

IN THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY

IOWA ASSOCIATION OF ORIENTAL
MEDICINE AND ACUPUNCTURE,
Petitioner,

v.

IOWA BOARD OF PHYSICAL AND
OCCUPATIONAL THERAPY,
Respondent,

IOWA PHYSICAL THERAPY
ASSOCIATION,
Intervenor.

CASE NO. CVCV051242

ORDER:

Ruling on Petition
for Judicial Review

On July 15, 2016, this matter came before the Court for oral argument regarding Iowa Association of Oriental Medicine and Acupuncture’s (“Petitioner”) Petition for Judicial Review. Petitioner appeared by and through their attorneys Mark McCormick and Espnola F. Cartmill. Respondent appeared by and through their attorney Laura Steffensmeier. Finally, Intervenor appeared by and through their Attorney Douglas L. Struyk. Petitioner seeks judicial review of the Iowa Board of Physical and Occupational Therapy’s decision regarding the use of rehabilitative techniques. After hearing the arguments of counsel, reviewing the court file, the briefs filed by the parties, and the certified administrative record, the Court finds as follows:

A. Standard of Review

Chapter 17A of the Iowa Code governs a district court’s judicial review of administrative agency action.¹ The district court acts in an appellate capacity to correct errors of law on the part of the agency.² The Court “may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria contained in Section 17A.19(10)(a) through (n).”³ Where an

¹ See Iowa Code § 17A.19 (2015).

² *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006).

³ *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Sys., Inc. v. Iowa Utils. Bd.*,

agency has been “clearly vested” with a fact-finding function, the appropriate “standard of review [on appeal] depends on the aspect of the agency’s decision that forms the basis of the petition for judicial review”—that is, whether it involves an issue of: (1) findings of fact; (2) interpretation of law; or (3) application of law to fact.⁴

“If the claim of error lies with the agency’s findings of fact, the proper question on review is whether substantial evidence supports those findings of fact.”⁵ “[A] reviewing court can only disturb those factual findings if they are ‘not supported by substantial evidence in the record before the court when that record is reviewed as a whole.’”⁶ A district court’s review “is limited to the findings that were actually made by the agency, not other findings that the agency could have made.”⁷ “Substantial evidence means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.”⁸

If “the claim of error lies with the agency’s interpretation of the law, the question on review is whether the agency’s interpretation was erroneous, and we may substitute our interpretation for the agency’s.”⁹

If “the claim of error lies with the *ultimate conclusion* reached, then the challenge is to the agency’s application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence.”¹⁰ Thus, the Court will only reverse the Agency’s application of law to the facts if “it is ‘irrational, illogical, or wholly unjustifiable.’”¹¹

805 N.W.2d 758, 762 (Iowa 2011)).

⁴ *Burton*, 813 N.W.2d at 256.

⁵ *Meyer*, 710 N.W.2d at 219.

⁶ *Burton*, 813 N.W.2d at 256 (quoting Iowa Code § 17A.19(10)(f) (2007)).

⁷ *Id.*

⁸ Iowa Code § 17A.19(10)(f)(1) (2015).

⁹ *Meyer*, 710 N.W.2d at 219.

¹⁰ *Id.*

¹¹ *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012) (quoting *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007)); see also *Burton*, 813 N.W.2d at 256 (“When the application of law to fact has been clearly vested in the discretion of an agency, a reviewing court may only disturb the agency’s application of the law to the facts of the particular case if that application is ‘irrational, illogical, or wholly

B. Application

The practice of physical therapy is defined in Iowa Code section 148A.1(1)(b). It states in pertinent part:

“physical therapy” is that branch of science that deals with the evaluation and treatment of human capabilities and impairments. Physical therapy uses the effective properties of physical agents, including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound, and therapeutic exercises, and rehabilitative procedures to prevent, correct, minimize, or alleviate a physical impairment. Physical therapy includes the interpretation of performances, tests, and measurements, the establishment and modification of physical therapy programs, treatment planning, consultative services, instructions to the patients, and the administration and supervision attendant to physical therapy facilities.¹²

On January 14, 2016, Respondent concluded Iowa physical therapists are authorized by law to perform a procedure commonly referred to as "dry needling." Petitioner asserts the Board erred because: (1) Iowa Code section 148A.1(1)(b) contemplates the use of non-invasive procedures only; (2) physical therapists do not have statutory authority to use filiform needles to perform invasive procedures, such as dry needling; (3) Acupuncturists, not physical therapists, are permitted to use filiform needles as governed by Iowa Code section 143E.1(4). Consequently, the only issue before this Court is whether it was irrational, illogical, or wholly unjustifiable for the Board to conclude that dry needling is within the scope of “rehabilitative procedures” as discussed in Iowa Code section 148A.1(1)(b).

Originally, Petitioner requested a declaratory order from the Board regarding dry needling. Petitioner submitted eight (8) questions to the Board for review. Those questions were as follows:

1. What are the medical and legal definitions of “trigger points,” “Ashi Point,” “intramuscular manual therapy,” “dry needling,” and “lifting/thrusting technique”?
2. Does the use of “trigger points” equate to the use of “Ashi” points?
3. Is Dry Needling/Intramuscular Manual Therapy a technique within the

unjustifiable.”).

¹² Iowa Code § 148A.1(1)(b) (2015).

- practice of acupuncture due to the utilization of a FDA regulated medical device, the acupuncture needle?
4. Is Dry Needling/Intramuscular Manual Therapy an invasive technique?
 5. What type of training should be required?
 6. How is the safety of the patient protected?
 7. Who should be legally able to perform dry needling/intramuscular manual therapy?
 8. "Is dry needling within the scope of physical therapy as defined in Iowa Code section 148A.1(1)(b)?"¹³

Ultimately, the Board declined to answer questions one through seven, but voted to answer "yes" to question eight. Respondents argue, much if not all, of Petitioner's argument in this Petition for Judicial review is directed toward issues that were not considered by the Board. This Court agrees. Consequently, Petitioner has not met its burden of demonstrating the Board's decision was irrational, illogical, or wholly unjustifiable.

The Board adopted the following definition of dry needling:

Dry needling is a skilled technique performed by a physical therapist using filiform needles to penetrate the skin and/or underlying tissue to effect change in body structures and functions for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disability.

First, the Board previously issued informal opinions prior to the adoption of the aforementioned definition. Those opinions concluded physical therapists could perform dry needling, as it was a rehabilitative procedure. The record presented supports Respondent's claim that since the entry of those opinions, physical therapists have been performing dry needling in Iowa for many years without any documented harm or complications to patients. In short, their competency to perform dry-needling had never been questioned. Second, even if there were to be a complaint, the Board has the statutory authority to revoke or suspend that physical therapist's license. Therefore, to the extent Petitioners contend there is need to protect the public, Iowa Code section 272C.3(2) provides an appropriate safeguard. Third, the rehabilitative techniques

¹³ Petitioner agreed to add question #8 on September 11, 2015.

available in 1984, when the legislature enacted Iowa Code section 148A.1(1)(b), are immeasurably different than those available in 2016. Science is experimentation. Experimentation begets knowledge. Knowledge begets change. The rehabilitative techniques in the practice of physical therapy have changed. Applying the 1984 standard of “rehabilitative techniques” to 2016 knowledge is illogical. Fourth, deference to the agency’s findings is particularly important when, as here, the matters to be decided call for the exercise of judgment on a matter within the agency’s expertise and knowledge.¹⁴ Although the Court may question some of the Board’s findings of fact, when those findings are supported by substantial evidence, as they are here, the findings are binding on the District Court.¹⁵

IT IS THEREFORE ORDERED, the Decision from Iowa Board of Physical & Occupational Therapy should be and is hereby **AFFIRMED**.

IT IS FURTHER ORDERED, the Petition for Judicial review should be and is hereby **DENIED** and **DISMISSED**. Cost assessed to Petitioner.

So Ordered.

¹⁴ See *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993).

¹⁵ *Norland v. Iowa Dep’t of Job Serv.*, 412 N.W.2d 904, 908 (Iowa 1987).



State of Iowa Courts

Type: OTHER ORDER

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So Ordered

A handwritten signature in black ink, appearing to read 'David Porter', written over a horizontal line.

David Porter, District Court Judge,
Fifth Judicial District of Iowa