



Texas Board of Chiropractic Examiners

The Honorable Ken Paxton
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711
ATTN: Opinion Committee



RQ-0510-KP
FILE# **ML-49286-23**
I.D.# **49286**

Via email: opinion.committee@oag.texas.gov

May 19, 2023

Dear General Paxton:

This is a formal request from the Texas Board of Chiropractic Examiners (Board) for an Attorney General Opinion on:

Whether the Board has any discretion under Texas Occupations Code §201.5065 (Required Suspension or Revocation of License for Certain Offenses) on suspending or revoking a chiropractor's license if the chiropractor is convicted of certain offenses, or the Board does have discretion under Occupations Code §§201.502(a)(5) and 53.021(a)(1).

BACKGROUND AND ANALYSIS

Occupations Code §201.5065 currently states:

- (a) The board *shall* [emphasis added] suspend a chiropractor's license on proof that the chiropractor has been:
- (1) initially convicted of:
 - (A) a felony;
 - (B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;
 - (C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;
 - (D) a misdemeanor under Section 25.07, Penal Code; or
 - (E) a misdemeanor under Section 25.071, Penal Code; or
 - (2) subject to an initial finding by the trier of fact of guilt of a felony under:
 - (A) Chapter 481 or 483, Health and Safety Code;
 - (B) Section 485.033, Health and Safety Code; or
 - (C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).
- (b) On final conviction for an offense described by Subsection (a), the board *shall* [emphasis added] revoke the chiropractor's license.



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Texas Board of Chiropractic Examiners

The “shall” highlighted in subsections (a) and (b) above is the crux of the Board’s question. That statute’s unambiguous text states that the Board has no discretion and therefore must suspend or revoke a chiropractor’s license for a conviction of those certain offenses.

However, that clearly mandatory language conflicts with other provisions in Occupations Code Chapter 201 under the Board’s jurisdiction and other Occupations Code applicable to all Texas licensing agencies that do appear to give the Board discretion in situations where a licensee has been convicted of an offense, including felonies. Specifically, §201.502 (Grounds for Refusal, Revocation, or Suspension of License) states:

(a) The board . . . **may** [emphasis added] revoke or suspend a license or place a license holder on probation for a period determined by the board for:

...

(5) being convicted of a crime involving moral turpitude or a felony;

...

(c) The board **may** [emphasis added] . . . revoke or suspend a license or place a license holder on probation for a period determined by the board because of the person's or license holder's violation of a law of this state, other than this chapter, or a rule of another licensing board in this state, or of a statute or rule of another state as determined through a search conducted as provided by Section 201.314, if the violation constitutes a violation of the laws of this state or a board rule.

Additionally, Occupations Code §53.021 (Authority to Revoke, Suspend, or Deny License), which is applicable to all licensing agencies (including the Board) states:

(a) Subject to Section 53.0231, a licensing authority **may** [emphasis added] suspend or revoke a license . . . on the grounds that the person has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(2) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

...

(b) A license holder's license **shall** [emphasis added] be revoked on the license holder's **imprisonment** [emphasis added] following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

....

The language in §53.0231(a) seems to indicate that the Board’s authority to suspend or revoke is generally discretionary, while §53.0231(b) clarifies that the Board’s discretion disappears only if the conviction results in imprisonment.





Texas Board of Chiropractic Examiners

Also, the legislative intent of these Occupations Code Chapter 53 provisions is clear from §53.003 (Legislative Intent; Liberal Construction of Subchapter), which states:

- (a) It is the intent of the legislature to enhance opportunities for a person to obtain gainful employment after the person has:
 - (1) been convicted of an offense; and
 - (2) discharged the sentence for the offense.
- (b) This chapter shall be liberally construed to carry out the intent of the legislature.

The Board agrees that it is required to liberally construe Chapter 53 to permit a licensee with a conviction to continue working as a license-holder. However, it is not clear that this requirement for a liberal construction has any effect on the mandatory language in §201.5065.

CONCLUSION

The Board therefore respectfully requests an opinion as to whether the Board has any discretion under Occupations Code §201.5065 on suspending or revoking a chiropractor's license if the chiropractor is convicted of certain offenses.

Please feel free to contact the Board's general counsel, Christopher Burnett, at 512-305-6715 or christopher@tbce.texas.gov if you need any more information.

Sincerely,

A handwritten signature in black ink that reads "Mark Bronson, DC".

Mark Bronson, President
Texas Board of Chiropractic Examiners

cc: Patrick Fortner, Executive Director, Texas Board of Chiropractic Examiners
Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners
Joseph McLaughlin, Director of Enforcement, Texas Board of Chiropractic Examiners