


NEW YORK STATE DEPARTMENT OF HEALTH

MEMORANDUM

To: Staff Members
Office of Professional Medical Conduct

From: Dennis  Graziano, Director
Office of Professional Medical Conduct

Date: June 15, 2005

Subject: Investigation of Practitioners Utilizing Treatment Modalities that Are Not Universally Accepted by the Medical Profession

This memorandum is intended to memorialize and endorse the principles that are currently in place in the Office of Professional Medical Conduct regarding the investigation of physicians, physician assistants and specialist assistants who use treatment modalities that are not universally accepted by the medical profession, such as the varying modalities used in the treatment of Lyme disease and other tick-borne diseases.

As you know, Article 131 of the Education Law defines the practice of medicine. Paragraph (e) of subdivision four of §6527 of the Education Law provides that Article 131 "shall not be construed to affect or prevent . . . [a] physician's use of whatever medical care, conventional or non-conventional, which effectively treats human disease, pain, injury, deformity or physical condition." Under current law, therefore, it is clear that so long as a treatment modality effectively treats human disease, pain, injury, deformity or physical condition, the recommendation or provision of that modality does not, by itself, constitute professional misconduct. Consequently, it is contrary to the policy and practice of the Office of Professional Medical Conduct to identify, investigate or charge a physician, physician assistant or specialist assistant based solely on that practitioner's recommendation or provision of such a treatment modality.

Please note that this prohibition does not exonerate such practitioners from otherwise applicable professional requirements.

cc: Members, Board for Professional Medical Conduct
Brian Murphy, Chief Counsel, Bureau of Professional Medical Conduct