



**345TH DISTRICT COURT  
TRAVIS COUNTY COURTHOUSE  
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November 24, 2009

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Re: Cause No. D-1-GN-06-003451; *Texas Medical Association and Texas Medical Board v. Texas Board of Chiropractic Examiners, Glen Parker, Executive Director, and Texas Chiropractic Association; in the 250<sup>th</sup> Judicial District of Travis County, Texas*

Dear Counsel:

The statute excludes surgical procedures from the practice of Chiropractic, and it is undisputed that MUA is defined as a surgical procedure. The Board of Chiropractic and the Chiropractic Association contend that the sentence "the board may not adopt a process to certify chiropractors to perform manipulation under anesthesia" is a clear exception. It is not. That the legislature intended both to authorize chiropractors to perform MUA, the exclusion of surgery notwithstanding and intended to go the further step of prohibiting the Board from even requiring special competence to perform MUA is possible. But the language might also indicate a

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At  
Amalia Rodriguez-Mendoza Clerk

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legislative intent to make clear that MUA was not only prohibited generally but also could not be authorized by certification of special competence. Given the ambiguity of the statutory language, the legislative history is pertinent.

The transcript of the debate in the legislature clearly reveals that the majority approving Representative (Dr.) Janek's amendment intended to prohibit the Board of Chiropractic from allowing any chiropractor to perform MUA.

The statute precludes chiropractors from performing an "incisive procedure," which includes "making an incision into any tissue by any person or implement" but does not include use of a needle for the purpose of drawing blood for diagnostic testing. Incision is not defined, and its ordinary meaning is a surgical cut or wound. Whether the ordinary meaning would include a needle entry is subject to debate. The exception for the use of a needle for the purpose of drawing blood, however, would be superfluous if the legislature had not meant "incision" to include a needle entry. There is no ordinary meaning of "incision" that refers to "removal." There was no basis, therefore, for the Board to construe the exception as directed to a prohibition on removal of tissue.

Additionally, the legislative history of the "incisive procedure" prohibition is that the House passed Representative Janek's amendment (#12) removing language that would have created exceptions for acupuncture and needle EMG.

Turning to the Board's use of the word "diagnosis" in its rules, the statutory language does not preclude it. There is no statutory definition of the word, and its ordinary meaning is the identification of the nature or cause of a condition, which is not different substantively from "evaluation" or "analysis." The issue is not the word, but the scope of practice – diagnosis *of what and for what purpose*.

I will grant TMA & TMB's motion for partial summary judgment as to MUA and needle EMG and TBCE and TCA's motion for partial summary judgment as to "diagnosis" in part, concluding that the statute, without consideration of scope of practice evidence and arguments, does not preclude the use the word. I am reserving judgment on TMA and TMB's claim that construing the statute to permit particular rules of diagnosis would impermissibly allow the TBCE to authorize the practice of medicine. Expert testimony is pertinent to that question.

All of the objections are moot, as no evidence was pertinent to the statutory construction

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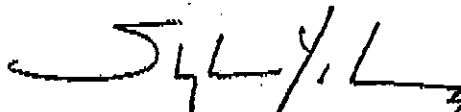
<sup>1</sup> Representative Uher, by amendment (#10) and without objection, had also himself removed those exceptions due, in part, to concerns raised by Representative Janek. (TMA MSJ Tab 4, page 34 and 182).

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questions considered and decided, except the undisputed legislative history and CPT Codebook.

Sincerely,



Stephen Yelenosky  
Judge, 345th District Court  
Travis County, Texas

SY/ar

Original: Hon. Amalia Rodriguez-Mendoza, District Clerk

