



Physicians Caring for Texans

July 12, 2012

Ms. Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
333 Guadalupe St.
Tower III, Suite 825
Austin, Texas 78701

Re: Proposed Rules, Title 22 Texas Administrative Code, section 75.15, Applications and Applicants; and 22 Texas Administrative Code, section 75.17, Rules of Practice.

Dear Ms. Yarbrough:

The Texas Medical Association (TMA) is a private, voluntary, nonprofit association of Texas physicians and medical students. TMA was founded in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and improvement of public health. Today, our maxim continues in the same direction: “Physicians Caring for Texans.” TMA’s diverse physician members practice in all fields of medical specialization.

On behalf of our over 45,000 member physicians, TMA appreciates this opportunity to review and offer comments on proposed rules, Title 22 Texas Administrative Code, section 75.15, Applications and Applicants; and 22 Texas Administrative Code, section 75.17, Rules of Practice.

Title 22 Texas Administrative Code, section 75.15, Applications and Applicants

Proposed section 75.15 would recognize a specialty of “chiropractic neurology.” TMA finds this proposal very problematic for two reasons. First, “neurology” connotes the practice of medicine. If TBCE recognizes “chiropractic neurology” as a specialty, it will confuse, deceive and potentially injure the public. Second, neurology is beyond the lawful scope of practice of chiropractic in Texas, so a “chiropractic neurology” specialty is inappropriate.

Many definitions exist supporting the argument that neurology and neurologist are terms that the public will interpret to mean a physician practicing medicine. For example, Webster’s dictionary defines neurologist as “one specializing in Neurology; especially: a *physician* skilled in the diagnosis and treatment of disease of the nervous system.” Dictionary.com defines a neurologist as “a *physician* specializing in neurology.” Mosby’s Medical Dictionary defines neurologist as “a *physician* who specialized in the nervous system and its disorders.” Even Wikipedia defines a neurologist as a physician, and neurology as a “*medical specialty* related to the human nervous system.” All of these definitions regard a neurologist as a physician, and neurology as a medical specialty involving the nervous system. Chiropractors are not physicians. Neurology and the human nervous system are beyond the scope of chiropractic. Allowing a chiropractor to refer to himself or herself as a chiropractic neurologist is misleading and completely inappropriate. In fact, one who “publicly professes to be a physician or

surgeon” is “practicing medicine.” TEX. OCC. CODE § 151.002(a)(13). In this case, a chiropractor using the designation of “chiropractic neurologist” would be practicing medicine in Texas without a license.

This proposed rule is not in harmony with the Texas Chiropractic Act, the Healing Art Identification Act, or the Health Professions Council Statute. The Texas Chiropractic Act defines the practice of chiropractic as using “objective or subjective means to *analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body,*” or performing “nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve *the subluxation complex or the biomechanics of the musculoskeletal system.*” The Chiropractic Act makes no reference to neurology. Neurology does not involve the biomechanics of the spine and musculoskeletal system. Neurology is clearly beyond the scope of chiropractic in Texas, and this proposed rule is a brazen effort by the board to circumvent Texas statutory law to expand chiropractors’ scope.

Furthermore, the Healing Art Identification Act and the Health Professions Council Statute are both bodies of Texas law with the purpose of ensuring that patients can clearly identify and distinguish healing arts practitioners, rather than be subjected to false, misleading or deceptive advertising regarding the practitioner’s license and care the practitioner is authorized to provide. In fact, section 101.201 of the Texas Occupations Code specifically prohibits the type of designation the board has proposed to authorize. It states,

§101.201. False, Misleading, or Deceptive Advertising

(b) False, misleading, or deceptive advertising or advertising not readily subject to verification includes advertising that:

(9) represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

A violation of section 101.201 is grounds for revocation or denial of a license by the appropriate health licensing agency, as well as grounds for action by the consumer protection division of the office of the attorney general. See TEX. OCC. CODE §101.204. Furthermore, the person violating this statute is liable for civil penalties and reasonable expenses incurred in obtaining an injunction, including court costs, reasonable attorneys’ fees, reasonable investigative costs, witness fees, and deposition expenses. See TEX. OCC. CODE § 101.251 and § 101.252.

The Texas Legislature has long been concerned about the potential for misidentification by healing arts practitioners. Chapter 104 of the Occupations Code requires a person to designate the healing art the person is licensed to practice. The purpose of this statute is to ensure that patients are not misled or confused regarding the person’s licensure. Section 104.003(e) specifically pertains to chiropractors and provides, “A person who is licensed by the Texas Board of Chiropractic Examiners shall use: (1) chiropractor; (2) doctor, D.C.; (3) doctor of chiropractic; or (4) D.C.” Violation of Chapter 104 subjects one to criminal penalties. See TEX. OCC. CODE § 104.007.

Many chiropractors today are already pushing the envelope in their advertisements, burying the designations required under section 104.003(e) such that patients become confused as to whether or not the chiropractor is a physician. Indeed, allowing chiropractors to call themselves chiropractic neurologists would further confuse and mislead the public. Is this individual a neurologist *and* a chiropractor? Could it be a neurologist that also does adjustments? Will this individual be able to refer to himself or herself as

simply a neurologist? For example, a chiropractor named Michael Siefman is identified on multiple websites as, “Board certified since 1992, he has been *practicing as a neurologist* since that time...” See, e.g., www.jvra.com. This type of confusion and mischaracterization cannot be permitted in Texas, yet the TBCE is proposing rules to not only authorize but also welcome such behavior.

Neurologists practice in one of the most complex and highly specialized areas of medicine—to allow chiropractors to use that designation would confer upon them a title that is obtained only after medical school, years of residency training, and obtaining board certification. See, e.g., American Board of Medical Specialties, www.abms.org. Could an acupuncturist treating headaches become an acupuncture neurologist, an attorney specializing in brain injury litigation become an attorney neurologist, or a nutritionist who professes to assist in mental acuity become a nutritionist neurologist?

TMA is very concerned that not only will patients be deceived and misled, but many could also suffer injury and harm, for example by delayed diagnosis. A patient suffering headaches, syncope, or seizures could have a serious neurological disease, but that patient could easily find himself or herself in a “chiropractic neurologist’s” office. The patient could easily be deceived into believing that this chiropractor could diagnose or treat his or her medical condition, including a brain tumor, aneurism, or stroke.

This proposed rule serves to mislead, confuse, and even defraud the public. It also tacitly authorizes the practice of medicine. TMA therefore strongly urges the board to withdraw its proposed rules in section 75.15.

Title 22 Texas Administrative Code, section 75.17, Rules of Practice

The proposed definitions in section 75.17 venture to allow by rule that which is not allowed by statute. The Legislature has unambiguously restricted the scope of chiropractic. A chiropractor is authorized only “to analyze, examine or evaluate the *biomechanical condition* of the *spine and musculoskeletal system* of the human body.” TEX. OCC. CODE § 201.002(b)(1) (Vernon’s 2010). The board has proposed to define biomechanics in such a way as to encompass more of the human body than what the legislature intended when it used the term.

Biomechanics

Although there is a plethora of authoritative and widely acceptable definitions for “biomechanics,” TBCE has chosen to create its own. The board’s proposed definition for biomechanics is:

- (1) Biomechanics—the interaction of components of the human musculoskeletal system (such as the bones, muscles, ligaments, and tendons) with each other and with the nervous system that allows a body or part of a body to move from one place or position to another or to maintain position.

Although the Texas Chiropractic Act *limits* the scope of chiropractic with its term biomechanical, it is interesting that the board has chosen to take that term and redefine it in a way that actually *expands* the scope of chiropractic. TMA urges the board to consider the following reliable and authoritative definitions as an alternative to the one it has proposed:

“The mechanics of biological and especially muscular activity (as in locomotion or exercise); also: the scientific study of this.” Merriam-Webster Dictionary.

“The study of the mechanics of a living body, especially of the forces exerted by muscles and gravity on the skeletal structure.” The American Heritage Dictionary of the English Language (4th Ed. 2000).

“The study of the mechanical laws relating to the movement or structure of living organisms.” Oxford English Dictionary.

“The study of mechanical laws and their application to living organisms, especially the human body and its locomotor system.” CR 1493, Mosby’s Medical Dictionary, p. 217.

“The application of mechanical laws to living structures, as to a locomotor system.” CR 1507, Dorland’s Illustrated Medical Dictionary, p. 221.

“The science concerned with the action of forces, internal or external, on the living body.” CR 1500, Stedman’s Medical Dictionary, p. 221.

“The application of the principles and techniques of mechanics to the structure, function and capabilities of living organisms.” CR 1514, Webster’s New World Dictionary, p. 140.

None of these definitions makes any reference to the nervous system. TMA searched medical and other dictionaries and was unable to locate any definition of biomechanics that includes nerves or the nervous system. The Chiropractic Act does not mention nerves or the nervous system, as the nervous system is beyond the scope of chiropractic. As Mr. Glenn Parker correctly stated while he was Executive Director of TBCE:

“[The Chiropractic Act] does NOT say the ‘neuro-musculoskeletal system’-it just says musculoskeletal system, the spine, the subluxation complex and improving the biomechanics of the musculoskeletal system. It does not say anything about the circulatory system, the central nervous system, the endocrine system, the immune system, the lymphatic system, the digestive system, etc.”

March 3, 2010 email from Glenn Parker to Larry Montgomery and Ken Perkins. In that same email, Mr. Parker stated that the board is “...*not ultimately free to define fully what chiropractic is or is not in Texas...The Board cannot unilaterally go beyond the statute.*”

It is inappropriate for the TBCE to manufacture its own definition of biomechanics in such a way that it circumvents the statutory limitations placed on the scope of chiropractic. This proposed rule incorporates terms to ultimately encompass procedures and areas of practice that are prohibited by statute. As Mr. Parker stated on March 3, 2010, “I understand that a person can link all ills in the body with having an effect on the musculoskeletal system, but I don’t think that means that it is within scope of DCs in Texas to treat anything and everything that may be wrong with the human body.” Proposing this new, overly broad, and apparently baseless definition of biomechanics is yet another effort by TBCE to circumvent the law.

TMA urges the TBCE to adopt one of the more acceptable and established definitions of biomechanics, and to remove reference to the nervous system from the definition.

Subluxation

There is disagreement among chiropractors as to the definition of subluxation or subluxation complex, as well as to its existence. In fact, the General Chiropractic Council has issued a guidance on the use of the term because, "it is not supported by any clinical research evidence." Regardless, the Texas Legislature has authorized chiropractors to treat subluxation complex. In that regard, TMA does not disagree that defining the term is appropriate. TMA is aware that the board has proposed the World Health Organization's definition of subluxation. TMA prefers the board using the WHO definition, rather than the board creating its own definition as it has done with its proposal for biomechanics.

Finally, TMA supports the board clarifying that cosmetic treatments are not within the scope of chiropractic. As chiropractors are limited to analyzing, examining, or evaluating the biomechanical condition of the spine and musculoskeletal system, and to improving the subluxation complex or the biomechanics of the musculoskeletal system, cosmetic procedures are clearly outside the scope of chiropractic.

TMA appreciates the opportunity to comment on the proposed rules, and is optimistic that the board will consider these comments in its reevaluation of the appropriateness of the proposed rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Speer, MD". The signature is fluid and cursive, with a large initial "M" and "S".

Michael E. Speer, MD
President

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