



Texas Association of Acupuncture and Oriental Medicine

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***Via E-Mail: [Opinion.committee@texasattorneygeneral.gov](mailto:Opinion.committee@texasattorneygeneral.gov)***

The Honorable Ken Paxton

Attorney General of Texas

Attn: Opinions Committee

P.O. Box 12548

Austin, Texas 78711-2548

Re: Whether licensed physical therapists are authorized to practice trigger point dry needling (RQ-0068-KP)

Dear General Paxton:

The Texas Association of Acupuncture and Oriental Medicine (TAAOM) is a membership organization of Licensed Acupuncturists and acupuncture students whose mission is to protect and promote the practice of acupuncture and Oriental medicine in the State of Texas.<sup>1</sup> TAAOM was originally founded in 1989 as the Texas Acupuncture Association, before the practice of acupuncture was a regulated and licensed profession in Texas. Founding members of TAAOM were

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<sup>1</sup> Texas Association of Acupuncture and Oriental Medicine, About Us, available at <http://www.taaom.org/about/>.

instrumental in the crafting of the Texas State Board of Acupuncture Examiners' enabling statute, adopted in 1993, which established standards for acupuncture training, licensing, and regulation.

TAAOM offers the following additional commentary in relation to the Texas State Board of Acupuncture Examiners request for an opinion on the practice of dry needling by physical therapists, and by reference here, incorporates the legal and policy arguments submitted by the Texas Acupuncture Board in its Opinion request dated November 9, 2015. TAAOM believes the practice referred to as "trigger point dry needling" that is being performed by physical therapists in Texas clearly meets the statutory definition of the practice of acupuncture as defined in Texas Occupations Code Sec. 205.001(2). Further, we find no evidence in the statutes governing the practice of acupuncture or the practice of physical therapy, or in the legislative history of these statutes, that would support a finding that the legislature intended for the practice of acupuncture to be clearly encompassed under the scope of licensure for Physical Therapists. We remain concerned that the Physical Therapy Board, while allowing its licensees to utilize acupuncture needles in the practice of physical therapy, has essentially sanctioned an unauthorized scope of practice for physical therapists in Texas and

has allowed this with no regulatory oversight and no educational or training standards.

**I. Dry needling is acupuncture.**

One common argument used by the physical therapy profession to justify the practice of dry needling is to claim that dry needling is not acupuncture.<sup>2</sup> The argument is that physical therapists do not prescribe to the theories of traditional Chinese medicine but rather base their practice on “western neuroanatomy and modern scientific study of the musculoskeletal and nervous system”,<sup>3</sup> and so when a physical therapist inserts an acupuncture needle into the body it is not acupuncture.

But the statutory definition of acupuncture is the “insertion of an acupuncture needle”.<sup>4</sup> The regulated practice of acupuncture in Texas is not contingent upon any one cultural or historical context, thought process, or particular technique of needling. If acupuncture needles are being inserted into the body, that is acupuncture, regardless of the process informing the needle insertion, or the

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<sup>2</sup> See Dry Needling by a Physical Therapist: What You Should Know, available at <http://www.moveforwardpt.com/Resources/Detail.aspx?cid=f767e7d6-a75b-425e-b9a6-34d7cb345e64#.VmgKi79BM23>.

<sup>3</sup> See Physical Therapists & the Performance of Dry Needling: An Educational Resource Paper, p.4 Distinction Between Professions’ Scope of Practice, available at <http://www.apta.org/StateIssues/DryNeedling/ResourcePaper/>.

<sup>4</sup> TEX. OCC. CODE Sec. 205.001(2) DEFINITIONS, available at <http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.205.htm>.

technique of insertion. There are many needling techniques in the practice of acupuncture. The lifting and thrusting technique characteristic of so called “trigger point dry needling” is but one.

And while training in acupuncture is certainly informed by a historical precedent stretching back many centuries, Licensed Acupuncturists are also educated and trained in a contemporary biomedical understanding of the human body and of acupuncture. That the use of acupuncture needles in the practice of dry needling is relatively new to physical therapy does not mean dry needling is a practice distinct from that of acupuncture. It is not.

For example, there are no Current Procedural Terminology (CPT) codes for dry needling or intramuscular manual therapy, the terms ascribed to the physical therapist’s use of acupuncture needles.<sup>5</sup> The CPT code for treatment with acupuncture needles is “97810: Acupuncture, one or more needles, without electrical stimulation, initial 15 minutes of personal one-on-one contact with the

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<sup>5</sup> See APTA Official Statement on The Billing of Dry Needling by Physical Therapists, available at [http://www.iamt.org/wp-content/uploads/2014/04/APTASTatement\\_DryNeedling-2014.pdf](http://www.iamt.org/wp-content/uploads/2014/04/APTASTatement_DryNeedling-2014.pdf).

The APTA statement seemingly recommends billing for dry needling using code 97799: “unlisted physical medicine/rehabilitation service or procedure.”

patient.”<sup>6</sup> The CPT code does not distinguish Chinese medicine from dry needling. It articulates a procedure involving acupuncture needles.

The Federation of State Boards of Physical Therapy (FSBPT) in its Dry Needling Resource paper posits: “The question for the state board should only be whether or not dry needling is within the scope of practice of physical therapy, not determining whether it is part of acupuncture.”<sup>7</sup> TAAOM rejects such an assertion outright. Calling acupuncture something else, or being certain to not represent oneself as an acupuncturist when performing acupuncture without an acupuncture license,<sup>8</sup> does not change the fact that the insertion of an acupuncture needle, under both state and federal law, is considered the practice of acupuncture. Dry needling involves the insertion of acupuncture needles into the body, and that is the practice of acupuncture. The question, more directly, is *whether acupuncture is within the scope of physical therapy*, and are physical therapists exempt from the requirements of the Acupuncture Chapter of the Texas Occupations Code?

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<sup>6</sup> See Acupuncture Today, New CPT Codes are Here, available at <http://acupuncturetoday.com/mpacms/at/article.php?id=30032>.

<sup>7</sup> See FSBPT Dry Needling Resource Paper (Intramuscular Manual Therapy) 4<sup>th</sup> Ed., p.6, available at [https://www.fsbpt.org/download/DryNeedlingResourcePaper\\_4thEdition.pdf](https://www.fsbpt.org/download/DryNeedlingResourcePaper_4thEdition.pdf).

<sup>8</sup> *Id.* at 6.

## II. An acupuncture needle is a regulated medical device.

“An acupuncture needle is a device intended to pierce the skin in the practice of *acupuncture* (emphasis added). The device consists of a solid, stainless steel needle. The device may have a handle attached to the needle to facilitate the delivery of acupuncture treatment.”<sup>9</sup> As an FDA regulated class II medical device, acupuncture needles are intended for use only by practitioners licensed by law to use them (i.e., to practice acupuncture).<sup>10</sup> TAAOM is unaware of any such authorization for physical therapists in Texas.<sup>11</sup> Nor are acupuncture needles (or “dry needles”) among the many regulated physical medicine devices used in the practice of physical therapy.<sup>12</sup>

There is one instance we are aware of where acupuncture needles are being branded and marketed to physical therapists as “dry needles”.<sup>13</sup> This marketing effort appears to be part of an attempt to “carve out” dry needling as a practice unique to physical therapy. But these needles are of the very same construction

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<sup>9</sup> Code of Federal Regulations 21CFR880.5580, available at <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/cfrsearch.cfm?fr=880.5580>.

<sup>10</sup> Code of Federal Regulations 21CFR801.109, available at <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/cfrsearch.cfm?fr=801.109>.

<sup>11</sup> See Texas State Board of Acupuncture Examiners, Re-affirmation of Standards to Practice Acupuncture, available at <http://www.tmb.state.tx.us/idl/349E004E-B7EE-C896-4748-F6503F0BB824>.

<sup>12</sup> Code of Federal Regulations Title 21, Part 890 Physical Medicine Devices, available at <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?CFRPart=890>.

<sup>13</sup> See iDryNeedle, Myotech Dry Needles, at <http://idryneedle.com/myotech-needles/>.

articulated in FDA regulations for acupuncture needles. Just as *dry needling is acupuncture*, these “dry needles” are, in fact, acupuncture needles.

**III. The Physical Therapy Board, by tacitly allowing the unauthorized practice of acupuncture under the guise of “dry needling”, is failing in its regulatory duty.**

The Physical Therapy Board offers no regulation or oversight of dry needling by its licensees.<sup>14</sup> In fact, the Physical Therapy Board has claimed to not know much at all about dry needling.<sup>15</sup>

The primary role of any regulatory agency is to protect the health, safety, and welfare of the public. It is relevant to note that even the FSBPT supports this view in its Dry Needling Resource Paper: “Protection of titles and terms are important from a public protection stand point in that people need to be clear as to the qualifications of their practitioner of choice as well as his/her profession.”<sup>16</sup> And yet, the practice of acupuncture by physical therapists is obscured by the use of a

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<sup>14</sup> PT Board Chair Gary Gray testified before the House Public Health Committee, citing PT Board Rule 322.4(b) which pertains to “Practicing in a manner detrimental to the public health and welfare.” Also, 322.4(b)(10) “failing to conform to the minimal standards of acceptable prevailing practice” and 322.4(b)(10)(B) “performing or attempting to perform techniques or procedures or both in which the physical therapist or physical therapist assistant is untrained by education or experience” as the boards “failsafe” should a complaint arise over dry needling. Texas House of Representatives, Public Health Committee Hearing April 10, 2013, at 1:11:50, available at [http://tlchouse.granicus.com/MediaPlayer.php?view\\_id=28&clip\\_id=6643](http://tlchouse.granicus.com/MediaPlayer.php?view_id=28&clip_id=6643).

<sup>15</sup> Id. at 1:11:32, PT Board Chair Gray states, “I’ve heard of the dry needling. Honestly, it’s a pretty new thing. I don’t know that much about it.”

<sup>16</sup> [https://www.fsbpt.org/download/DryNeedlingResourcePaper\\_4thEdition.pdf](https://www.fsbpt.org/download/DryNeedlingResourcePaper_4thEdition.pdf) p.6.

variety of misleading terms, including “dry needling”, “trigger point dry needling”, and “intramuscular manual therapy,” none of which are supported by an associated CPT code.<sup>17</sup> Thus, it is likely the general public has no idea what the procedure being performed on them actually is, much less the qualifications of the practitioner performing the procedure. As noted by the Acupuncture Board, this contravenes the regulatory structure set out by the Texas Legislature in the Occupations Code.

#### **IV. Training standards in dry needling are insufficient.**

Acupuncture is an invasive procedure with known risks.<sup>18</sup> As such, the State of Texas has established rigorous standards for the practice of acupuncture. A Licensed Acupuncturist in Texas must complete a four-year Master’s level program of at least 2625 hours, including a minimum of 870 clinical hours.<sup>19</sup>

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<sup>17</sup> The 2014 APTA Official Statement on The Billing of Dry Needling by Physical Therapists states, “The CPT code set provides a uniform language that accurately describes medical, surgical, and diagnostic services, and thereby serves as an effective means for reliable communication among physicians, qualified health care professionals, patients, and third parties. ” available at [http://www.iamt.org/wp-content/uploads/2014/04/APTASTatement\\_DryNeedling-2014.pdf](http://www.iamt.org/wp-content/uploads/2014/04/APTASTatement_DryNeedling-2014.pdf).

<sup>18</sup> See Mayo Clinic, Acupuncture Risks, available at <http://www.mayoclinic.org/tests-procedures/acupuncture/basics/risks/prc-20020778>.

<sup>19</sup> See National Certification Commission for Acupuncture and Oriental Medicine, Examination Eligibility Requirements (U.S. Requirements), available at <http://www.nccaom.org/applicants/eligibility-requirements>.



In contrast, there are no uniform national standards for training in dry needling by physical therapists.<sup>20</sup> A typical training in dry needling consists of **27 hours** taught over a three-day weekend.<sup>21</sup> One organization even offers a **12 hour dry needling certification course**, claiming, “The 12 hour program will give you all the training necessary to deliver dry needling services safely and effectively in your practice.”<sup>22</sup> Practitioners are encouraged to begin using what they learned over the course of a weekend immediately on the following Monday.<sup>23</sup> These are individuals who likely had never previously handled an acupuncture needle, which clearly has implications for patient safety.

Various national organizations have attempted to address the policy concerns regarding safety of the practice of acupuncture being referred to as “dry needling”. The American Academy of Physical Medicine and Rehabilitation “maintains that this procedure [dry needling] should only be performed by

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<sup>20</sup> See FSBPT Dry Needling Resource Paper (Intramuscular Manual Therapy) 4<sup>th</sup> Ed., p. 11, available at [https://www.fsbpt.org/download/DryNeedlingResourcePaper\\_4thEdition.pdf](https://www.fsbpt.org/download/DryNeedlingResourcePaper_4thEdition.pdf).

<sup>21</sup> See Myopain Seminars, Dry Needling (DN) Program DN – 1, available at <http://myopainseminars.com/dn-1/>, also Kinetacore, Functional Dry Needling® - Level 1 Training, available at <http://www.kinetacore.com/physical-therapy/Functional-Dry-Needling-Level-1-Training/page17.html>, also Dr. Ma’s Integrative Dry Needling, FAQ, How do I get certified in dry needling?, available at <http://integrativedryneedling.com/resources/frequently-asked-questions/>.

<sup>22</sup> See Dry Needling Institute LLC, available at <http://fishkincenter.com/dryneedlinginstitute/>.

<sup>23</sup> See Dry Needling Course, How our Course is Organized, available at <http://dryneedlingcourse.com/how-our-course-is-organized>.

practitioners with standard training and familiarity with routine use of needles in their practice, such as licensed acupuncturists or licensed medical physicians.”<sup>24</sup>

The American Academy of Medical Acupuncture also takes the position that dry needling “should be performed only by practitioners with extensive training and familiarity with routine use of needles in their practice and who are duly licensed to perform these procedures, such as licensed medical physicians or licensed acupuncturists.”<sup>25</sup>

**V. The use of acupuncture needles by physical therapists is an inappropriate and unsafe expansion of the statutorily provided scope of practice for physical therapy.**

The use of acupuncture needles by physical therapists is beyond what is normally conceived of as physical therapy. It seems inevitable that physical therapists, if allowed to use acupuncture needles for trigger point dry needling,

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<sup>24</sup> See American Academy of Pain Management & Rehabilitation, AAPM&R Position on Dry Needling, June 2012, available at <http://www.aapmr.org/practice/resources/positionpapers/AAPMR%20Documents/AAPMR-Position-on-Dry-Needling.pdf>. The 2014 APTA Official Statement on The Billing of Dry Needling by Physical Therapists however seemingly recommends billing for dry needling using code 97799: “unlisted physical medicine/rehabilitation service or procedure.” available at [http://www.iamt.org/wp-content/uploads/2014/04/APTASTatement\\_DryNeedling-2014.pdf](http://www.iamt.org/wp-content/uploads/2014/04/APTASTatement_DryNeedling-2014.pdf).

<sup>25</sup> See American Academy of Medical Acupuncture, AAMA Policy on Dry Needling, available at <http://www.medicalacupuncture.org/Portals/2/PDFs/AAMADryNeedlingPolicyOct15.pdf>.

will gradually practice acupuncture in a more expansive way – especially in jurisdictions with direct patient access.<sup>26</sup>

This concern is supported by a 2014 dry needling literature review, which suggests a growing belief in physical therapy that how state boards have defined the practice of dry needling is too limited and that “state boards of physical therapy should consider broadening the definition of dry needling...” This same document points to a broad range of technical considerations clearly suggestive of an expansion into the broader practice of acupuncture and possibly even medicine.<sup>27</sup>

In summary, an acupuncture needle is not just a tool, and the practice of acupuncture is not merely a procedure. The insertion of an acupuncture needle to treat and mitigate a human condition is the practice of acupuncture, and the practice of acupuncture is a regulated and licensed profession. The Texas State Board of Acupuncture Examiners is a sub-board to the Texas Medical Board and

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<sup>26</sup> For example, the practice of dry needling in Colorado was affirmed by statute in 2013, and physical therapists there are already performing “cosmetic” dry needling for facial revitalization, long the domain of the Licensed Acupuncturist. See Movement Physical Therapy, Cosmetic Dry Needling – What is it and how does it work? available at <http://movementvail.com/introducing-cosmetic-dry-needling>. Another example comes from a dry needling course, where apparently dry needling is being used to treat sinusitis, available at <https://twitter.com/drdunning/status/663482492704325632>.

<sup>27</sup> See Physical Therapy Reviews, Aug. 19, 2014 Aug; 19(4): 252–265, Dry Needling: A Literature Review with Implications for Clinical Guidelines, Abstract, Conclusions: available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4117383/>.

acupuncturists are licensed by the Texas Medical Board. Acupuncture is a sub-set of the practice of medicine, and physical therapists are expressly prohibited from practicing medicine. There is nothing in the Physical Therapy statute that authorizes physical therapists to practice acupuncture, and nothing in the Acupuncture statute that exempts licensed physical therapists from the requirements set out in that chapter. Simply calling an acupuncture needle a “dry needle” or the practice of acupuncture “dry needling” does not exempt physical therapists from the requirements of the Acupuncture Chapter of the Occupations Code, or from their own chapter.

Respectfully submitted,

/s/ Wally Doggett, L.Ac.

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