



TEXAS CHIROPRACTIC ASSOCIATION PUBLIC COMMENT ON THE SUNSET ADVISORY COMMISSION STAFF REPORT ON THE TEXAS MEDICAL BOARD

The Texas Chiropractic Association (“TCA”) is the essential voice for chiropractic in Texas. It is the oldest and largest professional association of Doctors of Chiropractic in Texas, and represents the interests of thousands of Doctors of Chiropractic and chiropractic patients.

TCA believes that Texans should have adequate access to the health care of their choice and supports the statutory authority of individual practitioners to diagnose and treat the living human body by any method taught by an accredited chiropractic college. TCA supports the use of any method of examination or therapy taught by any accredited chiropractic college that is within the legal scope of chiropractic practice.

TCA appreciates the efforts of the Sunset Advisory Commission, but believes its Staff Report failed to make recommendations to address two of the most concerning issues at the Texas Medical Board (“TMB”). During the last Sunset Review cycle, TCA informed the Advisory Commission of the unnecessary scrutiny the Texas Board of Chiropractic Examiners (“TBCE”) and Doctors of Chiropractic face from TMB.

Specifically, individual Doctors of Chiropractic have been hauled before TMB for alleged violations, and TBCE has been forced into litigation with TMB over TBCE’s rulemaking – despite the Sunset Advisory Commission’s Staff Report on TBCE stating:

“The Texas Board of Chiropractic Examiners has long been dogged by litigation and a reputation for using its authority to expand chiropractors’ scope of practice in lieu of focusing on protecting the public. While scope of practice is still the most contentious issue within the profession, Sunset staff found no evidence that the board continues to engage in practices that would merit this reputation.”ⁱ

Lawsuits amongst state agencies are unnecessary and result in significant waste of taxpayer funds. Subjecting Doctors of Chiropractic to potential disciplinary action from multiple boards creates a lack of professional practice clarity, inhibits the practice of chiropractic, and has the potential to expose Doctors of Chiropractic to double jeopardy. **Such litigation and the disciplinary actions brought against Doctors of Chiropractic evidence an anticompetitive atmosphere at TMB.** Direction from the Legislature on these matters would prevent government waste, prevent anticompetitive conduct, and improve regulation.

TCA ENCOURAGES THE LEGISLATURE TO PROHIBIT ARTICLE VIII HEALTH CARE LICENSING BOARDS FROM SUING EACH OTHER BY REQUIRING DISPUTES TO BE SETTLED BY THE OFFICE OF THE ATTORNEY GENERAL.

In Texas Medical Association and Texas Medical Board v. Texas Board of Chiropractic Examiners, TMB challenged rules promulgated by TBCE.ⁱⁱ When the state sues itself, taxpayers lose. It is estimated that

this lawsuit and its appeals process cost TBCE alone \$325,018.75 (1,244.5 attorney hours at \$250/hour and 185.25 legal assistant hours at \$75/hour).

Prohibiting Article VIII health care licensing boards from suing each other and requiring disputes to be settled by the Office of the Attorney General would reduce the wasting of taxpayer resources.

TCA ENCOURAGES THE LEGISLATURE TO PROHIBIT TMB FROM DISCIPLINING HEALTH CARE PRACTITIONERS LICENSED BY OTHER ARTICLE VIII LICENSING AGENCIES FOR EXCEEDING THEIR SCOPE IN INSTANCES WHERE THE PRACTITIONER'S OWN LICENSING BOARD HAS CONDUCTED AN INVESTIGATION AND ISSUED A RULING.

Doctors of Chiropractic, Podiatry, Optometry, and Dentistry practice within their authorized scope and are regulated by their respective licensing boards. However, when a health care practitioner not licensed by TMB is accused of exceeding their scope of practice they may face discipline from their own licensing board and/or TMB.

This system is duplicative and has the potential to waste taxpayer resources and subject practitioners to double jeopardy. TCA recommends prohibiting TMB from disciplining practitioners licensed by other Article VIII licensing boards for exceeding their scope in instances where the practitioner's own licensing board has conducted an investigation and issued a ruling.

TCA appreciates the opportunity to provide feedback on the Sunset Advisory Commission's Staff Report regarding the Texas Medical Board.

ⁱ Sunset Advisory Commission Staff Report: Texas Board of Chiropractic Examiners, 1 (2016).

ⁱⁱ See Texas Bd. of Chiropractic Exam'rs, et al v. Texas Med. Assoc., et al, 375 S.W.3d 464 (Tex. Third Ct. of App. 2012)