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OPINION COMMITTEE

The State of Texas
House of Representatives

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May 23, 2006

The Honorable Greg Abbott
Attorney General for the State of Texas
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FILE # ML-44818-06
I.D. # 44818

Re: Request for Opinion - Texas Chiropractic Board's authority to adopt rules under Texas Occupations Code §201.302(d)

RQ-0494-GA

Dear Attorney General Abbott:

I respectfully request an opinion on the authority of the Texas Board of Chiropractic Examiners' authority to adopt rules under Texas Occupations Code §201.302(d).

Discussion

Recently, three graduates of the Texas Chiropractic College (Houston, TX) applied for a license to practice chiropractic care with the Texas Board of Chiropractic Examiners. Their applications were denied because they failed to meet the requirements in Texas Occupations Code §201.302(a)(3) which states that "an applicant for license by examination must present satisfactory evidence to the board that the applicant has completed 90 semester hours of college courses at a school other than a chiropractic school;" among other requirements.

The requirement that a candidate complete 90 semester hours of college courses prior to sitting for examination for a license in Texas, compliments the requirements for chiropractic colleges for national accreditation. The Council on Chiropractic Education, the agency recognized by the U.S. Secretary of Education for accreditation of programs and institutions offering the doctor of chiropractic degree, requires that a student complete 90 semester hours of college prior to being admitted to a Doctor of Chiropractic Degree Program by an accredited chiropractic college¹. The Council on Chiropractic Education is more detailed than the Texas statute in that it details the required course work for 48 of those semester hours. However, The Council on Chiropractic Education only requires that the 90 hours be completed at a college or university that is accredited by a nationally recognized agency; for example, the Southern Association of Colleges and Schools provides accreditation for colleges and universities in Alabama, Florida, Georgia, Kentucky,

¹The Council on Chiropractic Education, "Standards for Doctor of Chiropractic Programs and Requirements for Institutional Status," January, 2006, <<http://www.cce-usa.org/2006%20January%20STANDARDS.pdf>> (May 23, 2006).

Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. The Council on Chiropractic Education does not require that these prerequisite courses be completed in a college or university other than a chiropractic college; this provision is specific to the Texas statute.

The requirement that candidates must complete prerequisite college courses, "other than a chiropractic school" was added in 1975 by Senator Lloyd Doggett² which replaced a requirement that candidates have a high school diploma which had been in the statute since 1949.

Because of the predicament of the three graduates, the Texas Board of Chiropractic Examiners' Rule Committee was approached about a possible rule to interpret whether the prerequisite hours could be completed at a chiropractic college which had accreditation by a nationally recognized agency for these types of courses. Currently, both chiropractic colleges in Texas have accreditation from the Southern Association of Colleges and Schools for their undergraduate courses. It was asserted that the Texas Board of Chiropractic Examiners' Rule Committee had the authority to adopt such a rule because it would be compliant with The Council on Chiropractic Education and that Texas Occupations Code §201.302(d) grants them the authority.

However there is a question as to whether Texas Occupations Code §201.302(d) grants that authority or whether it only pertains to any difference between the number of prerequisite hours required by The Council on Chiropractic Education and the Texas Occupations Code. Specifically it states:

"Notwithstanding Subsection (a)(3), if the Council on Chiropractic Education or another national chiropractic education accreditation organization recognized by the board requires a number of semester hours of college courses at a school other than a chiropractic school that is greater or less than the number of hours specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate."

Questions of Law

- 1) Does Texas Occupations Code §201.302(a)(3) allow candidates for a license to practice chiropractic care in Texas to complete their prerequisite college courses at a chiropractic college if the chiropractic college has been accredited by the Southern Association of Colleges and Schools or a similar agency?
- 2) If the answer to the first question is no; then does Texas Occupations Code §201.302(d) allow the Texas Board of Chiropractic Examiners' to adopt a rule which would allow candidates for a license to practice chiropractic care in Texas to complete their prerequisite college courses at a chiropractic college if the chiropractic college has been accredited by the Southern Association of Colleges and Schools or a similar agency?
- 3) If the answer to the second question is no; then does Texas Occupations Code §201.302(d) only

² 64R SB 40, Senator Lloyd Doggett

allow the Texas Board of Chiropractic Examiners to adopt a rule to change the *number* of prerequisite college semester hours based on the number of hours required by The Council on Chiropractic Education, but not *where* those course may be taken.

Thank you for your consideration of this important matter.

Sincerely,



Burt Solomons
Chairman
House Committee on Financial
Institutions

BRS/bb

cc: Representative Diane White Delisi
Chairwoman of the House Committee on Public Health

Representative Vicki Truitt
Vice-Chairwoman of the Texas Sunset Advisory Commission and
Chair of Budget and Oversight for the House Committee on Public Health

Senator Jane Nelson
Chairwoman of the Senate Committee on Health and Human Services

Senator Kim Brimer
Chair of the Texas Sunset Advisory Commission

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JUN 27 2006

The Honorable Greg Abbott
Office of the Attorney General
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RQ-0494-GA OPINION COMMITTEE

FILE # RQ 0494-GA

I.D. # 44862

Dear General Abbott:

I am aware that Rep. Burt Solomons, Chairman of the House Committee on Financial Institutions, has requested an Attorney General's Opinion regarding certain issues relating to undergraduate education requirements for licensure as a chiropractor (See Attorney General Opinion Request No. RQ-0494-GA). Chairman Solomons' request contains background facts about these issues that I will not repeat here.

Please accept this letter as my request for an Attorney General's Opinion on different, but related, issues regarding undergraduate college hours required for licensure as a chiropractor.

I am aware that some institutions of higher education offer both chiropractic doctoral programs and unrelated undergraduate courses and degree programs. These institutions are accredited overall by nationally recognized agencies and their chiropractic programs are separately accredited by the Council on Chiropractic Education (CCE). Some of these institutions use the term "university" in their names, while others use the word "college." In either case, they offer separate bachelors degree programs in fields of study unrelated to their doctoral chiropractic programs. Their undergraduate programs have separate management and separate instructional personnel from their chiropractic programs. The CCE's accreditation of their chiropractic programs has nothing to do with and does not cover these undergraduate programs. The undergraduate course credits are acceptable to the University of Texas for its bachelors degree programs (see Sec. 201.303(a), Occupations Code).

Section 201.302(a)(3), Occupations Code, requires applicants for a chiropractic license to complete "...90 semester hours of college courses at a school *other than a chiropractic school...*" (emphasis added) This requirement of college hours outside the chiropractic field was added in 1975.

Chapter 201, Occupations Code, does not define the term "school." Section 201.303(d) defines what constitutes a "bona fide reputable chiropractic school." This statutory definition of chiropractic school has been supplemented by agency rule (see 22 T.A.C. 71.5)

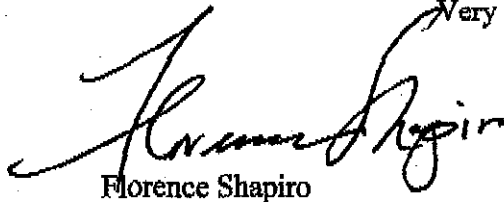
It is my understanding that the Texas Board of Chiropractic Examiners has granted licenses to numerous applicants (during the last five years) whose undergraduate course work (i.e., college hours used to meet the "90 hour requirement") was completed at the same institution that granted their doctoral chiropractic degrees.

My questions are:

1. Does the Texas Board of Chiropractic Examiners have the authority to determine or define by interpretation or rule what constitutes a "chiropractic school" and what constitutes a "school other than a chiropractic school?"
2. Does the Texas Board of Chiropractic Examiners have the authority to recognize for purposes of Section 201.302(a)(3) college courses unrelated to a chiropractic doctoral degree program completed at an institution of higher education that also offers a chiropractic doctoral degree program?
3. In adopting 22 Texas Administrative Code 71.5, has the Texas Board of Chiropractic Examiners defined what constitutes a chiropractic school that satisfies licensure requirements, and in so doing, defined what is not a chiropractic school for purposes of Section 201.302(a)(3)?
4. If the Texas Board of Chiropractic Examiners has established a practice of interpreting the statute to recognize college courses unrelated to a chiropractic degree, but completed at an institution that also offers a chiropractic degree, and the Legislature has met repeatedly since that practice began without changing the statute, is the agency's interpretation on sound legal footing?

Thank you for your consideration of these questions.

Very Truly Yours,



Florence Shapiro



Mike Jackson