



24 October 2018

Patricia A. Pritchard
Executive Director
North Carolina Acupuncture Licensing Board
Post Office Box 10686
Raleigh, NC 27605

Re: North Carolina Acupuncture Licensing Board Audit Letter Response

Dear Ms. Pritchard:

By letter dated 18 October 2018 based upon a request from the auditor occurring on 17 October 2018, you have asked us to furnish to you certain information concerning the North Carolina Acupuncture Licensing Board (the "NCALB") in connection with the examination of the NCALB's financial statements as of June 30, 2018.

Our response to that request is limited to those matters that potentially involve loss contingencies and that the NCALB has referred to us for legal representation or about which the NCALB has consulted us as counsel and with respect to which we have given substantive attention subsequent to March 1, 2015. We have identified those matters by making inquiry of lawyers currently in our Firm who, according to our records, have been engaged in providing legal services on behalf of the NCALB during that period and by examining various current records that we maintain for our internal operations. In that identification process we have not undertaken any independent review of documents or records concerning the NCALB that are in our possession.

We were engaged by the NCALB in early March 2015 to serve as its Board Attorney. At that time, the NCALB had already engaged special litigation counsel, namely Everett Gaskins Hancock LLP, to advise and represent the NCALB with respect to a rule proposed by the NC Board Physical Therapy Examiners ("NCBPTE") to the North Carolina Rules Commission regarding "dry needling." The NCALB's position is that the practice known as "dry needling" is acupuncture and that to perform that procedure on patients; one must be a licensed acupuncturist in North Carolina or qualify for one of the statutory exemptions in the Acupuncture Practice Act. The NC Rules Commission objected to the proposed rules as being outside the scope of practice of physical therapists.

Pending or Threatened Litigation (Excluding Unasserted Claims)

State Court Matter:

The NCALB filed an action against the NCBPTE seeking declaratory relief regarding the dry needling issue on September 2, 2015. Among other things, the NCBPTE moved to dismiss that action. On April 26, 2016, Judge Bledsoe of the North Carolina Business Court dismissed the NCALB's complaint without prejudice on procedural grounds indicating that the NCALB had not exhausted its administrative remedies pursuant to either N.C. Gen. Stat. § 150B-4 or § 150B-20.

On May 2, 2016, the NCALB requested that the NCBPTE issue a declaratory ruling that "dry needling" is not within the scope of the Physical Therapy Practice Act, among other relief. On June 28, 2016, the NCBPTE issued a declaration contrary to the NCALB's request. On July 27, 2016, the NCALB filed a complaint and petition for judicial review pursuant to N.C. Gen. Stat. § 150B-4. As before, the NCALB requested that the court determine if "dry needling" is acupuncture as defined by the North Carolina General Assembly and, if it is, to stop physical therapists who are not licensed to practice acupuncture from performing the procedure absent adequate education and supervised, clinical training. The parties briefed the issues and a hearing occurred on December 7, 2016. On August 2, 2017, the North Carolina Business Court issued an order and opinion affirming the NCBPTE's position. The NCALB appealed that decision to the North Carolina Supreme Court on August 25, 2017. The

Supreme Court heard oral argument in the matter on 18 April 2018. With no decision from the Supreme Court as of this writing, the appeal remains pending.

Federal Court Matter:

On October 7, 2015, the NCALB received notice of a lawsuit filed in the United States District Court for the Middle District of North Carolina (Case No. 1:15-cv-831) styled "*Henry, Schlenklopper, Carter, Jones, Burkhard-Catlin and Purrington v. NCALB, Norfleet, Majebe, Vaughn, Andrews, Phillips and Cutler*" ostensibly in response to the original NCALB declaratory judgment action. This action purported to assert claims sounding in antitrust and violations of due process. The NCALB's insurance carrier retained Charlot Wood, Alan Ruley and Andrew Freeman of Bell, Davis & Pitt, P.A. in Winston-Salem, NC to defend the complaint. Our firm has not appeared in the matter.

Based on information provided by insurance defense counsel, the federal court has dismissed the plaintiffs' claims sounding in due process violations. In addition, the plaintiffs have dismissed all claims for damages and the federal court has stayed the action pending resolution of the state court case.

As of June 30, 2018, the NCALB was indebted to this firm for \$8,004.36 for board attorney retainer fees. That indebtedness has since been paid and the NCALB is current on its ongoing monthly obligations to the firm. As of June 30, 2018, the NCALB was indebted to this firm for \$5925.81 in separate legal fees related to the state (\$4680.30) and federal (\$1245.51) court litigation matters referred to above. Provided the NCALB stays current on its ongoing monthly management and board attorney fees obligations to the firm, the firm has agreed to accept \$500 per month on each litigation matter until those fees are paid or until other arrangements are made to retire those amounts due.

This letter is not intended to reflect a waiver of the attorney-client privilege, the attorney work-product doctrine or any other protection.

The information in this letter is as of October 18, 2018, the date on which we completed our internal review procedures for purposes of preparing this response and reflects changes through the effective date of this letter. Although we disclaim any undertaking to advise you of changes brought to our attention subsequent to the effective date of this letter, we are willing to review these matters again in response to your further written request. We will be able to supplement the information in this letter, however, only if given adequate advance notice of your request, and our response under the circumstances may be limited to the extent that the review procedures that we employ are limited.

This response is limited by, and in accordance with, the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975); without limiting the generality of the foregoing, the limitations set forth in such Statement on the scope and use of this response (Paragraphs 2 and 7) are specifically incorporated herein by reference, and any description herein of any "loss contingencies" is qualified in its entirety by Paragraph 5 of the Statement and accompanying Commentary (which is an integral part of the Statement).

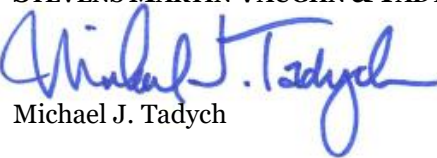
The NCALB has not specifically identified, and specifically requested that we comment to you concerning, any unasserted possible claims or assessments. Please be advised that, pursuant to clauses (b) and (c) of Paragraph 5 of the ABA Statement of Policy and related Commentary referred to below, it would be inappropriate for this Firm to respond to a general inquiry relating to the existence of unasserted possible claims or assessments involving the NCALB. We can only furnish information concerning those unasserted possible claims or assessments upon which the NCALB has specifically requested, in writing, that we comment and we cannot comment upon the adequacy of the NCALB's listing, if any, of unasserted possible claims or assessments or their assertions concerning the advice, if any, about the need to disclose same. We do wish to confirm the NCALB's understanding, as set forth in its letter to us, that, whenever, in the course of performing legal services for the NCALB with respect to a matter recognized by us to involve an unasserted possible claim or assessment that may call for financial statement disclosure, we have formed a professional conclusion that the NCALB must disclose or consider disclosure concerning such possible claim or assessment, we, as a matter of professional responsibility to the NCALB, will so advise the

NCALB and will consult with the NCALB concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No.5.

This letter has been furnished to you solely for your information in connection with your examination of the financial condition of the NCALB and is not to be quoted in whole or in part or otherwise referred to in any financial statements of the NCALB or related documents, and it is not to be filed with, or otherwise furnished to, any governmental agency or other person, without our prior written consent. Notwithstanding the foregoing, this letter may be furnished to others in compliance with court process or when necessary in order to defend yourself against a challenge of the audit by the NCALB or a regulatory agency, provided that we are given written notice of the circumstances reasonably before this letter is so furnished.

Very truly yours,

STEVENS MARTIN VAUGHN & TADYCH, PLLC



Michael J. Tadych

MJT/tbm