

Chiropractic in Texas is Under Attack

The Texas Medical Association Is Attempting to Delegitimize Chiropractic and Severely Limit its Practice

The field of chiropractic faces an unprecedented challenge in Texas, where it faces an attack that is more aggressive, sustained, and dangerous than anything previously seen. The medical lobby has launched a coordinated, multi-front assault. If left unchecked, this assault will not only be very damaging to the practice of chiropractic in the Lone Star State, but also will have national and international repercussions, as a victorious and emboldened medical lobby will seek to expand this fight to other states and even other nations.

The complexity, coordination, and timing of these efforts lead me to suspect a synchronized, calculated attempt by medicine to destabilize and damage the practice of chiropractic in Texas. In past battles with the Texas Medical Association (TMA), Texas chiropractors lost the use of the term “Chiropractic Physician.” Additionally, the right to perform vestibular-ocular-nystagmus (VON) testing, manipulation under anesthesia (MUA), and needle electromyography was also taken away. While these procedures are not used broadly by most chiropractors, the loss of them did show the medical lobby that they could reduce and eliminate portions of the scope of chiropractic practice. Heartened by these victories, the TMA is now trying to eviscerate the scope of chiropractic practice in Texas. It is my hope that the chiropractors of the United States and other countries will recognize that this battle is a renewal of the Byzantine practice of organized medicine to restrict our freedom to practice and to restrict our patients’ access to chiropractic care.

The battlefield is fluid and complex. Here is an overview of what is happening in Texas:

1. The medical association is seeking to remove *diagnosis* from the scope of chiropractic. This is after the Texas’ 3rd Court of Appeals ruled that doctors of chiropractic can certainly diagnose.
2. Ongoing lawsuits by the Texas Medical Association are currently underway with the intent to limit the scope of practice of non-medical providers. Recent lawsuits have succeeded in the removing *diagnosis* and *treatment of neurological conditions* from the scope of care, including *diagnosis and treatment of subluxation*. This decision has been appealed.
3. The Texas Association of Acupuncture and Oriental Medicine is intent on restricting chiropractors from practicing acupuncture unless the chiropractor is also licensed by the Acupuncture Board and has completed the prescribed requisite 1800 hours of training in acupuncture along with other highly restrictive stipulations.
4. Recently there was a serious attempt by the Sunset Advisory Commission to dismantle the chiropractic board and place chiropractic under a separate consolidated credentialing board. That would have impacted the autonomy of the profession of chiropractic in the state. Thankfully, that battle is behind us.

5. The Sunset Commission is a Texas review commission whose charge is to eliminate and abolish unneeded state agencies. This commission has power to make recommendations that weaken or eliminate the power of state agencies when they come up for review every 12 years. This year the Texas Board of Chiropractic Examiners (TBCE) is due for its review by the sunset commission, creating an opportunity that opponents of chiropractic are seizing on in an attempt to get rid of or severely hamstringing the agency.¹

What Makes Texas State Politics Unique?

It appears that the medical lobby has identified that chiropractic in this state is particularly vulnerable to attack, given their clout as well as the unique system of laws and regulation in Texas. Though the problems we are facing in the state are complex, I have attempted to clarify some of the uniquely Texan political aspects of the governmental landscape.

Particularly strong medical lobby. Texas has more medical doctors in its state house than any other state. It has six, all republicans—three in the State Senate and three in the State House.² From my time in the U.S. Capitol, I know congressmen and congresswomen frequently defer to colleagues whom they consider subject matter experts. So it is common for a lawmaker to defer to another lawmaker who is a medical physician in matters dealing with healthcare. This gives the medical profession an expanded voice in Texas politics. Three more medical doctors have announced their intention to run for the state house in the 2018 elections; if they win, this will further strengthen the medical lobby.

Lawsuits. The Texas Medical Association (TMA) is currently in a legal battle with the Texas Board of Chiropractic Examiners to remove diagnosis from chiropractic. The TMA has a long history of lawsuits intended to restrict the scope of practice of all non-MD or DO professions. Right now, TCA is fighting to keep the use of *diagnosis; treatment of nerves and neuromusculoskeletal conditions; manipulation under anesthesia; and vestibular-ocular-nystagmus (VON) testing.* The TCA is also appealing a decision in which the definition of the subluxation complex has been narrowed.

The Scope of Practice Partnership (SOPP). The SOPP, while not a uniquely Texas organization, has had great influence in the state. It was formed in 2006 by the American Medical Association to limit scope of practice expansions by non-MD/DO physicians. The TMA has been a charter member of this organization and is essentially its attack dog. But chiropractors should not feel alone in the attacks on our scope of practice. SOPP and the TMA have also campaigned against the scope of nurses, midwives, podiatrists, physical therapists, and others. They don't like competition. The AMA's SOPP strategically funds battles with the greatest likelihood of success. Apparently the scope of practice of chiropractors in Texas seems

¹ In its first draft of their report, the Sunset Commission is already raising the possibility of consolidating the TCBE with other health agencies. See Sunset Advisory Commission. (2016). *Texas Board of Chiropractic Examiners: Sunset staff report* (Texas, Sunset Advisory Commission). Retrieved from https://www.tbce.state.tx.us/Documents/TBCE_Sunset_Staff_Report_2016.pdf
² Garrett, R. T. (2015, September). While Texas Legislature seats the most doctors, health care still on back-burner. *Dallas News*. Retrieved from <http://www.dallasnews.com/news/politics/2015/09/04/while-texas-legislature-seats-the-most-doctors-health-care-still-on-back-burner>

to be worth the fight to the AMA. ***Make no mistake about it: if we lose this battle in Texas, SOPP will fund battles in other states.***

The Sunset Commission. In an attempt to limit unbridled bureaucracy, the state of Texas created the Texas Sunset Act in 1977. According to this act, every regulatory agency will automatically be abolished (hence there is a “sunset” to its existence) at the end of a twelve-year cycle unless the legislators vote to keep the agency. There are about 130 state agencies which are subject to the Texas Sunset Act (1977). This is the year that the Texas Board of Chiropractic Examiners is due to enter the Sunset review process. During the time of review, the Sunset Commission can make changes to the management directives of the agency. After the Sunset Commission agrees on the proposed fate of the reviewed agency, it is presented to the general session for a vote. This commission is charged with the task to look for weakness in an agency: “Sunset reviews also focus on identifying areas of weakness in an agency’s operations and recommending specific solutions for improvement through changes in law and management directives to an agency’s leadership.”³

Limited legislative sessions. The legislative body meets only every other year, the odd-numbered years, for five months. This schedule for the legislative body dates back to the days of the Old West when the preferred method of travel was horseback. At a time when it could take weeks to travel to Austin from the far reaches of the state, it made sense to meet only every other year. Retaining this archaic schedule means that it can take much longer in Texas to challenge and undo actions taken by the legislature. In addition, because such actions are in place for a minimum of two years, changes can take on inertia and become much harder to undo once implemented.

Low pay of Texas legislators. The pay for lawmakers in Texas is low: \$600 per month, plus \$125 per day when they are in session or traveling during official business. This low wage and short (140 days every other year) legislative season lends itself to attract those who can leave their jobs for five months and do not need the money (or have a strong sense of civic duty and are willing to make the sacrifice). This wage may discourage middle class citizens from seeking state office, thus attracting a particular elite or poor segment of society rather than a diverse population. Only the rich or the poor could afford to serve as a Texas state lawmaker. Since running a campaign is expensive, government office in Texas is slanted toward the well-off versus those with lower financial reserves. This situation results in a demographic among Texas legislators that is likely to include more members of the medical profession and more bias towards it.

Time to Stand in the Breach

Texas is the second largest state in the union by both population and area. Politically and symbolically, a major defeat in Texas will have far reaching consequences. This battle is against all chiropractors everywhere, and while the profession has a reputation for circling the wagons and shooting inward, this fight should mobilize our forces and field our army. Lose the battle in Texas, and our enemies will quickly

³ Sunset Advisory Commission. (2015). Sunset in Texas 2015-2017 (Texas, Sunset Advisory Commission). Retrieved from https://www.sunset.texas.gov/public/uploads/files/reports/Sunset%20in%20Texas_0.pdf

move on to the next state. To quote Benjamin Franklin at the signing of the Declaration of Independence, "We must, indeed, all hang together, or most assuredly we shall all hang separately."

To quote another founding father, Thomas Jefferson is attributed to saying, "The cost of freedom is eternal vigilance." This fight will never end; it is eternal, just like our commitment to our patients. Part of being a master clinician is to be an advocate for our patients. This is the time to become that advocate.

Be assured that we at Parker University will do everything in our power to represent the interests of the university, our students, and our alumni in order to preserve the rights of all chiropractors in Texas to practice the art and science of chiropractic as effectively and efficiently as possible.

We have a serious battle ahead of us, one that will require the resolve of every member of the chiropractic community to guarantee victory. I am calling upon you for political and material support. I encourage each of you to step forward to help us preserve and protect chiropractic for now and the future. The nation will be closely monitoring the outcome of these deliberations, since the impact of the Texas decisions will certainly resonate across the country. Our patients are relying upon us and we shall not let them down. Failure is not an option. I hope that I can count on you to join the fight when the battle lines are formed.

May our credo be "Semper Fidelis" (Always Faithful) as we enter this contest.

Semper Fi

William E. Morgan, DC
President
Parker University

The Texas Chiropractic Association remains on the front lines of this battle, as they have been for over 100 years. They are taking action NOW to ensure that we are prepared in every way for the battle ahead.

Join the fight!

TCA can always use more team members and additional funds (both through donations and through sponsorships of the various programs TCA has in place). If you're not a TCA member, you can join today at www.chirotexas.org/join-now (even if you are out of state). If you haven't donated to the [Chiropractic Development Initiative](#) (CDI), you can start today by making a one-time donation or you can opt for a monthly auto-draft. To donate, you can go to www.chirotexas.org/cdi or call TCA headquarters at (512) 477-9292 for more details.

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