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COORDINATING BOARD

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August 5, 2003

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

FILE # ML-43216-03

I.D. # 43216

RQ-0091-6A

Re: Request for Attorney General Opinion

Dear General Abbott:

As commissioner of higher education at the Texas Higher Education Coordinating Board, I am submitting this request for a written opinion pursuant to Texas Government Code § 402.042.

I respectfully request an opinion regarding the issue of whether the Texas Higher Education Coordinating Board (Coordinating Board) or the State Board of Acupuncture Examiners (Acupuncture Board) has the authority to regulate acupuncture schools, as relates to their granting of degrees, credits toward degrees, and their use of academic terms.

The Coordinating Board has the statutory authority to regulate private degree-conferring institutions within the state of Texas, in order to prevent deception of the public by fraudulent or substandard degrees. TEC § 61.301. Under the Texas Education Code, "A person may not grant or award a degree on behalf of a private postsecondary educational institution unless the institution has been issued a certificate of authority to grant the degree by the [Coordinating] board." TEC § 61.304. Before the Coordinating Board will issue a certificate of authority, a team of credentialed volunteers and staff members conducts a detailed investigation into many aspects of the school's organization, such as their funding structures, their governing boards, academic independence, curriculum, library, laboratories, advertising, student recruitment, appropriate faculty-student ratios and faculty qualifications.

The term "college," may not be used in the official name or title of an educational or training establishment, or a "nonexempt private postsecondary educational institution that has not been granted a certificate of authority." TEC § 61.313. There is no question that all the acupuncture schools currently operating in Texas fit within the definition of private postsecondary educational institutions that is found at TEC § 61.302.

All four of the acupuncture schools in Texas currently offer a "Master's Degree of Oriental Medicine," and three include the word "college" in their names. The Coordinating Board has never granted a certificate of authority to any Texas acupuncture schools to allow them to award degrees, or to use the protected term, "college."

To be frank, the Coordinating Board has heretofore not sought to exercise authority over these schools' use of "college" or award of "degree." However, recently the Coordinating Board staff has become aware that one of the Texas acupuncture schools has requested the Acupuncture Board grant them authority to offer doctorates in Oriental Medicine. This news has provoked us to rethink the regulatory power of the two agencies, and we are asking for your opinion on this point. The specter of medical practitioners with not so much as Bachelor's degrees being given the "right" to call themselves "Doctors," creates real concern on our part that perhaps we have misunderstood the exemption to our statutory responsibility to protect the public from substandard degrees.

A limited number of schools are exempt from Coordinating Board regulation under a statutory exemption in TEC § 61.303(a), which states:

The provisions of this subchapter do not in any way apply to an institution which is fully accredited by a recognized accrediting agency, or an institution or degree program that has received approval by a state agency authorizing the institution's graduates to take a professional or vocational state licensing examination administered by that agency. The granting of permission by a state agency to a graduate of an institution to take a licensing examination does not by itself constitute approval of the institution or degree program required for an exemption under this subsection.

The Coordinating Board staff has never been certain how to determine whether an agency has, "authorize(ed) the institution's graduates to take a professional or vocational state licensing examination administered by that agency," and therefore the schools and degree programs are exempt from Coordinating Board regulation, or whether in actuality the agency has merely, "grant(ed)... permission to a graduate of an institution to take a licensing examination," which would leave them subject to the Coordinating Board's regulatory authority. We need a clearer understanding of how to reconcile those two clauses, so that this Board is better able to determine whether the exemption should apply. It seems to us to be a distinction without a difference.

As we have said, none of the Texas acupuncture schools have certificates of authority from this Board. All four acupuncture schools that operate in Texas at this time are accredited by the ACAOM (Accreditation Commission for Acupuncture and Oriental Medicine), but this is not an accrediting agency that is recognized by the Coordinating Board. Therefore, the only statutory basis for these schools to be offering degrees and using protected terms in Texas is if the acupuncture schools have "received approval by a state agency authorizing the institution's graduates to take a professional or vocational state licensing examination administered by that agency," rather than the Acupuncture Board having merely "granted permission to graduates of those institutions to take a licensing examination."

The Texas State Board of Medical Examiners (Medical Board) is responsible for the licensure and discipline of Texas physicians (M.D.'s and D.O.'s), and, in addition, the Medical Board also oversees the Acupuncture Board. Among the Medical Board's responsibilities in this regard are approving acupuncture rules for publication, and issuing acupuncture licenses, upon the recommendation of the Acupuncture Board. The Medical Board itself has professed on many occasions that it has no interest in regulating either medical schools or acupuncture schools. Yet the Acupuncture Board itself takes the position that it "regulates" acupuncture schools sufficiently to exempt the schools from Coordinating Board regulation.

The powers and duties of the Acupuncture Board are established in the Texas Occupation Code, § 205.101. This list of powers does not include the authority to regulate acupuncture schools, but it does include the authority to, "establish minimum education and training requirements necessary for the acupuncture board to recommend that the medical board issue a license..." TOC § 205.101(a)(2).

There are a number of Acupuncture Board rules that we perceive as going well beyond establishing education and training requirements necessary for licensure. See, for example, 22 TAC 183.2(2), (regarding "acceptable approved schools"); §183.3(g)(3)(D), (relating to consulting with the Coordinating Board on educational requirements), but compare §183.3(g)(3)(H), (regarding rules setting "degree requirements"); §183.4(g), (stating that approved schools may use the word "college," but not "university"); and §183.4(h), (creating an exception to their standards for certain schools "operating in Texas").

We are aware that there are Texas licensing agencies that indisputably regulate schools, such as the Board of Vocational Nurse Examiners and the Cosmetology Commission. There are many more

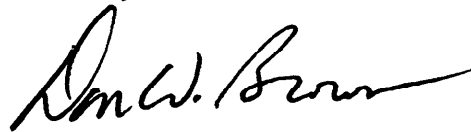
Mr. Abbott
August 5, 2003
Page 4

licensing agencies that have never suggested that their licensing standards render the Texas schools that educate their applicants exempt from the Coordinating Board's regulations. Among these agencies are the Board of Medical Examiners and the Board of Law Examiners. Only two agencies have presented us with this dilemma. The Board of Chiropractic Examiners takes the position that chiropractic schools are exempt. This position currently presents this Board with no problem, for both of the chiropractic schools currently operating in Texas are accredited by a recognized accrediting agency.

The Texas Higher Education Coordinating Board respectfully requests your legal opinion on this question:

Are acupuncture schools exempt from regulation by the Coordinating Board under TEC § 61.303(a), which would allow the schools to use the protected term "college" and to award degrees, including masters and perhaps also doctorate degrees, without Coordinating Board approval?

Cordially,

A handwritten signature in black ink, appearing to read "Don W. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

Don W. Brown