

## Court Defends DC Scope in Texas Again

By James Edwards, DC

For the past few years, Texas DCs have been under **full frontal attack** by the Texas Medical Association in regard to diagnosis and scope of chiropractic practice. In defense of our patients and the chiropractic profession, Texas doctors of chiropractic have fought back valiantly. In fact, members of the Texas Chiropractic Association contributed over \$25,000 at a single luncheon after Dr. Fabrizio Mancini, Dr. Richard Brassard, and this author addressed the attendees back in June. And their commitment has paid off! On Nov. 21, 2012, the Texas Third Court of Appeals reversed summary judgment against the Texas Board of Chiropractic Examiners and ordered the case back to the trial court to proceed.

Since I am not an attorney, I will not give you my legal opinion. Instead, I will provide the pertinent points directly from the court's decision and which are very clear.

"The Texas Medical Association ('TMA') sued the Texas Board of Chiropractic Examiners ('the Board') and its executive director seeking a declaration that portions of the Board's administrative rule defining the scope of chiropractic practice were invalid. ... The rule provisions at issue purport to authorize certain of the Board's licensees to perform 'Technological Instrumented Vestibular-Ocular-Nystagmus Testing'."

"Thereafter, the TMA moved for summary judgment on these grounds. The Board filed its own summary-judgment motion joining issue with the TMA's validity challenge. The district court granted the TMA's motion for summary judgment, denied the Board's motion, and declared that rule 75.17(c)(3)(C) was invalid and void in its entirety and that rule 75.17(c)(2)(F) was invalid and void to the extent it purported to permit VONT. This appeal followed."

"In its petition, the TMA alleged that 'Vestibular-Ocular-Nystagmus Testing' is used solely to diagnose a problem of the brain or inner ear. The TMA first contends that because VONT is performed on the eyes and inner ears of a patient, neither of which is part of the spine or musculoskeletal system, the rule 'ignores the statutory limitation on what a chiropractor can do by extending a chiropractor's scope of practice to the inner ears, eyes and brain.' The TMA argues that because Texas law limits the practice of chiropractic to the spine and the musculoskeletal system, there is no language in the Chiropractic Act that authorizes a chiropractor to "analyze, examine or evaluate" the brain, eyes or inner ears. The TMA maintains that chiropractors are not permitted to analyze, examine, or evaluate the eyes or inner ear and therefore may not perform VONT. **We do not agree that the statute so limits the scope of chiropractic. Rather, the statute permits chiropractors to use objective or subjective means to analyze and evaluate the biomechanical condition of the spine and musculoskeletal system. ... This means that so long as the objective or subjective means used are capable of revealing a significant fact about the biomechanical condition of the musculoskeletal system or spine, the test itself need not necessarily be a direct examination of the musculoskeletal system or spine.**"

"This interpretation is supported by section 201.002(a)(3) of the Chiropractic Act, which expressly excludes from prohibited incise or surgical procedures 'the use of a needle for the purpose of drawing blood for diagnostic testing.' ... This provision permitting chiropractors to draw and test a patient's blood reveals that the legislature did not intend to narrowly restrict the purview of a chiropractic examination solely to the musculoskeletal system and spine themselves. **We hold that the statute does not prohibit a chiropractor from examining parts of the body other than the spine and musculoskeletal system if such an examination will assist in analyzing or evaluating the biomechanical condition of the spine or musculoskeletal system.**"

"The net effect of the statutory interplay [between the Medical Practice Act and the Chiropractic Act] is that a person licensed by [the Texas Board of Chiropractic Examiners] as a chiropractor but not by the **Texas Medical Board** to 'practice medicine' (i.e., as a physician) can lawfully do things that would otherwise constitute 'practicing medicine' as long as he remains within the statutory scope of chiropractic under chapter 201. However, to the extent he exceeds the statutory scope of chiropractic, he would subject himself to the Medical Practice Act – and practice medicine unlawfully. Another consequence of this statutory interplay is a long history of professional, scientific, or economic antagonism between chiropractors and the medical community, and resultant disputes, spanning all three branches of government, regarding where any legal line between chiropractic and the practice of medicine is or should be... Under the circumstances, we believe it would be inappropriate and contrary to the legislature's intent to give deference to the Board's interpretation of the statutes governing the two disciplines. ... ('As neither statute establishes a clear line of demarcation between the professions, we believe it would be unreasonable and contrary to the legislature's intent to give total

deference to either agency's interpretation of the statutes to the extent of any overlap.')."

"For the reasons set forth above, we conclude that neither the TMA nor the Board has shown its entitlement to summary judgment regarding the validity of the rule provisions purporting to authorize certain of the Board's licensees to perform 'Technological Instrumented Vestibular-Ocular-Nystagmus Testing.'... We therefore reverse the trial court's judgment and remand the cause to that court for further proceedings."

Bottom line: Texas chiropractic won and Texas medicine lost this extremely important battle! So back to court we go with direction being provided by the Appeals Court.

"Don't Mess With Texas" bumper stickers are on a great many vehicles in this state. Perhaps it is time for a new one: "Don't Mess With Texas Chiropractic," because like the popular Texas Hold 'em card game, Texas doctors of chiropractic are "all in" on behalf of their patients!

#### *References*

1. Edwards J. "The Subluxation Complex Saves Diagnosis in Texas." *Dynamic Chiropractic*, June 3, 2012.
2. Texas Board of Chiropractic Examiners; and Yvette Yarbrough, Successor to Glenn Parker, Executive Director, Appellants v. Texas Medical Association, Appellee. Case No. 03-12-00151-CV. Memorandum Opinion by the Texas Court of Appeals, Third District at Austin, Nov. 21, 2012. Access the complete court ruling at [www.chirotexas.org](http://www.chirotexas.org).

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