

Vermont
Acupuncture
Association

July 7, 2015

Brian Finch
Rutland Regional Medical Center
160 Allen Street
Rutland, VT 05701

Dear Mr. Finch,

Please see the attached letter from Vermont's Office of Professional Regulation in response to our recently filed complaint. We appreciate your patience on this matter while awaiting this response.

As you see, OPR does not believe the current statutes prohibit the practice of dry needling by physical therapists, hence they feel no authorization to take further action in response to our complaint. The concern from the acupuncture professionals in Vermont still exists, however, specifically around the lack of standardized requirements for the practice of dry needling. To assure safe practice for the sake of the patient, the limited hours of training and supervision for this technique are in question.

Again, we hope to engage in a welcomed dialogue around our concerns. We are each dedicated toward moving our patients to a greater state of health. They will benefit most from our open and sincere communication.

Respectfully,

J. Singer by/kt

Joshua Singer, L.Ac.
Director, Vermont Acupuncture Association

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June 22, 2015

Joshua Singer
Vermont Acupuncture Association
P.O. Box 575
Winooski, Vermont 05404

Re: Complaint of the Vermont Acupuncture Association

Dear Mr. Singer:

The Office of Professional Regulation has received your complaint on behalf of the Vermont Acupuncture Association, dated June 12, 2015, alleging that eleven Vermont physical therapists have engaged in the unauthorized practice of acupuncture by using a therapy known as “trigger point dry needling,” or TDN. We appreciate your candor in acknowledging the Office’s *Report of Concluded Investigation* in docket no. 2012-218, dated December 31, 2012, finding that the use of TDN by a physical therapist is not *ipso facto* unprofessional conduct or unauthorized practice of acupuncture. To date, the OPR has been unable to identify any physical therapy patient injured or otherwise aggrieved by the performance of TDN by a physical therapist.

Acupuncture is defined as “the insertion of fine needles through the skin ... *for the purpose of promoting health and balance as defined by traditional and modern Oriental theories.*” 26 V.S.A. § 3401(1) (emphasis added). The scope of physical therapy practice specifically includes “alleviating impairments and functional limitations in physical movement and mobility and disabilities by developing, implementing, and modifying treatment interventions.” *Id.* § 2801a(8)(B). The latter may—and does in the case of TDN—involve the insertion of fine needles through the skin. As we look to the respective professions’ scopes of practice, the common mechanism employed is but one element of practices that are otherwise distinct: the acupuncturist uses needles to promote health and balance consistent with Oriental theories; the physical therapist uses needles to alleviate impairments of physical movement. Were we to ignore the *purpose* for which the fine needle is inserted, it would follow that pediatric vaccination is acupuncture.

This is not to say that physical therapists may use TDN irresponsibly. Like other OPR licensees, physical therapists are constrained to practice “within the scope permitted by law” and must not employ therapies they are not competent to perform. 26 V.S.A. § 2121(b)(3). All OPR licensees are prohibited from “performing treatments or providing services which the licensee is not qualified to perform or which are beyond the scope of the licensee’s education, training, capabilities, experience, or scope of practice.” 3 V.S.A. § 129a(a)(13). Similarly, no OPR licensee—whether an acupuncturist, a physical therapist, or a nurse—may “[e]xercis[e] undue influence on or tak[e] improper advantage of a person using professional services, or promot[e] the sale of services or goods in a manner which exploits a person for the financial gain of the practitioner or a third party.” *Id.* § 129a(a)(12). The latter

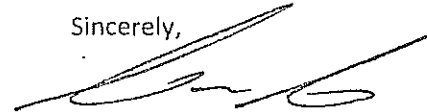
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prohibition restricts practitioners from offering quack or sham therapies, or otherwise profiting from therapeutic practices known to be ineffective, regardless of how thoroughly a practitioner may have trained to perform the ineffective therapy.

The Association's complaint of June 12 accuses eleven individuals of wrongdoing without identifying any basis for suspicion or any witness to their practices. I infer from the accompanying materials that the named individuals may have attended a March course in TDN. But even assuming the premise that TDN could not have been taught competently in the time allotted, an individual's attendance at such a course does not exclude other sources of training.

For the reasons described above, the Association's June 12 submission does not identify *prima facie* unauthorized practice by any individual, so much as it raises the same abstract question of statutory interpretation resolved by the Office in 2012 in a manner that would favor the accused. While we take seriously the Association's concerns about the adequacy of TDN training among some physical therapists, we have learned that it is best not to use the threat of individual discipline to settle questions of legislative policy. Under the existing law, OPR believes physical therapists reasonably may practice TDN if appropriately trained and experienced, and if the therapy is reasonably indicated for the relief of an impairment of physical movement. Should it be necessary, the Legislature is empowered to amend 26 V.S.A. § 2801a to specifically exclude TDN from the broad range of treatment interventions within the scope of physical therapy practice.

Sincerely,



Gabriel M. Gilman
General Counsel

cc: Karen Tyler, Esq.
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