

# Texas Board of Chiropractic Examiners

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November 1, 2000 OPINION COMMITTEE

FILE # ML-41745-00

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The Honorable John Cornyn  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711-2548

RQ-0308-jc

OFFICE OF THE ATTORNEY GENERAL  
EXECUTIVE ADMINISTRATION

NLC-13

RE: Whether Licensed Acupuncturists May Perform Spinal Manipulation

Dear General Cornyn:

During various committee meetings concerning spinal manipulation during the 75<sup>th</sup> Legislature in the spring of 1999, it came to light that various acupuncturists in the state of Texas were routinely performing spinal manipulations as a normal part of their respective acupuncture practices. Numerous complaints have been filed with the Texas Board of Chiropractic Examiners (TBCE) alleging that acupuncturists performing spinal manipulations have caused injuries to the citizens of Texas, some quite serious. These acupuncturists did not have a license from the TBCE to perform chiropractic procedures such as spinal manipulation. (See Attachment A, sample complaint received by TBCE.)

Given that the TBCE has no jurisdiction over licensed acupuncturists, the Board filed a complaint with the Texas State Board of Acupuncture Examiners (TSBAE). The TSBAE determined that the practice of spinal manipulation was "...not reflective of a violation of the Act [regulating acupuncture]." (See Attachment B, Letter from Becky Nichols, Chief of Investigations, TSBAE.) Her letter further explained that the procedure of spinal manipulation was equivalent to a procedure entitled *Tui Na* taught in many acupuncture schools, and as such, was of the opinion that no statutory violation had occurred. Yet, Ms. Nichols went on to admit that the TSBAE did "...not have specific training requirements relating to..." this procedure. In addition, in a letter from Jerry T. Walker, dated 07-26-00, he stated that the TBCE's concerns "...did not identify a scope of practice issue requiring board action..." (See Attachment C, Letter from Mr. Walker.) We disagree that *Tui Na* is equivalent to the practice of chiropractic as defined by Chapter 201 of the Occupations Code, or in actual practice of the two techniques. We also do not believe that neither *Tui Na* nor spinal manipulation are within the scope of acupuncture as defined by Chapter 205 of the Occupations Code.

Section 205.001 of the Occupations Code defines acupuncture as follows:



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“(2) ‘Acupuncture’ means:

- (A) the nonsurgical, nonincisive insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body as a primary mode of therapy to treat and mitigate a human condition, and
- (B) the administration of thermal or electrical treatments or the recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by Paragraph A of this subdivision.

(3) ‘Acupuncturist’ means a person who practices acupuncture.”

Nowhere in this Act is “spinal manipulation” or even *Tui Na* mentioned. Paragraph B does consider “the recommendation of ... energy flow exercise,” but it does not provide express authorization or recognition of *Tui Nai* as being within the scope of acupuncture. In addition, as there is a marked distinction between *recommending* a procedure, and actually *performing* it, it is the TBCE’s opinion that this section does not authorize acupuncturists to perform “energy flow exercises.” Even if it did, neither spinal manipulation nor *Tui Na* are considered forms of energy flow exercise.

In terms of defining spinal manipulation, a search of available chiropractic literature revealed several sources that the TBCE Technical Standards Committee considers very reliable. One definition in particular, generated by the American Chiropractic Association (ACA) in its August of 1999 Spinal Manipulation Policy Statement, is particularly helpful. This Statement was issued based on the findings and opinions of an expert committee that consisted of clinicians in private practice, academics, board-certified specialists, researchers, and business executives at the time.

This Policy Statement defines manipulation (a chiropractic adjustment) as a manual maneuver during which a joint complex is carried beyond the normal physiological range of movement, but without exceeding the boundaries of anatomical integrity. The essential characteristic of manipulation is a thrust -- a brief, sudden, and carefully administered “impulsion” that is given at the end of the normal passive range of movement. This “dynamic thrust” is the defining factor that distinguishes manipulation from all other forms of manual therapy. (See Attachment D.)

I would also note that the level of skill and education necessary for a doctor of chiropractic to properly perform manipulation requires four academic years of professional education, averaging a total of 4822 hours. On the average, 52% of these hours are dedicated to adjustive techniques/spinal analysis, physical/clinical laboratory

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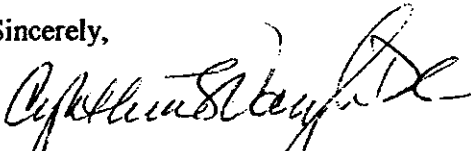
diagnosis and diagnostic imaging. It is paramount for the safety of the public that spinal manipulation is performed only by licensed healthcare providers who have the requisite training to perform such procedures.

In addition, available information, received from legislative sponsors and conference committee members responsible for drafting the original statute, suggests that there was no intent by the Texas legislature to allow acupuncturists to perform spinal manipulation procedures, or for that matter, any other procedures not listed in the stated definitions. (See Attachment E.)

Considering these definitions and this information, and following a comprehensive review of the relevant statutes, we have found no reference to the practice of "manipulation", of any kind, stated or defined within the Texas Acupuncture Practice Act, the Texas Occupations Code, or SB 1062 passed by the 73<sup>rd</sup> Texas Legislative Session (1993). Therefore, the Texas Board of Chiropractic Examiners respectfully asks: *Is it within the scope of practice for licensees of the Texas State Board of Acupuncture Examiners to perform spinal manipulation?*

Thank you for your assistance. If further information is required, please contact the Executive Director for the TBCE, Dr. Gary Cain, Ed.D., at (512) 305-6700. You may also discuss this request with Brenda Loudermilk, Assistant Attorney General, 5-4292, who provides the TBCE with legal counsel. You may also want to request input from the entities listed below.

Sincerely,



Cynthia S. Vaughn, D.C.  
President, Texas Board of Chiropractic Examiners

CSV/  
Enclosures

cc: Members, TBCE  
Gary Cain, Executive Director  
Brenda Loudermilk, OAG  
James Welch, D.C., President, Texas Chiropractic Association  
Shelby M. Elliott, D.C., President, Texas Chiropractic College  
Fabrizio Mancini, D.C., President Parker College of Chiropractic  
Mark Hanson, D.C., L.Ac., Owner, Dallas Institute of Acupuncture and Oriental Medicine