

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.17, relating to Scope of Practice, to address several matters. First, the Board has recognized the need to define additional terms in order to improve the clarity of the rule. Second, the Board is clarifying that cosmetic treatments, needle electromyography, and manipulation under anesthesia are not within the scope of practice.

The Board proposes adding definitions for biomechanics, cosmetic treatment, and subluxation in subsection (b). These terms are not defined in the Chiropractic Act, and as such, the Board proposes these definitions.

Next, the Board proposes deleting subsection (c)(3)(A) and its subparts that deal with needle electromyography (needle EMG). The 3rd Circuit Court of Appeals recently ruled that this procedure is outside of the chiropractic scope of practice due to its incisive nature. Although the Texas Medical Association filed a Petition for Review with the Supreme Court of Texas in this case, the Board feels that proposing the amendment at this time is in the best interest of the public.

The Board also deletes in subsection (e)(2) “manipulation under anesthesia” (MUA) as a treatment procedure and service that is within the scope of practice for chiropractors in Texas. This amendment is in response also to the 3rd Circuit Court of Appeals decision ruling that MUA is outside the chiropractic scope of practice due to its surgical nature. Again, while the Texas Medical Association filed a Petition for Review with the Supreme Court of Texas in this case, the Board feels that proposing the amendment at this time is in the best interest of the public

Finally, in subsection (e)(3) the Board adds cosmetic treatments to treatment procedures and services that are outside the scope of practice for chiropractors in Texas. This addition is in response to the Board’s Enforcement Committee noticing an increase in the number of complaints involving licensees advertising and/or performing cosmetic treatments.

Ms. Yvette Yarbrough, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments. Ms. Yarbrough has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this amendment will be in effect.

Ms. Yarbrough has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be to clarity in the scope of practice for chiropractors in Texas.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Yvette Yarbrough, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, TX

78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

These amendments are proposed under Texas Occupations Code § 201.152 and § 201.1525. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 requires that the Board adopt rules clarifying what activities are included within the scope of practice of chiropractic and what activities are outside of that scope.

No other statutes, articles, or codes are affected by the proposed amendment.

§75.17 Scope of Practice

(a) Aspects of Practice.

(1) (No change.)

(2) (No change.)

(3) 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.

~~[(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.]~~

~~[(B) The use of a needle for a procedure is surgical if the procedure is listed in the surgical section of the CPT Codebook.]~~

(4) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Biomechanics--the interaction of components of the human musculoskeletal system (such as the bones, muscles, ligaments, tendons, and joint capsules) 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.

(2) [(4)] Board--the Texas Board of Chiropractic Examiners.

(3) [(2)] CPT Codebook--the American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.

(4) Cosmetic treatment--a treatment that is primarily intended by the licensee to address the outward appearance of a patient.

(5) [(3)] Incision—a [A] cut or a surgical wound; also, a division of the soft parts made with a knife or hot laser.

(6) [(4)] Musculoskeletal system—the [The] system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.

(7) [(5)] On-site--the presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(8) [(6)] Practice of chiropractic--the description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(9) Subluxation--a lesion or dysfunction in a joint or motion segment in which alignment, movement integrity and/or physiological function are altered, although contact between joint surfaces remains intact. It is essentially a functional entity, which may influence biomechanical and neural integrity.

(10) [(7)] Subluxation complex--a neuromusculoskeletal condition that involves an aberrant relationship between two adjacent articular structures that may have functional or pathological sequelae, causing an alteration in the biomechanical and/or neuro-physiological reflections of these articular structures, their proximal structures, and/or other body systems that may be directly or indirectly affected by them.

(c) Examination and Evaluation.

(1) (No change.)

(2) To evaluate and examine individual patients or patient populations, licensees of this board are authorized to use:

(A) physical examinations;

(B) diagnostic imaging;

(C) laboratory examination;

(D) electro-diagnostic testing, other than an incisive procedure;

(E) sonography; and

(F) other forms of testing and measurement.

(3) Examination and evaluation services which require a license holder to obtain additional training or certification, in addition to the requirements of a basic chiropractic license, include:

~~[(A) Electro-neuro Diagnostic Testing training requirements and standards (paraspinal surface electromyography excluded) include:]~~

~~[(i) Board approved training consisting of one hundred and twenty (120) hours of initial clinical and didactic training in the technical and professional components of the procedures or completion of a neurology diplomate program with sixty (60) hours of certification training in the technical and professional components of the procedures (these hours may be applied to a doctor's annual continuing education requirement);]~~

~~[(ii) The professional component 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-site during the technical component of the procedures;]~~

~~[(iii) The technical component of these procedures may be delegated to a technician if, said technician meets the training requirements of this section and is a licensed health care provider authorized to provide those services under Texas law;]~~

~~[(iv) The technical component of surface (non-needle) procedures may be delegated to a technician that has successfully completed Board approved training consisting of sixty (60) hours of initial clinical and didactic training in the technical component of the procedures; and]~~

~~[(v) Procedures must be performed in a manner consistent with generally accepted parameters, including clean needle techniques, standards of the Center for Communicable Disease, and meet safe and professional standards.]~~

(A) ~~[(B)]~~ Performance of radiologic procedures, which are authorized under the Texas Chiropractic Act, Texas Occupations Code, Chapter 201, may be delegated to an assistant who meets the training requirements set forth under §78.1 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(B) ~~[(C)]~~ Technological Instrumented Vestibular-Ocular-Nystagmus Testing may be performed by a licensee with a diplomate in chiropractic neurology and that has successfully completed 150 hours of clinical and didactic training in the technical and professional components of the procedures as part of coursework in vestibular rehabilitation including the successful completion of a written and performance examination for vestibular specialty or certification. The professional component of these procedures may not be delegated to a technician and must be directly performed by a qualified licensee.

(d) (No change.)

(e) Treatment Procedures and Services.

(1) (No change.)

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture and other reflex techniques;

(D) exercise therapy;

(E) patient education;

(F) advice and counsel;

(G) diet and weight control;

(H) immobilization;

(I) splinting;

(J) bracing;

(K) therapeutic [~~Therapeutic~~] lasers (non-invasive, non-incisive), with adequate training and the use of appropriate safety devices and procedures for the patient, the licensee and all other persons present during the use of the laser;

(L) durable medical goods and devices;

(M) homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, nutraceuticals, and glandular extracts;

(N) non-prescription drugs;

~~[(O) manipulation under anesthesia;]~~

(O) [~~(P)~~] referral of patients to other doctors and health care providers; and

(P) [~~(Q)~~] other treatment procedures and services consistent with the practice of chiropractic.

(3) The treatment procedures and services provided by a licensee which are outside of the scope of practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials;
[Ø]

(D) cosmetic treatments; or

(E) [~~(D)~~] other treatment procedures and services that are inconsistent with the practice of chiropractic and with the treatment procedures and services described under this subsection.

(f) (No change.)