

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.17, relating to Scope of Practice, to address several matters. First, in recent litigation brought by the Texas Medical Association, a district court judge identified concerns regarding subsections (d)(1)(A) and (B), relating to analysis, diagnosis, and other opinions. Second, the Board has recognized the need to define additional terms in order to improve the clarity of the rule. Third, the Board is clarifying that certain treatments are not within the scope of practice. Finally, the Board is replacing some terms of art with plain language descriptions and making other minor editorial corrections to the rule.

The Board has proposed adding definitions for biomechanics and cosmetic treatments in subsection (b).

Additionally, the Board has proposed changes and additions to subsection (d)(1) to provide clarity on what analysis, diagnosis, and other opinion may be rendered by a chiropractic licensee, in response to a district court judge's ruling in recent litigation involving the Board. The Board has removed the expansive language "including, but not limited to," which failed to make clear the limits of diagnosis under chiropractic scope of practice. The Board has also clarified in subsection (d)(1)(H) that a licensee can render a diagnosis for the purpose of referring a patient to another health care provider for evaluation or treatment of conditions not within the chiropractic scope of practice.

In addition, the Board proposes to remove "incisive or surgical procedures," "the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription," and "the use of x-ray therapy or therapy that exposes the body to radioactive materials" from subsection (d)(2), as these are more appropriate where they are already listed in subsection (e)(3), which deals with treatment procedures and services outside the chiropractic scope of practice. The Board has also proposed adding language in subsection (d)(2) making clear that licensees cannot render a definitive opinion or diagnosis that a person suffers from a disease or condition unrelated to the biomechanics of the spine or musculoskeletal system.

The Board has proposed adding dry needling and video fluoroscopy (with restrictions on use) to subsection (e)(2), treatment procedures and services that are within the chiropractic scope of practice. Also, the Board proposes adding language in subsection (e)(2)(C) to clarify the restrictions on the use of acupuncture with a reference to the requirements of §75.21(b).

Finally, in subsection (e)(3) the Board proposes to add the following treatment procedures and services that are outside the scope of practice for chiropractors in Texas: cosmetic treatments, oxygen therapy, and treatment of pathology of the internal organs of certain body systems. This addition is in response to the Board's Enforcement Committee noticing an increase in the number of complaints involving licensees advertising and/or performing cosmetic treatments and in response to certain scope of practice questions posed to the Board by licensees.

At its May 19, 2011, Board meeting, the Board also considered other versions of amendments to this rule. The Board would like the public to consider and comment on these other versions, available here:

<https://www.tbce.state.tx.us/ProposedRules/FY2011/75-17chart.pdf>.

Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this amendment will be in effect.

Mr. Parker has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be clarity in the scope of practice for chiropractors in Texas.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, TX 78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

These amendments are proposed under Texas Occupations Code § 201.152 and § 201.1525. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 requires that the Board adopt rules clarifying what activities are included within the scope of practice of chiropractic and what activities are outside of that scope.

No other statutes, articles, or codes are affected by the proposed amendment.

§75.17 Scope of Practice

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) (No change.)

(2) Biomechanics--the interaction of components of the human musculoskeletal system (such as the bones, muscles, ligaments, and tendons) with each other and with the peripheral nervous system that allows a body or part of a body to move from one place or position to another or to maintain position.

(3) Cosmetic treatment--a treatment that is primarily intended to address the outward appearance of an individual, such as hair removal, body sculpting, dermatological treatments, laser treatment of toenail fungus, and similar treatments.

(4) ~~[(2)]~~ CPT Codebook--the American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.

(5) ~~[(3)]~~ Incision--A cut or a surgical wound; also, a division of the soft parts made with a knife or hot laser.

(6) ~~[(4)]~~ Musculoskeletal system--The system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.

(7) ~~[(5)]~~ On-site--the presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(8) ~~[(6)]~~ Practice of chiropractic--the description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(9) ~~[(7)]~~ Subluxation complex--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.

(c) (No change.)

(d) Analysis, Diagnosis, and Other Opinions

(1) Except as provided by paragraph (2) or other law, in [It] the practice of chiropractic, licensees may render an analysis, diagnosis, or other opinion, made in accordance with appropriate clinical judgment, regarding [the findings of examinations and evaluations. Such opinions could include, but are not limited to, the following]:

(A) the following characteristics of [An analysis, diagnosis or other opinion regarding] the biomechanical condition of the spine or musculoskeletal system [including, but not limited to, the following]:

(i) the health, ~~[and]~~ integrity, normality, or abnormality of the structures of the spine or musculoskeletal system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health, ~~[and]~~ integrity, normality, or abnormality of the spine or musculoskeletal system;

(iii) the existence of structural pathology, functional pathology, or other abnormality of the spine or musculoskeletal system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology, or other abnormality of the spine or musculoskeletal system;

(v) the etiology of the ~~[said]~~ structural pathology, functional pathology, or other abnormality of the spine or musculoskeletal system; and

(vi) the effect of the ~~[said]~~ structural pathology, functional pathology or other abnormality of the spine or musculoskeletal system on the health of an individual patient or population of patients;

(B) the following characteristics of ~~[An analysis, diagnosis or other opinion regarding]~~ a subluxation complex of the spine or musculoskeletal system ~~[including, but not limited to, the following]:~~

(i) the nature, severity, complicating factors and effects of the ~~[said]~~ subluxation complex;

(ii) the etiology of the ~~[said]~~ subluxation complex; and

(iii) the effect of the ~~[said]~~ subluxation complex on the health of an individual patient or population of patients;

(C) the ~~[An opinion regarding the]~~ treatment procedures that are indicated in the chiropractic ~~[therapeutic]~~ care of a patient or condition;

(D) the ~~[An opinion regarding the]~~ likelihood of recovery of a patient or condition under an indicated course of chiropractic treatment;

(E) the ~~[An opinion regarding the]~~ risks associated with the treatment procedures that are indicated in the chiropractic ~~[therapeutic]~~ care of a patient or condition;

(F) the ~~[An opinion regarding the]~~ risks associated with not receiving the treatment procedures that are indicated in the chiropractic ~~[therapeutic]~~ care of a patient or condition;

(G) the ~~[An opinion regarding the]~~ treatment procedures that are contraindicated in the chiropractic ~~[therapeutic]~~ care of a patient or condition;

(H) whether ~~[An opinion that]~~ a patient should be referred to another health care ~~[or condition is in need of care from a medical or other class of]~~ provider for evaluation or treatment of conditions not within the chiropractic scope of practice, as authorized by Texas Occupations Code §201.002 and this rule;

(I) ~~[An opinion regarding]~~ an individual's ability to perform normal job functions and activities of daily living, and the assessment of any disability or impairment; and

(J) the risks to ~~[An opinion regarding]~~ the biomechanical condition of ~~[risks to]~~ a patient's spine or musculoskeletal system ~~[patient]~~, or patient population from various occupations, job duties or functions, activities of daily living, sports or athletics, or from the ergonomics of a given environment, ~~[; and]~~

~~[(K) Other necessary or appropriate opinions consistent with the practice of chiropractic.]~~

(2) Analysis, diagnosis, and other opinions regarding the findings of examinations and evaluations that ~~[which]~~ are outside the scope of chiropractic include:

(A) a definitive opinion or diagnosis that a patient suffers from a disease or condition unrelated to the biomechanics of the spine or musculoskeletal system;

~~[(A) incisive or surgical procedures;]~~

~~[(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;]~~

~~[(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or]~~

(B) ~~[(D)]~~ other analysis, diagnosis, and other opinions that are inconsistent with the practice of chiropractic, as authorized by Chapter 201, Occupations Code; or

(C) other ~~[and with the]~~ analysis, diagnosis, and other opinions that are inconsistent with paragraph (1) of ~~[described under]~~ this subsection.

(e) Treatment Procedures and Services

(1) (No change.)

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture, as long as the licensee meets the requirements of §75.21(b) of this title, relating to acupuncture, and other reflex techniques;

(D) dry needling, as long as the licensee meets the requirements of §75.21(b) of this title to practice acupuncture;

(E) [(D)] exercise therapy;

(F) [(E)] patient education;

(G) [(F)] advice and counsel;

(H) [(G)] diet and weight control;

(I) [(H)] immobilization;

(J) [(I)] splinting;

(K) [(J)] bracing;

(L) [(K)] therapeutic [Therapeutic] lasers (non-invasive, non-incisive), with adequate training and the use of appropriate safety devices and procedures for the patient, the licensee and all other persons present during the use of the laser;

(M) [(L)] durable medical goods and devices;

(N) [(M)] homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, nutraceuticals, and glandular extracts;

(O) [(N)] non-prescription drugs;

(P) [(O)] manipulation under anesthesia;

(Q) video fluoroscopy, as long as the licensee has a diplomate in chiropractic radiology from the American Chiropractic Board of Radiology;

(R) [(P)] referral of patients to other doctors and health care providers; and

(S) [(Q)] other treatment procedures and services consistent with the practice of chiropractic.

(3) The treatment procedures and services provided by a licensee which are outside of the scope of practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials;
[or]

(D) the treatment of pathology of the internal organs of the circulatory system, respiratory system, excretory system, urinary system, endocrine system, digestive system, and reproductive system;

(E) cosmetic treatments;

(F) oxygen therapy, including the use of an oxygen concentrator or hyperbaric chamber;

(G) [~~(D)~~] other treatment procedures and services that are inconsistent with the practice of chiropractic and with the treatment procedures and services described under this subsection.

(f) (No change.)