

New York Court Rules Acupuncturists Are Entitled to Same Legal Protection as Other Providers

Editorial Staff

The Supreme Court of the State of New York, County of Suffolk, has ruled that the therapies administered by acupuncturists in the course of patient care "constitute medical treatment" and bear "a substantial relationship to the rendition of medical treatment." As such, acupuncturists in New York are now protected under the same statute of limitations for medical malpractice that applies to medical doctors, dentists, podiatrists and other health care practitioners.

"This is a precedent-setting decision," said Michael Schroeder, vice president and general counsel of the American Acupuncture Council. "The plaintiff's attorney argued that a licensed acupuncturist was not entitled to rely on the same statute of limitations that protects all other licensed healthcare professionals in New York. This decision establishes once and for all that in New York, licensed acupuncturists are entitled to the same legal protection as are enjoyed by other licensed health care providers."

In the case, the plaintiff alleged that an acupuncturist "negligently, carelessly and inadequately" administered care during a series of visits between April 19, 2002 and May 10, 2002. Under New York law, actions of negligence carry a three-year statute of limitations following the last treatment, while actions of medical malpractice carry a two-and-a-half year statute. The complaint against the acupuncturist was not filed until Nov. 29, 2004.

A review by the court found no previous case that had determined whether acupuncturists were subject to the statute for medical malpractice or the statute for negligence. Reviews of similar cases, however - including a case against a doctor of chiropractic - found that health care providers would be protected under the malpractice statute, provided their services could be considered medical treatment or were substantially similar to the services provided by a medical doctor. The defendant also submitted to the court a copy of a prescription from the plaintiff's referring medical doctor, asking the acupuncturist to "Please eval and treat with acupuncture."

After reviewing the evidence presented at trial, along with decisions from other cases, Judge Denise F. Molia ruled that the acupuncturist's actions fell under the conditions of the medical malpractice statute, and ruled that the plaintiff's case be dismissed:

"Based upon the foregoing, it is determined that the cause of action is premised upon the alleged medical negligence by defendant during the rendering of medical treatment to plaintiff through acupuncture. These allegedly tortuous acts or omissions constitute medical treatment and bear a substantial relationship to the rendition of medical treatment of defendant. Accordingly, it is

determined that a two-and-one-half year limitations period applies to the defendant in this particular instance based upon the alleged negligence in administration of acupuncture therapy.

"... In that the complaint is dated November 29, 2004, it is determined that even if the action were commenced on November 29, 2004, the action would not have been timely commenced, as it would have had to been commenced by November 10, 2004. Therefore, it is determined that the instant action was not timely commenced, and the complaint is accordingly dismissed."

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