

Texas DCs Fighting a Modern-Day Goliath

TEXAS CHIROPRACTORS DEFEND THEIR RIGHT TO DIAGNOSE AS THE POWERFUL TEXAS MEDICAL ASSOCIATION BACKS THEM INTO A CORNER.

Peter W. Crownfield

With their ability to perform [needle electromyography and manipulation under anesthesia](#) already in severe jeopardy courtesy of a November 2009 summary judgment by Judge Stephen Yelenosky, the 4,800-plus practicing chiropractors in Texas now face an even more ominous threat to their scope of practice - the right to diagnose - that could set a dangerous precedent for the profession nationwide.

While Yelenosky tabled the diagnosis issue when making his ruling regarding needle EMG and MUA late last year, the Texas Medical Association (TMA) is still pushing with its substantial political clout - and millions in PAC funds - for diagnosis to be declared completely outside chiropractic scope of practice. In his summary judgment, Yelenosky stated that he was reserving judgment on whether diagnosis constitutes the practice of medicine because "expert testimony is pertinent to that question."

However, on Aug. 17, 2010, Yelenosky issued a letter of intent announcing his intended ruling regarding the issue of diagnosis. While it is unknown as of press time when he will issue his ruling and how the TMA will react in the interim, the letter strongly suggests that diagnosis will be permitted in chiropractic practice - but that its application will be severely limited.

After reviewing the Yelenosky letter of intent, the Texas Chiropractic Association (TCA), a voluntary defendant in the TMA's suit against the Texas Chiropractic Board of Examiners, said it "believes TMA will likely appeal the ruling, when issued, because it does not completely eliminate chiropractors' ability to diagnose. The AMA and TMA have published on their websites the [medical] profession's intent to decrease the scope of practice of all complementary and alternative health care providers. Their list begins with chiropractors."

Fighting for Professional Livelihood



The Texas Medical Association filed suit against the Texas Board of Chiropractic Examiners in May 2006, alleging that needle EMG and MUA are surgical procedures and that diagnosis is a medical act by definition. Within months, the Texas Board of Medical Examiners joined the suit while the TCA, the state's sole chiropractic membership association and one of the largest in the country, joined the chiropractic board voluntarily as a defendant.

In an exclusive interview with Dr. Carter, Dr. Kevin Raef, TCA coordinator of governmental affairs, and TCA Executive Director Patte Kent, Dr. Carter noted that the current chiropractic practice act uses the definition of diagnosis, but not the term. It is the TMA's contention that the term *diagnosis* is synonymous with the practice of medicine and thus is reserved for MDs and DOs. In his letter of intent, Yelenosky explains that the medical dictionary definition of *diagnosis* does not limit its application to medical doctors only. How the TMA will respond to this conclusion is unknown at this time.

The TCA is hoping to introduce legislation that would revise the state's 1989 chiropractic practice act to ensure diagnosis is clearly included in chiropractic scope in its most expansive form. According to Drs. Carter and Raef, legislation to revise the act would use language from other states' practice acts to create a more universal statute that would not only help Texas DCs, but also assist other states whose practice acts may require modification down the road.

Political, Not Personal?

Dr. Carter said that in his opinion, most medical doctors are not aware of the current suit, and Texas chiropractors generally have good working relationships with MDs, DOs and orthopedic surgeons throughout the state. He believes a select few within the TMA are responsible for pushing the suit forward and are motivated by "greed, diminishing health care dollars and a desire to

monopolize the health care marketplace."

<p>Recent/Ongoing Advocacy Efforts by the TCA</p> <ul style="list-style-type: none">• Hired Anthony Phillips, a former Texas Supreme Court justice, as an appeals attorney• In the process of hiring several state lobbyists to help introduce legislation to change the practice act to include a clear definition of diagnosis applicable to chiropractic• Raised approximately \$85,000 from various sources including the American Chiropractic Association, Parker College of Chiropractic and Texas Chiropractic College• Hired a PR firm to help develop multiple media messages, including newspaper articles, radio spots, etc., to reinforce the chiropractor's right to diagnose and their overall value in patient care• Nearing completion of a patient advocacy Web site that will be similar to the ACA's ChiroVoice.org in its ability to allow patients to contact their state legislators

According to Dr. Carter, medical doctors in Texas (as in many areas of the country) are facing patient overload and doctor shortages in underserved areas. With that said, he questions why the average medical doctor would want to limit or altogether eliminate the referral relationship between MDs and DCs. He also emphasized that the TCA's ongoing public-relations activities are not designed to polarize the medical and chiropractic professions in the eyes of the consumer, but rather to focus squarely on how removing or even restricting DCs' right to diagnose would impact patient choice and access to chiropractic care.

Texas Medical Association vs. Chiropractic: Not the First Time

DC readers will recall that in May 2006 at the American Medical Association's interim meeting in Dallas, the TMA delegation introduced Resolution 814, Limited Licensure Health Care Provider Training and Certification Standards. The resolution was designed specifically to study the qualifications, education and academic requirements of "limited licensure health care providers and limited independent practitioners," including doctors of chiropractic. The resolution called for the TMA to allocate \$171,975 to help fund and publish the study, and to provide a report of findings at the AMA's annual meeting later that year.

While it is not clear what the results of that study were or how any results may have played a role in the TMA's latest actions, what is clear is that the TMA is not afraid to flex its muscle when it comes to protecting its interests at the expense of non-MD/DO professions.

Defending Chiropractic: A Call for Profession-Wide Support

The TCA has filed 21 motions to dismiss the lawsuit and recently filed a motion for jury trial (which it has been requesting for the past year). In response, the TMA submitted its latest motion questioning TCA's standing to even be a party in the lawsuit and contending that Texas chiropractors have no legal interest in what the TMA constitutes as the unauthorized practice of medicine. As of press time, the TCA has been allowed to move forward with its defense of the scope-of-practice issue and remains a co-defendant, while a decision has not been made regarding

a jury trial. If his lengthy and detailed letter of intent is any indication, Yelenosky plans on issuing a ruling regarding diagnosis in the near future, which would make the possibility of a jury trial that much more unlikely.

When legislation to revise the state's existing chiropractic scope of practice is introduced, the TCA said it plans on recruiting chiropractic organizations including the ACA, ICA and others to help get the act changed. The Association of Chiropractic Colleges and its member institutions will also be contacted for financial assistance, as well as for documentation of accreditation standards and curriculum that support chiropractors' qualifications and right to diagnose.

In an official statement, Dr. Rick McMichael, ACA president, emphasized the significance of the TBCE/TCA fight against organized medicine in Texas and offered the association's complete support going forward:

"The American Chiropractic Association stands with the Texas Chiropractic Association and the Texas Board of Chiropractic Examiners in their fight against the Texas Medical Association. This attempt by the TMA to remove Texas DCs' right to diagnose their patients' condition(s) is an outright attack on DCs as doctors and as physician-level health care providers.

"Doctors of chiropractic have long been educated and trained to examine, diagnose and assume responsibility for patient care. Assuming responsibility for patient care (and for referral when needed) requires diagnosis of patients' presenting conditions. The AMA has made it clear through its approved policies and its legislative efforts that it wants to remove the right of non-MD/DO providers to diagnose or to identify themselves as 'doctors' or 'physicians.' TMA and AMA realize that the responsibility to diagnose is central to the rights and privileges of a portal-of-entry, first-contact, primary health care provider (a doctor or physician). AMA has also made it clear that it would prefer current discriminatory policies in health care to continue by repealing recent health care reform language that seeks to end such discrimination.

"ACA has offered its full legal resources, including the services of its General Counsel and funding from the National Chiropractic Legal Action Fund (NCLAF). ACA will continue to support our Texas chiropractic leaders in this effort and we encourage all doctors of chiropractic to support the battle for DCs' diagnostic privileges in Texas."

For additional information regarding this significant lawsuit, visit www.tbce.state.tx.us and www.chirotexas.org. Further developments including Judge Yelenosky's ruling and the Texas Medical Board's response will be reported in the our next (Oct. 7) print issue and posted in advance on DynamicChiropractic.com.

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