



December 19, 2016.

VIA E-MAIL

Steven McDavitt, PT, DPT, MS, FAAOMPT
President, Orthopaedic Section, APTA
2920 East Avenue South, Suite 200
La Crosse, Wisconsin 54601

RE: December 2016 Report on APTA Orthopaedic Section Advocacy Grant

Dear Dr. McDavitt:

Many thanks again for the Orthopaedic Section's generous \$5,000 advocacy grant in connection with the North Carolina scope-of-practice litigation over dry needling. With the help of your generosity, our chapter has been able to fight—and, thus far, *win*—an important scope-of-practice battle for physical therapists with national implications. This letter serves as our December 2016 report on our use of the grant funds and the progress we've made.

Please understand that because litigation is ongoing, we must be cautious in describing the specifics of our legal strategies. Of course, if you would like additional substantive information about the litigation or its national implications, I would be glad to supply you with it. In addition, our lead attorney, Mr. Erteschik, is available to answer any questions that the you might have.

Background

As the Orthopaedic Section may be aware, the APTA, the Federation of State Boards of Physical Therapy, and the majority of U.S. states all agree that dry needling is within the scope of practice of physical therapy. In North Carolina, our Physical Therapy Board has reached the same conclusion.

Despite this, the North Carolina Acupuncture Licensing Board has launched a campaign aimed at making dry needling unavailable to patients who benefit from it. The Acupuncture Board's motives are purely anticompetitive. Unfortunately, its conduct has led to substantial litigation in both federal and state courts in North Carolina.

The North Carolina Litigation

In September 2015, the Acupuncture Board filed a lawsuit designed to prevent physical therapists from competing against acupuncturists. The Acupuncture Board's



lawsuit sought an order declaring that dry needling by physical therapists is the unauthorized practice of acupuncture—a Class 1 misdemeanor. In other words, the Acupuncture Board wants to make dry needling a crime.

The NCPTA took swift action to protect our patients' access to care. On October 7, 2015, our lawyers filed a federal antitrust lawsuit against the Acupuncture Board on behalf of several of our members and their patients.

Our lawsuit quotes public records showing that Acupuncture Board members used their government positions to try to block North Carolina patients from receiving dry-needling treatments—all in an effort to crush competition from physical therapists. Worse, the Acupuncture Board did these things at the specific request of North Carolina's Acupuncture Association. Our lawsuit asks the federal courts to hold the Acupuncture Board and its members accountable.

Sadly, the Acupuncture Board responded to our lawsuit by suing some of our chapter's members in the state-court lawsuit that it filed against the Physical Therapy Board. Our chapter, again, took swift action to protect our members and their patients. On behalf of our members, our lawyers litigated with the Acupuncture Board's lawyers for many months. The case was hard-fought: More than 25 briefs were filed in the case since it began in September of last year.

That lawsuit, I am glad to report, has now been *dismissed*. In an order issued in late April, the North Carolina Business Court dismissed the Acupuncture Board's lawsuit in its entirety. The Court's thorough and well-reasoned decision can be found on our chapter's homepage at www.ncpt.org.

Our victory in the state-court lawsuit, however, did not mark the end of this battle, and that is why the Orthopaedic Section's financial support is so critical. Days after its lawsuit was dismissed in full, the Acupuncture Board started more legal proceedings with the Physical Therapy Board. The new proceedings have the same purpose as the now-dismissed lawsuit: trying to prevent patients from receiving dry needling.

On December 7, the Business Court held a hearing on that lawsuit. We expect a ruling from the Court by Spring 2017.

Meanwhile, our antitrust lawsuit continues to press forward successfully in federal court. Fortunately, we have good reason to be optimistic. As we recently showed the Court in an important filing in our federal lawsuit, the Acupuncture Board took the exact same actions that the U.S. Supreme Court recently condemned. The only difference is that, here, the Acupuncture Board went further, and it left a trail of public records cataloguing years' worth of its attempts to stamp out dry needling. For these and other reasons, we are confident that our federal lawsuit is well-positioned for success.



Lobbying Efforts

The NCPTA's commitment to protecting our patients' access to care is not limited to litigation. The NCPTA hired professional lobbyists for the 2016 session of the North Carolina legislature. Those lobbyists are educating our state legislature about these issues, and their work is an integral part of our comprehensive strategy.

Your Support

The NCPTA is committed to defending our members and their patients for as long as it takes. Doing so effectively, however, requires substantial resources.

That is why we are so grateful to the Orthopaedic Section for its generous advocacy grant. 100% of the advocacy grant has been applied directly towards funding the litigation and lobbying efforts described in detail above. Thus, the funds have allowed the NCPTA to make significant advances in protecting patients' access to quality choice of healthcare treatments.

Again, the NCPTA is tremendously grateful for the Orthopaedic Section's support of this vital, ongoing work. On behalf of the NCPTA's leadership and its members, thank you for your commitment to this important issue.

Warm regards,

Kyle Covington, PT, DPT, PhD
President, NCPTA