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Texas State Senate Considers Bill to Clarify Chiropractors' Diagnosis Authority

From the Texas Chiropractic Association: On Wednesday, April 5th, the Sunset bill for the Texas Board of Chiropractic Examiners (Senate Bill 304 by Sen. Van Taylor) passed the Texas Senate unanimously. SB 304's passage is critical to the chiropractic profession and its patients as it, among other things, clarifies that the practice of chiropractic includes the authority of Doctors of Chiropractic to diagnose the biomechanical condition of the spine and musculoskeletal system. The bill also continues the Texas Board of Chiropractic Examiners as a standalone agency for 12 years and eliminates the requirement that chiropractic facilities be registered with the Board. SB 304 has been sent to the Texas House of Representatives, where it will likely be considered in the next few weeks. This same bill was passed by the Texas Senate Health and Human Services Committee on March 29th by an 8-0 favorable vote.

This action takes place in the context of a November, 2016 court ruling in a case filed by the Texas Medical Association (TMA). Of that ruling, the Texas Chiropractic Association reported the following:

In a final judgment, Travis County District Court Judge Rhonda Hurley determined that the Texas Board of Chiropractic Examiners' (TBCE's) rules permitting chiropractors to make medical diagnoses and perform other medical procedures exceed the chiropractic scope of practice. By voiding the rules, Texas chiropractors can't perform vestibular-ocular-nystagmus (VON) testing. The court also specified that the definitions of "musculoskeletal system" to include "nerves," "subluxation complex" as a "neuromusculoskeletal condition," and use of the term "diagnosis" by TBCE in its rules all exceed the scope of practice as defined by the Texas Occupations Code.

TMA has a nearly 100 year history of litigation against the chiropractic board. TMA sued the board in early 2011 and emphasized to the court that allowing some chiropractors to perform VON testing puts Texans' health in danger, because "the eyes and ears are not part of the spine or musculoskeletal system of the human body."

TMA asked the Third Court of Appeals to uphold the trial court ruling, saying in part that: the vestibular system isn't part of the spine or musculoskeletal system, and the Chiropractic Act doesn't authorize chiropractors to make a "differential diagnosis" of a patient's medical condition.

Judge Hurley's opinion, released by the TMA, states "after considering the evidence, authorities and arguments of counsel, the Court is of the opinion and so finds that the provisions [of TBCE Rule 78.13] challenged by the TMA exceed the chiropractic scope of practice as defined by the Legislature..."

She further declares "the authorization for certain chiropractors to perform 'technological Instrumented Vestibular-Ocular-Nystagmus' in [rule 78.13] exceeds the scope of chiropractic ... and is therefore void; the definition of 'musculoskeletal system' to include 'nerves' ... exceeds the scope of chiropractic ... and is therefore void; the definition of 'subluxation complex' as a 'neuromusculoskeletal condition' ... exceeds the scope of chiropractic ... and is therefore void; and the use of the term 'diagnosis' ... exceeds the scope of chiropractic ... and is therefore void."

According to a release by the Texas Medical Association posted on November 1, 2016, "TMA has always maintained that expanding chiropractors' or any other practitioner group's scope of practice requires legislative action to amend state laws governing licensees in Texas. It is not something the regulatory boards can do on their own."

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