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OPINION COMMITTEE



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THE SENATE OF TEXAS
COMMITTEE ON HEALTH AND HUMAN SERVICES

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October 6, 2016

Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

Dear Attorney General Paxton:

It has come to our attention that a probate judge operating in Harris County has recently adopted a policy in which he is refusing to accept a Certificate of Examination submitted by licensed Texas physicians with the medical degree designation of doctor of osteopathy (D.O.) for purposes related to involuntary psychiatric commitment. He has stated that the statutory definition of "physician" is "at-best-ambiguous". We strongly disagree with the judge's interpretation of the law as it relates to the practice of medicine in Texas.

The plain language of the law, as well as established principles of statutory construction, require interpreting Health and Safety Code, Chapter 574, as defining "physician" as inclusive of both doctors of osteopathy and doctors of medicine.

Health and Safety Code § 571.003(18) defines "physician" as "a person licensed to practice medicine" in the state. The Legislature has clearly defined in Occupations Code Chapter 155 who is licensed to practice medicine in Texas: doctors of osteopathy and doctors of medicine.

QUESTION

We write seeking an opinion as to whether doctor of osteopathy have legal authority to issue Certificates of Medical Examination and other relevant documents under Health and Safety Code, Chapter 574.

BACKGROUND

In Texas, certain judges have the authority to involuntarily commit individuals to psychiatric care under certain circumstances. Recently, a Harris County probate judge, in deciding these cases, has adopted the policy of refusing to accept a Certificate of Examination performed by or any official documents submitted by licensed Texas physicians with the medical degree designation of doctor of osteopathy or "D.O." [see Appendix A].

The Harris County Judge's policy is based on the definition of "physician" in Health and Safety Code § 571.003(18):

"Physician" means:

- (A) a person licensed to practice medicine in this state;
- (B) a person employed by a federal agency who has a license to practice medicine in any state; or
- (C) a person authorized to perform medical acts under a physician-in-training permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

In an attempt to resolve the dispute over the judge's policy, several organizations, including the Texas Medical Board, have sent letters to the judge explaining that all physicians licensed in Texas have the same rights, responsibilities, and legal status regardless of whether they received a medical degree osteopathic medicine (D.O.) or allopathic medicine (M.D.) [see Appendices B-C].

DISCUSSION

Definition of Physician in Statute

The Texas Mental Health Code's definition of "physician" is "a person licensed to practice medicine in this state". *Health and Safety Code § 571.003(18)*. This definition was explicitly put in place by the Legislature to apply to the Texas Mental Health Code in its entirety.

In the Occupations Code, D.O.s and M.D.s are licensed to practice medicine in Texas, thus making them both "physicians" under state law, including the Texas Mental Health Code. As noted by the Texas Medical Board in Appendix B, in Chapter 155 of the Occupations Code ("License to Practice Medicine") the Legislature lays out the licensing requirements for Texas physicians and does not reference either allopathic (M.D.) or osteopathic (D.O.) schools, but requires that an applicant be "a graduate of a medical school located in the United States or Canada and approved by the board." *Texas Occupations Code § 155.003(4)*. Both allopathic (M.D.s) and osteopathic (D.O.s) schools are approved by the Texas Medical Board.

As further evidence of the Legislature's intent to include both M.D.s and D.O.s in the definition of "physician," the Texas Occupations Code prohibits state programs and state-funded programs from discriminating against a physician solely on the basis of the academic degree held by that physician (i.e. "M.D." or "D.O."). *Texas Occupations Code § 151.051*.

Construction and Interpretation

It is a principle of statutory construction that where possible, statutes should be construed so as to harmonize them with other relevant laws, not to find conflict. *In re United Servs. Auto. Ass'n*, 307 S.W.3d 299, 311 (Tex. 2010). It is clear that statutory definitions of "physician" are inclusive of D.O.s.

Government Code § 311.021 states:

In enacting a statute, it is presumed that:

- (1) compliance with the constitutions of this state and the United States is intended;
- (2) the entire statute is intended to be effective;
- (3) a just and reasonable result is intended;
- (4) a result feasible of execution is intended; and
- (5) public interest is favored over any private interest.

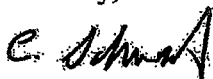
Thus, when enacting a statute, it is presumed that a just and reasonable result is intended. The purpose of the Texas Mental Health Code is to provide each person having a severe mental illness access to humane care and treatment. *Health and Safety Code § 571.002*. The just and reasonable interpretation of Health and Safety Code § 551.003(18) is inclusive of all licensed physicians in the state, including D.O.s, so as to ensure that the issue of access to care and treatment is more rapidly and effectively decided by the court. An interpretation of law which did not accept Certificates of Examination or other important documents from licensed Texas physicians could delay or even deny treatment for persons struggling with mental health.

CONCLUSION

An incorrect interpretation of the definition of "physician" in the Texas Mental Health Code will have a disastrous effect on Texas' mental health system by preventing individuals suffering from mental illness from receiving timely care in an appropriate setting. The judge's policy creates an undue burden on the local public health and criminal justice system, as individuals in an emergency room or county jail will now experience longer delays in receiving care, since they will have to wait for an M.D. to examine them. Most importantly, this policy will have the greatest impact on individuals in need of mental health care, placing them in dire risk of harming themselves or others. We cannot allow proper and effective psychiatric care to be impeded by such a gross misinterpretation of the law.

We respectfully request that you expedite your opinion in this matter, as it greatly impacts those in the state struggling with mental health! Thank you for your consideration of this request. Please do not hesitate to contact either of our offices if you require any additional information.

Sincerely,



Charles Schwertner
Chair, Senate Committee on Health & Human Services



Joan Huffman
Chair, Senate Committee on State Affairs

[Appendices attached]