

Texas Board of Chiropractic Examiners

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RQ-0546-GA

October 16, 2006

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OPINION COMMITTEE

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OCT 17 2006

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-45036-06
I.D. # 45036

TEXAS BOARD OF
CHIROPRACTIC EXAMINERS

Re: Request for Opinion on the Legality of the Definition of "Surgical Procedure" under the Chiropractic Act, Texas Occupations Code § 201.002(a)(4)

Dear General Abbott:

The Texas Board of Chiropractic Examiners (Board) respectfully requests your opinion regarding the legality of the definition of "surgical procedure" under the Chiropractic Act, Texas Occupations Code § 201.002(a)(4). This issue is of importance to the Board and the chiropractic profession as the Chiropractic Act prohibits chiropractors from performing surgical procedures. § 201.002(c)(1).

Background

In 2005, the Legislature amended the Chiropractic Act to, *inter alia*, include the following definition of "surgical procedure":

"Surgical procedure" includes a procedure described in the surgery section of the common procedures coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services."

§ 201.002(a)(4), as added by Acts 2005, 79th Leg., ch. 1020, § 1 (HB 972). The Centers for Medicare and Medicaid Services (CMS) have divided the common procedures coding system into two levels. See www.cms.hhs.gov/MedHCPCSGenInfo. As Level I of the coding system, CMS has adopted the American Medical Association's (AMA's) Current Procedural Terminology Codebook (CPT Codebook). Level II of the coding system is used primarily to identify products, supplies, and services not included in the CPT codes, such as ambulance services and durable medical equipment. As the surgery section is included in the AMA CPT Codebook, this request is concerned only with Level I of the coding system.



The AMA CPT Codebook is a numeric coding system consisting of descriptive terms and identifying codes that are used primarily to identify medical services and procedures furnished by physicians and other health care professionals. Health care professionals use the AMA CPT Codebook to identify services and procedures for which they bill public or private health insurance programs, and in turn, insurance programs use the CPT codes when authorizing payment for health services and procedures.

The surgery section of the AMA CPT Codebook includes procedures that are commonly recognized as surgical procedures, such as wound exploration (code 20100) and repair of cardiac wounds (33300). However, the surgery section also includes codes that lay people may not commonly think of as surgery: initial treatment of first degree burns when no more than local treatment is required (16000), manipulation of shoulder joint under anesthesia (23700), strapping a hand or finger (29280), removing foreign body-intranasal-office type procedure (30300), vaginal birth (59409), and removal of foreign body from external auditory canal (69200).

Questions Presented

The Board respectfully requests your assistance in answering the following questions:

1. Is the delegation of authority under Texas Occupations Code § 201.002(a)(4) to CMS, and the de facto delegation to the AMA, to determine surgical procedures which chiropractors may not perform constitutional?
2. Is the incorporation by reference of the CMS coding system under Texas Occupations Code § 201.002(a)(4) limited to the surgery section of the AMA CPT Codebook as it existed at the Legislature's adoption of HB 972?

See Texas Boll Weevil Eradication Found., Inc. v. Lewellen, 952 S.W.2d 454 (Tex. 1997); *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717 (Tex. 1995), *Texas Med. Ass'n v. Texas Workers Comp. Comm'n*, 137 S.W.3d 342 (Tex. App.—Austin 2004, no pet.); *Ex parte Elliott*, 973 S.W.2d 737 (Tex. App.—Austin 1998, pet. ref'd); *Madrid v. St. Joseph's Hosp.*, 928 P.2d 250 (N.M. 1996).

Thank you for consideration of these questions. Please contact Mr. Glenn Parker, the Board's Executive Director, at 305-6706 or at _____ if you have any questions regarding this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dr. Sandra Jensen, D.C.", written in black ink.

Dr. Sandra Jensen, President
Texas Board of Chiropractic Examiners

cc: Gov. Rick Perry
Sen. Jane Nelson, Chair, Senate Health & Human Services Committee
Rep. Dianne White Delisi, Chair, House Public Health Committee
Patte Kent, Texas Chiropractic Association
