use of oral or intravenous prescription medication for treatment.

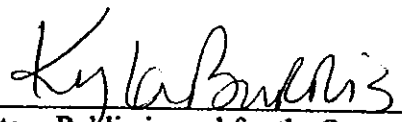
6. The proper performance of an EMG exam is imperative for patient safety. Needles are often inserted into muscles in the upper shoulder, over the ribcage, and along the spine. The examiner must have extensive knowledge of the anatomy of those body regions to prevent serious injury to underlying organs, such as the lung and liver. In addition, the examiner must be able to diagnose and emergently care for an injury caused by the EMG exam, should it occur.

7. EMG is a purely diagnostic test, only used to diagnose disorders of the nervous system, very complex to perform, and poses risk to the patient. The physicians who perform this test are extensively trained for years in the diseases of the nervous system and also the performance of the test. A recent study demonstrates that extensive training is necessary for electromyographers, not only in the recognition of abnormal spontaneous activity and in motor unit analysis, but in clinical application of these data. The consequences to a patient of having an untrained person doing the study would include erroneous or missed diagnosis, delay of treatment, potentially unnecessary surgery, and potential injury from the examination itself.

  
SARA AUSTIN, M.D.

SUBSCRIBED AND SWORN TO before me on this 15 day of August, 2006, to certify which witness my hand and official seal.



  
Notary Public in and for the State of Texas