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Texas Medical Association Denied

Texas diagnosis ruling: the "fat lady" has finally sung.

By James Edwards, DC

As detailed in past columns, Texas chiropractic has been under full frontal attack by the Texas Medical Association (TMA) and the Texas Medical Board with regard to diagnosis and chiropractic scope of practice.[1-3] In defense of our patients and the chiropractic profession, Texas doctors of chiropractic have fought back valiantly. Members of the Texas Chiropractic Association (TCA) have contributed many tens of thousands of dollars to legally oppose political medicine's attempt to limit our scope of practice and strip us of our authority to diagnose.

That unwavering commitment has paid off, because the "fat lady sang" on June 14, 2013, when the Texas Supreme Court denied the petition of the Texas Medical Association and the Texas Medical Board for additional review of their lawsuit against Texas Board of Chiropractic Examiners and the TCA. While there may be additional review by the lower trial court and the TMA may file for a rehearing, unless the earth moves, this issue is finally over.

Here is a thumbnail sketch of how this legal battle started – and ended. After the Texas Board of Chiropractic Examiners adopted administrative rules in 2006 appropriate for the practice of chiropractic in Texas, the Texas Medical Association filed a lawsuit to strike them down. After court hearings, the district court judge ruled that the Texas Board of Chiropractic Examiners rules should be struck down in regard to allowing DCs to diagnose subluxation complexes, and to diagnose conditions beyond the spine and musculoskeletal system for the purpose of referral.

The Texas Chiropractic Association and the Texas Board of Chiropractic Examiners then appealed. The Court of Appeals argument took place in Austin on Sept 14, 2011. The TCA's theme in the appeal was all about "deference." TCA's legal counsel stated:

"In 2006, the Texas Board of Chiropractic Examiners adopted a rule that defined the scope of practice for chiropractors in Texas. That rule was reasonable, and is entitled to deference. The trial court, however, showed the rule no deference and struck down several parts of it. This court should reverse the trial court's judgment on each of those issues."

The TCA's legal counsel then closed by stressing – on the basis of deference – that the Texas Board of Chiropractic Examiners alone has the responsibility to interpret and enforce the act, and make sure the act makes sense. It was also pointed out that Texas courts have consistently said that if an agency's interpretation of its own statute is reasonable (even if the court disagrees with the way the agency interprets it), then the court should defer to the agency, and let the agency make the decision. That principle of deferring to the agency is even stronger when the subject matter is complex, or where the subject matter requires special knowledge like it does on these issues.

On April 5, 2012, the Third Court of Appeals issued a 58-page opinion in the T*exas Board of Chiropractic Examiners and the Texas Chiropractic Association vs. the Texas Medical Association, the Texas Medical Board and the State of Texas, Cause No. 03-10-673-CV*. On the two most important issues presented by Texas Chiropractic Association, the Court of Appeals upheld the validity of the rules adopted by the Texas Board of Chiropractic Examiners.

The first rule, 75.17(d)(1)(A), permits chiropractors to render diagnoses "regarding the biomechanical condition of the spine and musculoskeletal system," and listing six typical diagnostic areas as examples of what is within the scope of practice. The Texas Court of Appeals found that the Texas Board of Chiropractic Examiners' rule does not exceed the scope of practice and struck down the district judge's ruling that prohibited unlimited authorization to diagnose.

The second rule, 75.17(d)(1)(B), permits chiropractors to diagnose subluxation complexes of the spine or musculoskeletal system, and lists three examples of what is within the scope of practice. The Texas Medical Association and Texas Medical Board had challenged that rule, claiming that the rule allowed chiropractors to diagnose neurological conditions, and pathological and neuro-physiological consequences that affect the spine and musculoskeletal system. Again, the Texas Court of Appeals disagreed with the district court judge. The Court of Appeals acknowledged that a subluxation complex could have functional or pathological consequences that affect essentially every part of the body.

And here is the best part. The Texas Court of Appeals decision's definition of the "subluxation complex" was very broad and read as follows (with emphasis added):

"TBCE's unchallenged definition of "subluxation complex" *establishes* that it is 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."[4]

The word *establishes* means the court's stated definition is now the Texas definition of the *subluxation complex.* And when you combine the two "neuro" references in the definition with "other body systems," it is broad indeed.

As a result of the Supreme Court's denial to review the case, the Texas Court of Appeals decision stands. Thus, Texas doctors of chiropractic will continue to be able to practice under the current laws and rules, and most importantly, our authority to "analyze, examine, or evaluate" (synonyms for "diagnose") remains in full force.

As we finish this ugly chapter of political medicine's latest effort to "contain and eliminate" the chiropractic profession, I want to congratulate the hundreds of Texas DCs who pulled out their checkbooks to protect and defend the chiropractic profession on behalf of the patients we serve. I am so proud of my Texas colleagues, who, in the words of Civil War General J.E.B. Stuart, "mounted up and rode to the sound of guns."

I will close with these words of advice for the American Medical Association and the Texas Medical Association, who wasted several hundred thousand dollars in their ill-advised and unsuccessful legal effort: "Don't mess with Texas chiropractic!"

References

1. Edwards J. "What Happens in Texas Won't Stay in Texas." *Dynamic Chiropractic*, Jan. 1, 2012.
2. Edwards J. "The Subluxation Complex Saves Diagnosis in Texas." *Dynamic Chiropractic*, June 3, 2012.
3. Edwards J. "Court Defends DC Scope in Texas Again." *Dynamic Chiropractic*, Jan. 1, 2013.

4. Texas Court of Appeals, Third District at Austin, Cause No. 03-10-673-CV. April 5, 2012, page 57.

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