

Texas Board of Chiropractic Examiners

333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701
512-305-6700 FAX 512-305-6705

RECEIVED

NOV 20 1996

Opinion Committee

November 5, 1996

The Honorable Dan Morales
Attorney General
State of Texas
P. O. Box 12548
Austin, Texas 78711-2548

RD-925

FILE # 39267
AL 38964-96
I.D. # 39262
39267

re: Request for Attorney General Opinion

Dear General Morales:

An Attorney General Opinion is respectfully requested under the authority of Section 22 of Article IV of the Texas Constitution and section 402.041 through 402.045 of the Texas Government Code. An opinion is requested concerning the use of injectables by licensed Chiropractors.

Attached are several letters requesting that the Board review this matter. Research brought up the question as to whether all injectible substances are classified as dangerous drugs or controlled substances.

Also attached is the Board adopted criteria which is used to determine if procedures are within the scope of practice as defined in Art. 4512b (V.A.C.S.).

As of this writing the committee has not been able to establish a definitive answer as to the classification of injectables. Various state and federal agencies have been contacted with regard to this question and have responded without giving a clear answer to the question (copies attached).

A legal brief was presented by counsel for licensees who use injectables as a part of their daily practice. Within the brief, reference was made to a 1993 Enforcement Committee action regarding injectables. Further research of that issue proved that this was an isolated issue which was never brought before the full Board for ratification. The question and the brief filed in behalf of those who use injectables places this agency in a precarious position with regard to regulation and enforcement. Promulgation of rules and/or procedural actions by this Board which stop the use of injectables will bring suit from one of several parties involved in this matter. Based on the concerns stated and the threat of legal action, the Texas Board of Chiropractic Examiners requests an Attorney General Opinion to definitively resolve the questions:

No. 1.
No needles.

1. Is the use of injectible vitamins by licensed Doctors of Chiropractic in the treatment of biomechanical conditions of the spine and musculoskeletal system of the body with the scope of practice as defined in Art. 4512b (V.A.C.S.)?

Oliver R. Smith, Jr., D.C., President
El Paso

Keith Hubbard, D.C.
Fort Worth

Kevin Raef, D.C.
Canyon

John Weddle, D.C.
Rockwall

Hubert Pickett, Jr.
Abilene

Carolyn Davis-Williams, D.C.
Houston

Carroll Guice, D.C.
Longview

Nancy Brannon
Gainesville

Dora Valverde
Mission

Patte Kent
Executive Director

The Honorable Dan Morales
November 5, 1996
Page 2

2. When the Federal Drug Administration requires a legend for a particular injectable substance (i.e. Caution: Federal Law prohibits dispensing without prescription.) Texas statute considers that substance to be a "dangerous drug." In some instances, although the FDA requires it, some manufacturers do not include the legend in their packaging and promotion. Therefore, how would a practitioner know if that substance was a controlled substance, dangerous drug or a drug that requires a prescription? Does the responsibility lie with the manufacturer or the practitioner?
3. In some instances the FDA does not require a legend but manufacturers continue to include it in their packaging and promotion. Is that substance still considered to be a dangerous drug according to the Texas Dangerous Drug Act?
4. In the State of Texas who is the source or body that has the definitive authority of defining a controlled substance, dangerous drug or drug that requires a prescription?
5. If these substances are not controlled substances or dangerous drugs, nor do they violate any other provision of the Chiropractic Act, is the use of these substances in the treatment of biomechanical conditions of the spine and musculoskeletal system of the body within the scope of practice as defined in Art. 4512b (V.A.C.S.).

yes
\$483.001 (22)
required to be

CS = leg

Your expeditious handling of this matter will be greatly appreciated as the potential for public harm exists.

Sincerely,



Oliver R. Smith, Jr., D.C.
President
Texas Board of Chiropractic Examiners

cc: Texas Board of Chiropractic Examiners