

The Subluxation Complex Saves Diagnosis in Texas

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On April 5, 2012, the Third Court of Appeals of Texas issued a 58-page opinion in Cause No. 03-10-673-CV - the Texas Board of Chiropractic Examiners (TBCE) and the Texas Chiropractic Association (TCA) vs. the Texas Medical Association (TMA), the Texas Medical Board (TMB) and the State of Texas. According to an April 6, 2012 communication by the Texas Chiropractic

Association¹, the case presented three questions for the court: 1) Are the two TBCE rules that allow chiropractors to make certain "diagnoses" valid? 2) Can chiropractors perform MUA? 3) Can chiropractors perform needle EMG? Here's what the Court of Appeals had to say in the matter:

Diagnosis

On the two most important issues presented by the TCA, the Court of Appeals upheld the validity of TBCE's Rules 75.17(d)(1)(A) and (B) ("the scope of practice rules"). The first rule, 75.17(d)(1)(A), permits chiropractors to render diagnoses "regarding the biomechanical condition of the spine and musculoskeletal system," and lists six typical diagnostic areas as examples of what is within the scope of practice. At the district court level, Judge Yelenosky had struck down that rule, stating that it created an unlimited authorization to diagnose any disease or condition, which, he said, exceeded chiropractors' scope of practice.

The Court of Appeals disagreed and reversed Judge Yelenosky's decision. The court found that the TBCE rule does not exceed the scope of practice because the rule limits chiropractors to making diagnoses of the biomechanical condition of the spine and musculoskeletal system.

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 neurophysiological consequences that affect the spine and musculoskeletal system. At the district court level, Judge Yelenosky agreed and struck down the rule because he found that it expanded the scope of chiropractic beyond what was allowed in the Chiropractic Act.

Again, the Court of Appeals disagreed with District Court Judge Yelenosky. The appeals court acknowledged that a subluxation complex could have functional or pathological consequences that affect essentially every part of the body. But the court found that the rule itself only allowed chiropractors to render a diagnosis regarding a subluxation complex of the spine or musculoskeletal system. That authority, the appeals court held, was consistent with the Chiropractic Act.

To be candid and based on the statutory language of the Texas Chiropractic Act, I was personally quite surprised that the Court of Appeals upheld diagnosis to the extensive degree it did. In no small measure, that ruling occurred because the term *subluxation complex* was correctly interpreted as being very broad.

In that regard, it is important to remember that Drs. Cynthia Vaughn and Paul Heikkinen gave compelling testimony at a TBCE hearing about the World Health Organization's broad definitions, which read as follows:²

- *Subluxation*: A lesion or dysfunction in a joint or motion segment in which alignment, movement integrity and/or physiological function are altered, although contact between joint surfaces remains intact. It is essentially a functional entity, which may influence biomechanical and neural integrity.
- *Subluxation complex (vertebral)*: A theoretical model and description of the motion segment dysfunction, which incorporates the interaction of pathological changes in nerve, muscle, ligamentous, vascular and connective tissue.

In addition, Drs. Vaughn and Heikkinen furnished the TBCE with the very broad definition of the "subluxation" as adopted by the Association of Chiropractic Colleges, which states:

*"A subluxation is a complex of functional and/or structural and/or pathological articular changes that compromise neural integrity and may influence organ system function and general health."*³

When the Court of Appeals decision was rendered, its definition of the "subluxation complex" was even broader 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

Did you note the word *establishes*? To me, that 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.

So, the next time one of your colleagues challenges the existence of the "subluxation complex" and pontificates that the terminology is outdated and should be abandoned, remind them that the "subluxation complex" saved diagnosis in Texas!

Manipulation Under Anesthesia

The Court of Appeals found that MUA is outside the scope of chiropractic on the basis that the Chiropractic Act bans procedures listed in the surgery section of the CPT codebook, and the court found that MUA is in the surgery section of the CPT codebook. TCA had argued that "chiropractic MUA" is actually in the chiropractic-specific section of the CPT codebook, not the surgery section, but this argument was undermined when TBCE agreed with TMA and TMB that the surgery section covers chiropractic MUA.

The Chiropractic Act also prohibits the TBCE from certifying chiropractors in MUA, and TCA and TBCE argued that this provision implies that chiropractors can perform MUA without certification. But the court believed that prohibiting certification could have been the legislature's way of stopping the board from finding that a DC had met the requirements to perform MUA.

There is a silver lining to the court's opinion. The court found that only procedures listed in the 2004 version of the CPT codebook are banned surgeries. That means any subsequent changes to the CPT cannot change the scope of surgery and thus the scope of chiropractic. So, the AMA

cannot attempt to whittle away at the scope of chiropractic by changing the CPT codebook. The damage is contained.

Needle EMG

The Court of Appeals struck down the TBCE's needle EMG rules. The court found that chiropractors cannot make "incisions," and that the technical meaning of an "incision" is a "cut." The court then looked to TMA's evidence, which included testimony that some needles used in needle EMG have a beveled edge designed to cut tissue. The Court of Appeals found that the use of these needles would be "incisive" and thus banned. Because the rules allowed chiropractors to perform needle EMG with these kinds of needles, the court found that the rules were too broad and violated the statutory ban on incisions.

However, the Court of Appeals made its ruling very narrowly. For that reason, the TBCE may be able to adopt a new rule authorizing some forms of needle EMG because the opinion acknowledges that needle EMG can be performed without using beveled-edge needles. Although the court didn't come out and say it, the opinion leaves open the possibility that a more narrowly-crafted rule would be legally permitted, as long as DCs are limited to using non-beveled-edge needles.

Here's the bottom line. While MUA was lost, diagnosis was saved and certain types of needle EMG procedures may be authorized. All in all, it was a great day for Texas doctors of chiropractic ... and a very bad day for the Texas Medical Association and the Texas Medical Board.

References

1. "TCA Victory in the Third Court of Appeals." Texas Chiropractic Association e-mail communication, April 9, 2012.
2. World Health Organization. *WHO Guidelines on Basic Training and Safety in Chiropractic*, Geneva, 2005.
3. Association of Chiropractic Colleges' Bylaws: The Chiropractic Paradigm.
4. Texas Court of Appeals, Third District, at Austin, Cause No. 03-10-673-CV. April 5, 2012, page 57

For background information on this case, read "Texas DCs Fighting a Modern-Day Goliath" ([Sept. 23, 2010](#)), "Texas Judge Rules on Diagnosis Issue" ([Oct. 21, 2010](#)) and "What Happens in Texas Won't Stay in Texas" ([Jan. 1, 2012](#)).

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