

May 2, 2016

Kelly A. Caudill, Executive Director
State Chiropractic Board
77 South High Street, 16th Floor
Columbus, Ohio 43215-6108

SYLLABUS:

2016-015

1. The State Chiropractic Board may determine that the practice of dry needling by a licensed chiropractor constitutes “acupuncture,” as defined in R.C. 4734.28(A).
2. Upon a determination that the practice of dry needling by a licensed chiropractor constitutes “acupuncture,” as that term is defined in R.C. 4734.28(A), the State Chiropractic Board shall permit a licensed chiropractor to practice dry needling, so long as the chiropractor holds a valid certificate to practice as an acupuncturist issued by the State Medical Board, is a physician as defined in R.C. 4762.01(H), performs acupuncture as part of a training program that satisfies both of the conditions of R.C. 4762.02(D)(1), holds a valid certificate to practice as an oriental medicine practitioner, or holds a certificate to practice acupuncture issued by the State Chiropractic Board.



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OPINION NO. 2016-015

Kelly A. Caudill, Executive Director
State Chiropractic Board
77 South High Street, 16th Floor
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Dear Executive Director Caudill:

You have requested an opinion whether the practice of dry needling constitutes the practice of acupuncture in the state of Ohio. You also wish to know whether the State Chiropractic Board may permit a chiropractor to practice dry needling without obtaining a certificate to practice acupuncture issued by the Board pursuant to R.C. 4734.283. In your letter, you explain that “[d]ry needling is a broad term used to describe a form of treatment that involves inserting and removing needles intramuscularly to stimulate underlying myofascial trigger points, muscular and connective tissues[.]”¹ You further explain that dry needling may be “referred to as trigger point dry needling, intramuscular manual therapy, intramuscular dry needling, or intramuscular stimulation.” For the purpose of this opinion, we examine the practice of dry needling as described in your letter.

The State Chiropractic Board has authority to promulgate rules governing the practice of acupuncture by a licensed chiropractor under R.C. Chapter 4734 (chiropractors) and the State Medical Board has authority to promulgate rules governing the practice of acupuncture under R.C. Chapter 4762 (acupuncturists).² R.C. 4734.10; R.C. 4762.19. Administration and enforcement of the provisions of R.C. Chapter 4734 are within the regulatory authority of the State Chiropractic Board, while administration and enforcement of the provisions of R.C. Chapter 4762 are within the regulatory authority of the State Medical Board. *See* R.C. 4762.02 (identifying who may practice acupuncture); R.C. 4762.19. Pursuant to R.C. 4734.283, the State Chiropractic Board may issue a certificate to practice acupuncture to a licensed chiropractor. The State Medical Board may issue a certificate to practice as an acupuncturist pursuant to R.C. 4762.04.

¹ It is our understanding that dry needling uses a filiform needle, which is a solid filament needle. This opinion does not address whether a chiropractor may practice dry needling using a hollow needle.

² For the purpose of this opinion, a licensed chiropractor is a chiropractor licensed by the State Chiropractic Board pursuant to R.C. Chapter 4734.

The Attorney General advises a state board on matters within the scope of the board's statutory authority and official duties. R.C. 109.12 (“[t]he attorney general, when so requested, shall give legal advice to a state ... board ... in all matters relating to [its] official duties”). Whether dry needling constitutes acupuncture under R.C. Chapter 4762 is a determination that shall be made by the State Medical Board. It is inappropriate, in an opinion, for the Attorney General to advise the State Chiropractic Board concerning matters that are within the regulatory authority of the State Medical Board, when the State Medical Board has not requested such an opinion. *See* 2004 Op. Att’y Gen. No. 2004-017, at 2-143; 2001 Op. Att’y Gen. No. 2001-032, at 2-193. Consequently, we shall narrow the scope of your first question insofar as it implicates the regulatory authority of the State Medical Board. Therefore, this opinion addresses whether the practice of dry needling constitutes acupuncture as it relates to the State Chiropractic Board’s regulation of licensed chiropractors and the issuance of a certificate to a chiropractor to practice acupuncture pursuant to R.C. 4734.283. *See* 2000 Op. Att’y Gen. No. 2000-016, at 2-95 n.4. This opinion does not address whether the practice of dry needling by a licensed physical therapist or a licensed athletic trainer constitutes acupuncture as that term is defined in R.C. 4762.01(A) or R.C. 4734.28(A).

Does Dry Needling Constitute Acupuncture as defined in R.C. 4734.28(A)?

R.C. 4734.141 prohibits a licensed chiropractor from practicing acupuncture, unless the chiropractor “holds a valid certificate to practice acupuncture issued by the [state chiropractic] board” under R.C. 4734.283 or is one of the individuals identified in R.C. 4762.02.³ “Acupuncture” is defined for the purpose of R.C. 4734.28-.286 as “a form of health care performed by the insertion and removal of specialized needles, with or without the application of moxibustion⁴ or electrical stimulation, to specific areas of the human body.” R.C. 4734.28(A) (footnote added).

The Revised Code does not define the terms “health care” and “specialized needles” as used in R.C. 4734.28(A). Accordingly, we use the common meaning of those terms. *See* R.C. 1.42. “Health care” is defined as “efforts made to maintain or restore health esp[ecially] by trained and licensed professionals[.]” *Merriam-Webster’s Collegiate Dictionary* 574 (11th ed. 2005). “Specialized” is defined as “designed, trained, or fitted for one particular purpose or occupation.” *Id.* at 1198. Therefore, insofar as the practice of dry needling by a licensed chiropractor is performed for the purpose of maintaining or restoring health using needles that are designed or fitted for a particular

³ A physician, a person who performs acupuncture as part of a training program that satisfies both of the conditions of R.C. 4762.02(D)(1), a person who holds a valid certificate to practice as an oriental medicine practitioner, or a person who holds a certificate to practice acupuncture issued by the State Chiropractic Board may practice acupuncture without obtaining a certificate to practice as an acupuncturist from the State Medical Board pursuant to R.C. Chapter 4762. R.C. 4762.02(B),(D). Further discussion of R.C. 4762.02 is provided below.

⁴ “Moxibustion” is “the use of an herbal heat source on one or more acupuncture points.” R.C. 4734.28(B).

purpose, the practice of dry needling by a licensed chiropractor comports with the definition of acupuncture in R.C. 4734.28(A). The ideological or scientific basis behind the insertion and removal of specialized needles is not part of the definition of acupuncture provided in R.C. 4734.28(A). There also is no requirement that the insertion and removal of specialized needles be rooted in principles of Chinese medicine.⁵

As previously discussed, regulation of the practice of acupuncture by a chiropractor under R.C. Chapter 4734 is a duty of the State Chiropractic Board. *See* R.C. 4734.02; R.C. 4734.10. Determining what techniques constitute the practice of acupuncture as that term is defined in R.C. 4734.28(A) and what qualifications a chiropractor must have to perform a particular technique involving the insertion and removal of specialized needles is part of the regulation of the practice of acupuncture by chiropractors and the enforcement of statutes governing that practice. The specialized knowledge possessed by the chiropractor members of the State Chiropractic Board qualifies the State Chiropractic Board to understand the specific techniques involved in the practice of dry needling and

⁵ The decision of the General Assembly to define acupuncture without reference to principles of Chinese medicine distinguishes Ohio's statutes from those of other states. *See, e.g.*, N.C. Gen. Stat. § 90-451(1) (defining "acupuncture" as "[a] form of health care *developed from traditional and modern Chinese medical concepts* that employ acupuncture diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease" (emphasis added)); Ky. Rev. Stat. Ann. § 311.672(5) ("[p]ractice of acupuncture' means the insertion of acupuncture needles, with or without accompanying electrical or thermal stimulation, at certain acupuncture points or meridians on the surface of the human body *for purposes of changing the flow of energy in the body* and may include acupressure, cupping, moxibustion, or dermal friction. The practice of acupuncture shall not include laser acupuncture, osteopathic manipulative treatment, chiropractic adjustments, physical therapy, or surgery" (emphasis added)); Tenn. Code Ann. § 63-6-1001(2) ("acupuncture" is defined as "a form of health care *developed from traditional and modern oriental medical concepts* that employs oriental medical diagnosis and treatment and adjunctive therapies and diagnostic techniques for the promotion, maintenance and restoration of health and the prevention of disease" (emphasis added)).

Even though there is no express reference to principles of Chinese medicine in the definitions of acupuncture in R.C. 4762.01(A) or R.C. 4734.28(A), R.C. 4762.02(C)(2) provides, "[t]o the extent that acupuncture is a component of oriental medicine, an individual who holds a certificate to practice as an acupuncturist issued under [R.C. Chapter 4762] or a chiropractor who holds a certificate to practice acupuncture issued by the state chiropractic board under [R.C. 4734.283]" may practice oriental medicine without obtaining a certificate to practice as an oriental medicine practitioner from the State Medical Board. Similarly, R.C. 4762.02(D)(2) authorizes a person "who holds a certificate to practice as an oriental medicine practitioner issued under [R.C. Chapter 4762]" to practice acupuncture without obtaining a certificate to practice as an acupuncturist from the State Medical Board. We may reasonably infer from these provisions that the General Assembly understands that acupuncture has a relationship to principles of Chinese medicine.

to compare those techniques to the common meaning of the terms in R.C. 4734.28(A). *See* R.C. 4734.02 (four out of the five members of the State Chiropractic Board are chiropractors “engaged in full-time practice ... and ... licensed by the board for at least five years”); *cf.* 2000 Op. Att’y Gen. No. 2000-023, at 2-155 (“the General Assembly has assigned to the members of the State Medical Board, the greater portion of whom are licensed to practice medicine and surgery and have been appointed because of their expertise and scientific knowledge in the area of medicine and surgery, the duty to determine in finer detail whether particular acts or practices fall within the statutory definition of the practice of medicine”); 2000 Op. Att’y Gen. No. 2000-016, at 2-97 n.6 (questions regarding whether something is within the practice of respiratory care and the practice of nursing “are better resolved by the Ohio Respiratory Care Board and the Board of Nursing to whose expertise the General Assembly has delegated the regulation of the respective practices”).

Insofar as the General Assembly has conferred the authority to regulate and enforce R.C. Chapter 4734 on the State Chiropractic Board, the question of whether the practice of dry needling by a chiropractor constitutes acupuncture, as that term is defined in R.C. 4734.28(A), may be determined by the State Chiropractic Board. The State Chiropractic Board shall exercise its discretion reasonably and in conformance with the provisions of R.C. Chapter 4734. In the reasonable exercise of its discretion, the State Chiropractic Board may not alter or disregard applicable statutes. Taking into consideration the statutory limitations on a licensed chiropractor’s scope of practice, *see, e.g.*, R.C. 4734.15, the Board shall carefully compare the techniques used in the practice of dry needling by a chiropractor with those used in the practice of acupuncture by a chiropractor to determine whether dry needling techniques require a chiropractor to obtain additional education, training, and certification in order to perform dry needling.

May a Licensed Chiropractor Practice Dry Needling without a Certificate Issued Pursuant to R.C. 4734.283?

In order to practice acupuncture, a licensed chiropractor shall hold a valid certificate to practice acupuncture issued by the State Chiropractic Board pursuant to R.C. 4734.283, unless the licensed chiropractor is one of the individuals identified in R.C. 4762.02. R.C. 4734.141. R.C. 4734.281 provides:

Except in cases where a chiropractor holds a certificate issued under [R.C. 4762.04 (certificate to practice as an acupuncturist issued by the State Medical Board)] or is an individual described in [R.C. 4762.02(B) (a physician⁶)], a chiropractor licensed under [R.C. Chapter 4734] shall not engage in the practice of acupuncture unless the chiropractor holds a valid certificate to practice acupuncture issued by the state chiropractic board under [R.C. Chapter 4734]. (Footnote added.)

⁶ A “physician” for the purpose of R.C. Chapter 4762 is “an individual authorized under [R.C. Chapter 4731] to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.” R.C. 4762.01(H).

See also R.C. 4734.15 (a licensed chiropractor may perform acupuncture if the chiropractor holds a valid certificate to practice acupuncture issued pursuant to R.C. 4734.283).

R.C. 4762.02(A)(2) prohibits any person from “[e]ngag[ing] in the practice of acupuncture⁷ unless the person holds a valid certificate to practice as an acupuncturist issued by the state medical board under [R.C. Chapter 4762].” (Footnote added.) The following persons are excepted from the prohibition of R.C. 4762.02(A)(2):

(1) A person who performs acupuncture as part of a training program in acupuncture, but only if both of the following conditions are met:

(a) The training program is operated by an educational institution that holds an effective certificate of authorization issued by the Ohio board of regents under [R.C. 1713.02] or a school that holds an effective certificate of registration issued by the state board of career colleges and schools under [R.C. 3332.05].

(b) The person performs the acupuncture under the general supervision of an acupuncturist who holds a certificate to practice as an acupuncturist issued under [R.C. Chapter 4762] and is not practicing within the supervisory period required by [R.C. 4762.10].

(2) An individual who holds a certificate to practice as an oriental medicine practitioner issued under [R.C. Chapter 4762].

(3) A chiropractor who holds a certificate to practice acupuncture issued by the state chiropractic board under [R.C. 4734.283].

R.C. 4762.02(D). The prohibition of R.C. 4762.02(A)(2) also does not apply to a physician who is “authorized under [R.C. Chapter 4731] to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.” R.C. 4762.01(H); R.C. 4762.02(B).

Accordingly, in order for a licensed chiropractor to engage in the practice of acupuncture in the state of Ohio, the chiropractor shall satisfy one of the following five requirements: (1) hold a valid certificate to practice as an acupuncturist from the State Medical Board; (2) be a licensed physician as defined in R.C. 4762.01(H); (3) perform acupuncture as part of a training program that satisfies both of the conditions of R.C. 4762.02(D)(1); (4) hold a valid certificate to practice as an oriental medicine practitioner; or (5) hold a certificate to practice acupuncture from the State Chiropractic Board. R.C.

⁷ R.C. 4762.01(A) defines “acupuncture” for the purpose of R.C. Chapter 4762 as “a form of health care performed by the insertion and removal of specialized needles, with or without the use of supplemental techniques, to specific areas of the human body.” “Supplemental techniques” are “the use of general nonmedical nutritional information, traditional and modern oriental therapeutics, heat therapy, moxibustion, acupressure and other forms of Chinese massage, and educational information regarding lifestyle modifications.” R.C. 4762.01(I); *see generally* R.C. 4762.01(C) (defining “general nonmedical nutritional information”); R.C. 4762.01(F) (defining “moxibustion”); R.C. 4762.01(G) (defining “oriental medicine”).

4734.141; R.C. 4734.281; R.C. 4762.02. A licensed chiropractor shall not practice acupuncture unless the chiropractor is one of the people identified in R.C. 4762.02 or holds a certificate to practice acupuncture issued by the State Chiropractic Board pursuant to R.C. 4734.283. R.C. 4734.141.

If the State Chiropractic Board determines that the practice of dry needling by a licensed chiropractor constitutes acupuncture, as that term is defined in R.C. 4734.28(A), the board shall not permit a licensed chiropractor to practice dry needling unless the chiropractor holds a valid certificate to practice as an acupuncturist issued by the State Medical Board, is a physician as defined in R.C. 4762.01(H), performs acupuncture as part of a training program that satisfies both of the conditions of R.C. 4762.02(D)(1), holds a valid certificate to practice as an oriental medicine practitioner, or holds a certificate to practice acupuncture issued by the State Chiropractic Board. R.C. 4734.141; R.C. 4734.281; R.C. 4762.02.⁸

Conclusions

Based upon the foregoing, it is our opinion, and you are hereby advised that:

1. The State Chiropractic Board may determine that the practice of dry needling by a licensed chiropractor constitutes “acupuncture,” as defined in R.C. 4734.28(A).
2. Upon a determination that the practice of dry needling by a licensed chiropractor constitutes “acupuncture,” as that term is defined in R.C. 4734.28(A), the State Chiropractic Board shall permit a licensed chiropractor to practice dry needling, so long as the chiropractor holds a valid certificate to practice as an acupuncturist issued by the State Medical Board, is a physician as defined in R.C. 4762.01(H), performs acupuncture as part of a training program that satisfies both of the conditions of R.C. 4762.02(D)(1), holds a valid certificate to practice as an oriental medicine practitioner, or holds a certificate to practice acupuncture issued by the State Chiropractic Board.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

⁸ If the State Chiropractic Board determines that the practice of dry needling by a chiropractor does not constitute acupuncture, as that term is defined in R.C. 4734.28(A), the Board shall determine whether the practice of dry needling by a chiropractor is within the scope of the practice of chiropractic as defined in R.C. 4734.01.