

**DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE
BOARD OF PHYSICAL THERAPY**

RULE DEVELOPMENT WORKSHOP

**November 8, 2017
AGENDA**

**RULES WORKSHOP
SHERATON LAKE BUENA VISTA
12205 S. APOPKA VINELAND
ORLANDO, FLORIDA 32836
(407) 239-0444**

Participants in this public meeting should be aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the Board's website.

November 8, 2017 – 4:00 p.m.

CALL TO ORDER: 4:00 p.m.

ROLL CALL

Tab 1 Dry Needling

- **Motion for Leave to Intervene**
- **Public Comments**

486.021 Definitions.—In this chapter, unless the context otherwise requires, the term:

- (1) “Board” means the Board of Physical Therapy Practice.
- (2) “Department” means the Department of Health.
- (3) “License” means the document of authorization granted by the board and issued by the department for a person to engage in the practice of physical therapy.
- (4) “Endorsement” means licensure granted by the board pursuant to the provisions of s. 486.081 or s. 486.107.
- (5) “Physical therapist” means a person who is licensed and who practices physical therapy in accordance with the provisions of this chapter.
- (6) “Physical therapist assistant” means a person who is licensed in accordance with the provisions of this chapter to perform patient-related activities, including the use of physical agents, whose license is in good standing, and whose activities are performed under the direction of a physical therapist as set forth in rules adopted pursuant to this chapter. Patient-related activities performed by a physical therapist assistant for a board-certified orthopedic physician or psychiatrist licensed pursuant to chapter 458 or chapter 459 or a practitioner licensed under chapter 460 shall be under the general supervision of a physical therapist, but shall not require onsite supervision by a physical therapist. Patient-related activities performed for all other health care practitioners licensed under chapter 458 or chapter 459 and those patient-related activities performed for practitioners licensed under chapter 461 or chapter 466 shall be performed under the onsite supervision of a physical therapist.
- (7) “Physical therapy practitioner” means a physical therapist or a physical therapist assistant who is licensed and who practices physical therapy in accordance with the provisions of this chapter.
- (8) “Physical therapy” or “physiotherapy,” each of which terms is deemed identical and interchangeable with each other, means a health care profession.
- (9) “Direct supervision” means supervision by a physical therapist who is licensed pursuant to this chapter. Except in a case of emergency, direct supervision requires the physical presence of the licensed physical therapist for consultation and direction of the actions of a physical therapist or physical therapist assistant who is practicing under a temporary permit and who is a candidate for licensure by examination.
- (10) “Physical therapy assessment” means observational, verbal, or manual determinations of the function of the musculoskeletal or neuromuscular system relative to physical therapy, including, but not limited to, range of motion of a joint, motor power, postural attitudes, biomechanical function, locomotion, or functional abilities, for the purpose of making recommendations for treatment.
- (11) “Practice of physical therapy” means the performance of physical therapy assessments and the treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related thereto by the use of the physical, chemical, and other properties of air; electricity; exercise; massage; the performance of acupuncture only upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs; the use of radiant energy, including ultraviolet, visible, and infrared rays; ultrasound; water; the use of apparatus and equipment in the application of the foregoing or related thereto; the performance of tests of neuromuscular functions as an aid to the diagnosis or treatment of any human condition; or the performance of electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medicine.

(a) A physical therapist may implement a plan of treatment developed by the physical therapist for a patient or provided for a patient by a practitioner of record or by an advanced registered nurse practitioner licensed under s. 464.012. The physical therapist shall refer the patient to or consult with a practitioner of record if the patient’s condition is found to be outside the scope of physical therapy. If physical therapy treatment for a patient is required beyond 30 days for a condition not previously assessed by a practitioner of record, the physical therapist shall have a practitioner of record review and sign the plan. The requirement that a physical therapist have a practitioner of record review and sign a plan of treatment does not apply when a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the physical therapist is treating the condition. For purposes of this paragraph, a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 and engaged in active practice is eligible to serve as a practitioner of record.

(b) The use of roentgen rays and radium for diagnostic and therapeutic purposes and the use of electricity for surgical purposes, including cauterization, are not “physical therapy” for purposes of this chapter.

(c) The practice of physical therapy does not authorize a physical therapy practitioner to practice chiropractic medicine as defined in chapter 460, including specific spinal manipulation. For the performance of specific chiropractic spinal manipulation, a physical therapist shall refer the patient to a health care practitioner licensed under chapter 460.

(d) This subsection does not authorize a physical therapist to implement a plan of treatment for a patient currently being treated in a facility licensed pursuant to chapter 395.

History.—s. 2, ch. 57-67; s. 1, ch. 67-537; s. 1, ch. 73-354; ss. 1, 2, ch. 78-278; ss. 1, 2, ch. 79-116; s. 361, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 2, 24, ch. 83-86; s. 1, ch. 83-93; s. 1, ch. 84-275; ss. 3, 17, 18, ch. 86-31; s. 2, ch. 89-124; s. 4, ch. 91-429; s. 1, ch. 92-70; s. 181, ch. 94-218; s. 175, ch. 97-264; s. 287, ch. 98-166; s. 1, ch. 2013-197; s. 1, ch. 2016-70.

**Board of Physical Therapy Practice Rules Workshop
November 8, 2017**

Memorandum

To: Board of Physical Therapy Practice (Board)

From: Board Counsel, Lynette Norr

Re: Motion for Leave to Intervene in the Petition for
Declaratory Statement filed by Robert Stanborough
Re Dry Needling

Pursuant to Section 120.565, Florida Statutes, the Board is required to publish a notice of receipt of a Petition for Declaratory Statement (Petition). Notice of the Petition from Robert Stanborough was published on June 12, 2017, in volume 43 number 113 of the Florida Administrative Register (FAR). (Attached to this Memo as Exhibit A.)

Rule 28-105.0027, Florida Administrative Code, allows interested parties to intervene within 21 days of the published notice. The FAR Notice also states, "Except for good cause shown, motions for leave to intervene must be filed within 21 days after publication of this notice." It is the responsibility of interested parties to review notices in the FAR and agendas published by the Board, and then timely intervene if so desired. The Motion for Leave to Intervene by the Florida State Oriental Medical Association (FSOMA) was filed on September 29, 2017, and is UNTIMELY. For the Board to consider an untimely motion to intervene, the movant must show good cause.

The Board deliberated on the Petition for Declaratory Statement from Robert Stanborough at its August 3, 2017, meeting and voted to grant the Petition. The Board's decision was final agency action. The Final Order was filed with the Clerk of the Department of Health on August 30, 2017. The Final Order advised that "a party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes, and that "the notice of appeal must be filed within thirty (30) days of the filing date of the Order to be reviewed." Section 120.68(2)(a), Florida Statutes, further provides that "judicial review shall be sought in the appellate district."

A notice of disposition of the Petition for Declaratory Statement from Robert Stanborough was published in the FAR on September 1, 2017, in volume 43 number 171 (Attached to this Memo as Exhibit B).

Action before the Board:

Determine by vote whether the Board will reopen the matter of the Petition for Declaratory Relief from Robert Stanborough for the purpose of allowing intervention by FSOMA, which itself requires a determination by the Board that the Movant for intervention has demonstrated good cause shown and should be allowed intervention past the statutory deadline to intervene.

EXHIBIT A

Notice of Declaratory Statement

DEPARTMENT OF HEALTH

Board of Physical Therapy Practice

NOTICE IS HEREBY GIVEN that the Board of Physical Therapy Practice has received the petition for declaratory statement from Robert Stanborough. The petition seeks the agency's opinion as to the applicability of Section 486.021(11), F.S. as it applies to the petitioner.

The Board of Physical Therapy Practice has received a Petition for Declaratory Statement filed by Robert Stanborough, on June 8, 2017. Petitioner seeks a declaratory statement regarding the scope of practice for licensed physical therapists, specifically as it relates to the practice of dry-needling as a licensed physical therapist in the State of Florida. Petitioner cites Section 486.021(11), F.S. within the Physical Therapy Practice Act, which alludes to the performance of acupuncture within the scope of physical therapy practice, for which a determination is requested. Except for good cause shown, motions for leave to intervene must be filed within 21 days after publication of this notice.

A copy of the Petition for Declaratory Statement may be obtained by contacting: Allen Hall, Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3253, Allen.Hall@flhealth.gov.

EXHIBIT B

Notice of Declaratory Statement

DEPARTMENT OF HEALTH

Board of Physical Therapy Practice

NOTICE IS HEREBY GIVEN that the Board of Physical Therapy Practice has issued an order disposing of the petition for declaratory statement filed by Robert Stanborough on June 8, 2017. The following is a summary of the agency's disposition of the petition:

The Notice of Petition for Declaratory Statement was published June 9, 2017 in Vol. 43, No. 113 of the Florida Administrative Register. The Board considered the Petition at a duly-noticed public meeting on August 4, 2017. Petitioner sought a declaratory statement as to whether he could practice dry-needling under his Florida physical therapy license. The Board granted the Petition for Declaratory Statement finding that Petitioner was uniquely qualified to practice dry-needling. The Order was filed on August 30, 2017.

A copy of the Order Disposing of the Petition for Declaratory Statement may be obtained by contacting: Allen Hall, Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin C05, Tallahassee, Florida 32399-3253, Allen.Hall@flhealth.gov.

Board of Physical Therapy Practice Rules Workshop
November 8, 2017

Memorandum on Rulemaking Authority and Law Implemented

To: Board of Physical Therapy Practice (Board)

From: Board Counsel, Lynette Norr

Re: Rulemaking Authority and Law Implemented for Rules Workshop

In preparation for the Rules Workshop, I have compiled the following statutory information that the board may find helpful.

All rulemaking by boards requires statutory authority for rulemaking and a law that the rule implements:

120.52 Definitions

(8) “Invalid exercise of delegated legislative authority” means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency’s class of powers and duties,

nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

(9) **“Law implemented”** means the language of the enabling statute being carried out or interpreted by an agency through rulemaking.

(16) **“Rule”** means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule.

(17) **“Rulemaking authority”** means statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term “rule.”

(20) **“Unadopted rule”** means an agency statement that meets the definition of the term “rule,” but that has not been adopted pursuant to the requirements of s. 120.54.

Physical Therapy Practice Specifically:

486.015 Legislative intent.—The sole legislative purpose in enacting this chapter is to ensure that every physical therapy practitioner practicing in this state meets minimum requirements for safe practice. It is the legislative intent that physical therapy practitioners who fall below minimum competency or who otherwise present a danger to the public be prohibited from practicing in this state.

History.—ss. 1, 24, ch. 83-86; ss. 2, 17, 18, ch. 86-31; s. 4, ch. 91-429.

486.025 Powers and duties of the Board of Physical Therapy Practice.—The board may administer oaths, summon witnesses, take testimony in all matters relating to its duties under this chapter, establish or modify minimum standards of practice, and adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. The board may also review the standing and reputability of any school or college offering courses in physical therapy and whether the courses of such school or college in physical therapy meet the standards established by the appropriate accrediting agency referred to in s. 486.031(3)(a). In determining the standing and reputability of any such school and whether the school and courses meet such standards, the board may investigate and make personal inspection of the same.

History.—s. 12, ch. 57-67; ss. 36, 44, ch. 78-95; s. 2, ch. 79-116; s. 365, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 3, 24, ch. 83-86; ss. 4, 17, 18, 19, 20, ch. 86-31; s. 4, ch. 89-124; ss. 4, 5, ch. 91-429; s. 158, ch. 98-200. Note.—Former s. 486.121.

486.021(11) “Practice of physical therapy” means the performance of physical therapy assessments and the treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related thereto by the use of the physical, chemical, and other properties of air; electricity; exercise; massage; the performance of acupuncture only upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs; the use of radiant energy, including ultraviolet, visible, and infrared rays; ultrasound; water; the use of apparatus and equipment in the application of the foregoing or related thereto; the performance of tests of neuromuscular functions as an aid to the diagnosis or treatment of any human condition; or the performance of electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medicine.

(a) A physical therapist may implement a plan of treatment developed by the physical therapist for a patient or provided for a patient by a practitioner of record or by an advanced registered nurse practitioner licensed under s. 464.012. The physical therapist shall refer the patient to or consult with a practitioner of record if the patient’s condition is found to be outside the scope of physical therapy. If physical therapy treatment for a patient is required beyond 30 days for a condition not previously assessed by a practitioner of record, the physical therapist shall have a practitioner of record review and sign the plan. The requirement that a physical therapist have a practitioner of record review and sign a plan of treatment does not apply when a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the physical therapist is treating the condition. For purposes of this paragraph, a health care practitioner licensed under chapter 458 [MD], chapter 459 [OD], chapter 460 [Chiro], chapter 461 [Pod], or chapter 466 [DDS] and engaged in active practice is eligible to serve as a practitioner of record.

(b) The use of roentgen rays and radium for diagnostic and therapeutic purposes and the use of electricity for surgical purposes, including cauterization, are not “physical therapy” for purposes of this chapter.

(c) The practice of physical therapy does not authorize a physical therapy practitioner to practice chiropractic medicine as defined in chapter 460, including specific spinal manipulation. For the performance of specific chiropractic spinal manipulation, a physical therapist shall refer the patient to a health care practitioner licensed under chapter 460.

(d) This subsection does not authorize a physical therapist to implement a plan of treatment for a patient currently being treated in a facility licensed pursuant to chapter 395 [Hospitals].

History.—s. 2, ch. 57-67; s. 1, ch. 67-537; s. 1, ch. 73-354; ss. 1, 2, ch. 78-278; ss. 1, 2, ch. 79-116; s. 361, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 2, 24, ch. 83-86; s. 1, ch. 83-93; s. 1, ch. 84-275; ss. 3, 17, 18, ch. 86-31; s. 2, ch. 89-124; s. 4, ch. 91-429; s. 1, ch. 92-70; s. 181, ch. 94-218; s. 175, ch. 97-264; s. 287, ch. 98-166; s. 1, ch. 2013-197; s. 1, ch. 2016-70.

2016

Florida Statutes and Rules Regarding Petitions for Declaratory Statements

120.565, Florida Statutes, Declaratory statement by agencies.—

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Register and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Register. Agency disposition of petitions shall be final agency action.

History.—s. 6, ch. 75-191; s. 7, ch. 76-131; s. 5, ch. 78-425; s. 5, ch. 79-299; s. 760, ch. 95-147; s. 17, ch. 96-159, s.9, ch. 2013-14.

CHAPTER 28-105, Florida Administrative Code, DECLARATORY STATEMENTS

28-105.001 Purpose and Use of Declaratory Statement

28-105.002 The Petition

28-105.0024 Notice of Filing

28-105.0027 Intervention

28-105.003 Agency Disposition

28-105.004 Notice of Disposition

28-105.001 Purpose and Use of Declaratory Statement.

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 4-1-97, Amended 1-15-07.

28-105.002 The Petition.

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information:

(1) The caption shall read: Petition for Declaratory Statement Before (Name of Agency).

(2) The name, address, any e-mail address, telephone number, and any facsimile number of

the petitioner.

(3) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner's attorney or qualified representative if any.

(4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought.

(5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.

(6) The signature of the petitioner or of the petitioner's attorney or qualified representative.

(7) The date.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.565 FS. History—New 4-1-97, Amended 3-18-98, 1-15-07, 2-5-13.

28-105.0024 Notice of Filing.

The agency shall file a notice of the Petition for Declaratory Statement in the next available Florida Administrative Register including the following information:

(1) The name of the agency with which the Petition for Declaratory Statement is filed.

(2) The name of the Petitioner.

(3) The date the Petition for Declaratory Statement was received.

(4) The statutory provision(s), rule(s) or order(s) on which the declaratory statement is sought.

(5) The contact name, address, e-mail address, and phone number where a copy of the petition may be obtained.

(6) The applicable time limit for filing motions to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 1-15-07, Amended 2-5-13.

28-105.0027 Intervention.

(1) Persons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. The presiding officer shall allow for intervention of persons meeting the requirements for intervention of this rule. Except for good cause shown, motions for leave to intervene must be filed within 21 days after publication of (or such later time as is specified in) the notice in the Florida Administrative Register. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(2) The motion to intervene shall contain the following information:

(a) The name, address, the e-mail address, and facsimile number, if any, of the intervenor; if the intervenor is not represented by an attorney or qualified representative; and

(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative, if any; and

(c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the

substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement; and

(d) The signature of the intervenor or intervenor's attorney or qualified representative; and

(e) The date.

(3) Any party may, within seven days of service of the motion, file a response in opposition.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 1-15-07, Amended 2-5-13.

28-105.003 Agency Disposition.

The agency may hold a hearing to consider a petition for declaratory statement. If the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting. The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within 90 days of the filing of the petition, the agency shall render a final order denying the petition or issuing a declaratory statement.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 4-1-97, Amended 1-15-07.

28-105.004 Notice of Disposition.

The agency shall file a Notice of Disposition for the Declaratory Statement or denial of the petition in the next available issue of the Florida Administrative Register including the following information:

(1) The name of the agency.

(2) A summary statement of the agency's decision.

(3) The agency, contact person, address, and e-mail address where a copy of the petition and final order may be obtained.

(4) The date the final order is filed.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 1-15-07, Amended 2-5-13.

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF PHYSICAL THERAPY PRACTICE

RECEIVED
DEPARTMENT OF HEALTH
2017 SEP 29 PM 4:04
OFFICE OF THE CLERK

In Re: Petition for Declaratory Statement

Case No. DS 2017-1605

ROBERT STANBOROUGH,

Petitioner.

MOTION FOR LEAVE TO INTERVENE

Pursuant to Florida Administrative Code Rule 28-105.0027, the Florida State Oriental Medical Association (“FSOMA”), by and through its undersigned counsel, in response to the Petition for Declaratory Statement (“Petition”) filed by Robert Stanborough on June 8, 2017, files this Motion to Intervene in the above captioned proceeding, and further requests that the Board of Physical Therapy Practice (“Board”) reopen the record in this matter and reconsider its Final Order. In support, FSOMA states as follows:

Parties

1. The affected agency is the Department of Health, Board of Physical Therapy Practice, located at 4052 Bald Cypress Way, Tallahassee, Florida 32399.
2. FSOMA is a professional association representing licensed Florida acupuncturists and other Oriental medicine practitioners. For purposes of this proceeding, the contact information for FSOMA is that of its undersigned counsel.
3. Mr. Stanborough is an individual holding a Florida physical therapist license.

Background

4. On June 8, 2017, Mr. Stanborough filed a Petition seeking the Board’s position regarding the scope of practice under a physical therapist license in Florida.

5. Specifically, Mr. Stanborough sought a determination from the Board as to whether he may legally practice dry-needling in Florida under his physical therapist license.

6. On June 12, 2017, the Board published a Notice of its receipt of the Petition for Declaratory Statement in the Florida Administrative Register (“FAR”).

7. However, the Board deviated from its normal methods and practices for notifying stakeholders. The Board did not provide notification of the Petition, the August 4, 2017 meeting, or the meeting agenda through its normal notification process of email to “Interested Parties”. This email list is updated and managed by the Board and it has routinely served as the most common method for keeping stakeholders informed of important Board events, such as petitions for declaratory statement, meeting locations and times, and meeting agendas. As a result, FSOMA did not receive notice of the Petition until after the Board’s meeting on August 4, 2017.

8. Due to the unusual deviation from its normal practice, FSOMA requests that the Board recognize that good cause exists for granting its intervention.

Intervention in Declaratory Statement Proceedings

9. There are procedural safeguards inherent in the process for considering and issuing a declaratory statement that are intended to protect the rights of other concerned parties. Florida Department of Business Regulation v. Investment Corporation of Palm Beach, 747 So. 2d 374, 384 (Fla. 1999). In Investment Corporation, the Court specifically noted that the requirement to publish notice of a request for a declaratory statement is an acknowledgement “that the answer to a petition for a declaratory statement may very well have an impact on others who are regulated by the agency” and that any “substantially affected party can intervene in a declaratory statement proceeding before the agency.” Id. at 377 (quoting Chiles v. Department of State, Division of Elections, 788 So. 2d 151, 154 (Fla. 1st DCA 1998)).

10. These safeguards in favor of participation in declaratory statement proceedings are particularly important in matters involving the healthcare industry.

11. The Petition sets forth circumstances and poses questions on the application and interpretation of Florida law that have broad implications for licensed acupuncturists in Florida. The questions raised seek an interpretation of section 486.021(11), Florida Statutes, which directly relate to and impact licensed acupuncturists. More specifically, the Petition asks the Board to impermissibly expand the scope of physical therapy practice beyond what is provided by statute to include a form of acupuncture known as dry-needling. This the Board cannot do.

12. Section 486.021(11), Florida Statutes, limits the scope of physical therapy practice to include:

the performance of physical therapy assessments and the treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related thereto by the use of the physical, chemical, and other properties of air; electricity; exercise; massage; the performance of acupuncture only upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs; the use of radiant energy, including ultraviolet, visible, and infrared rays; ultrasound; water; the use of apparatus and equipment in the application of the foregoing or related thereto; the performance of tests of neuromuscular functions as an aid to the diagnosis or treatment of any human condition; or the performance of electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medicine.

13. Significantly, physical therapists may practice acupuncture only when no penetration of the skin occurs and only in compliance with the Board of Medicine criteria.

14. Dry-needling is a form of acupuncture that involves penetration of the patient's skin. The primary difference between dry-needling and acupuncture is essentially in name only. Like other forms of acupuncture, dry-needling uses needles which are then inserted into specific trigger points to stimulate the body. The needles used in dry-needling are in fact acupuncture

needles, which are classified by the Food & Drug Administration as Class II medical devices for the specific use in acupuncture treatment.

15. The Petition presents significant legal issues with broad policy ramifications, including the potential first-time determination of whether physical therapists may practice dry-needling under section 486.021(11), Florida Statutes.

16. The real issue presented is whether a licensed physical therapist can practice acupuncture without first obtaining licensure as an acupuncturist.

17. In sum, FSOMA is substantially affected in this matter in several ways, including, but not limited to:

- A. The Petition for Declaratory Statement relates to the qualifications and requirements for the practice of acupuncture, which is one of the major business activities in which FSOMA's members are engaged.
- B. The Petition for Declaratory Statement seeks an interpretation as to the requirements to conducting the practice of dry-needling, a form of acupuncture which penetrates the skin, which is one of the major business activities in which FSOMA's members are engaged.
- C. The Petition for Declaratory Statement seeks to improperly expand the persons permitted to practice acupuncture which penetrates the skin beyond only the qualified licensed acupuncturists currently permitted under statute. Such an expansion would diminish the value of the additional time and training required to meet the higher educational and training standards required for acupuncturists. FSOMA represents many acupuncturists who are already qualified, licensed, and practicing in Florida who have an interest in maintaining the levels of education

and training required for licensing to prevent encroachment on their licenses. Department of Professional Regulation, Board of Dentistry v. Florida Dental Hygienist Association, Inc., 612 So.2d 646, 650 (Fla. 1st DCA 1993); Florida Home Builders Association v. Department of Labor and Employment Security, 412 So.2d 351 (Fla.1982). FSOMA also has an interest in protecting the public and the quality of care provided during the practice of acupuncture. Department of Professional Regulation, Board of Dentistry v. Florida Dental Hygienist Association, Inc., 612 So.2d 646, 651 (Fla. 1st DCA 1993);

18. Because of the significant statutory requirements applicable to the practice of acupuncture, FSOMA is substantially affected by any declaration by the Board which concerns the scope of practice for physical therapists regarding acupuncture. Consequently, FSOMA is entitled to participate and be heard regarding the proper interpretation of the statutes that the Petitioner is asking the Board to interpret and apply in this proceeding.

19. The undersigned has conferred with counsel for the Petitioner, and is authorized to represent that the Petitioner objects to this Motion.

WHEREFORE, FSOMA respectfully requests that the Board enter an order granting this Motion for Leave to Intervene in this proceeding as a full party and reopen the record in this matter.

Respectfully submitted this 29th day of September 2017.

/s/ Gabriel F. V. Warren
Gabriel F. V. Warren
gwarren@rutledge-ecenia.com
RUTLEDGE ECENIA
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
(850) 681-6788

Attorney for Florida State Oriental Medical
Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served by electronic
mail this 29th day of September 2017, as follows:

Shannon Revels, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin A-02
Tallahassee, FL 32399
shannon.revels@flhealth.gov

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1410 N. Westshore Blvd., Suite 200
Tampa, FL 33607

/s/ Gabriel F. V. Warren
Attorney

Final Order No. DOH-17-1605-*DS*-MQA

FILED DATE - *8-30-2017*
Department of Health

By: *Bridget Coates*

STATE OF FLORIDA
BOARD OF PHYSICAL THERAPY PRACTICE

IN RE: THE PETITION FOR DECLARATORY STATEMENT OF:
ROBERT STANBOROUGH

FINAL ORDER

THIS MATTER came before the Board of Physical Therapy Practice ("Board") pursuant to Section 120.565, Florida Statutes, at a duly-noticed public meeting held on August 4, 2017, in Tampa, Florida. The Petitioner, Robert Stanborough, requests a declaration as to whether he may practice dry-needling under his Florida physical therapy license. Petitioner was present at the meeting and was represented by counsel. The Board was represented by Marlene Stern, Assistant Attorney General. Having considered the Petition and relevant statutes and rules, the Board issues the following:

QUESTION PRESENTED

Whether the Petitioner may practice dry-needling in the State of Florida under his physical therapy license without violating the Physical Therapy Practice Act, chapter 486, Florida Statutes.

FACTUAL FINDINGS

1. The Petition was duly filed and noticed in the Florida Administrative Register in Volume 43, Number 113, on June 12, 2017. No comments or requests for intervention were received.
2. The Petition is attached hereto and incorporated herein by reference.
3. The Petition seeks the Board's interpretation of Section 486.021(11), Florida Statutes.

4. Petitioner is a Florida-licensed physical therapist, holding license number PT18156 who would like to use dry-needling as a modality to treat his patients in Florida.

5. Dry-needling is a skilled intervention using a solid filiform needle to penetrate the skin and stimulate underlying myofascial trigger points, muscular, and connective tissues for the management of neuromusculoskeletal pain and movement impairments. It is a technique used to treat dysfunctions in skeletal muscle, fascia, and connective tissue, as well as nervous system, diminishing persistent peripheral nociceptive input, central sensitization, reduce impairments, and restore and/or improve patient activity and function.

6. Dry-needling, as performed by physical therapists, stems from the medical model of Janet Travel, MD, and does not rely on traditional acupuncture theories or terminology.

7. Physical therapists use dry-needling based on western neuroanatomy, modern scientific study of the musculoskeletal and nervous system, including knowledge of pain science and skilled palpation.

8. The underlying philosophy of dry-needling in the physical therapy context is completely different from that of acupuncture. Dry-needling is not acupuncture even if needles are used that break the skin because the purpose of dry-needling, as used in physical therapy practice, is to manipulate soft tissue to correct dysfunctional muscles and the nervous system.

9. Petitioner is uniquely qualified to provide dry-needling services to his patients. He has studied the procedure for years and taught the procedure in other states. He has received over 140 hours of supervised dry-needling training and is certified in dry-needling through Myopain Seminars. He has been a senior instructor for Myopain Seminars since 2011 where he provided dry-needling instruction to physical therapists, medical doctors, advanced registered

nurse practitioners, chiropractors, dentists, and acupuncturists from the United States. Since 2005, he has been an instructor of continuing education in Myofascial Manipulation through the University of St. Augustine, in which capacity he gives lectures and labs on trigger points and pain science. In addition to providing instruction on dry-needling in the United States, he has provided such instruction in Chile, Japan, Canada and India. He published *Myofascial Manipulation: Theory and Application*, 3rd Ed. 2012, which includes subjects such as soft tissue examination, palpation, manipulation, pain science, and trigger point dry-needling.

CONCLUSIONS OF LAW

6. The Board has jurisdiction over this matter pursuant to section 120.565, Florida Statutes, and Chapter 486, Florida Statutes.

7. Section 120.565(1), Florida Statutes, states:

Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

8. The Board has the authority to issue declaratory statements regarding provisions of Chapter 486, Florida Statutes, and Rule Chapters 64B17-1 through 9, Florida Administrative Code.

9. Given the Petitioner's unique qualifications, he may practice dry-needling in Florida under his physical therapy license without violating Chapter 486, Florida Statutes, the physical therapy practice act.

THEREFORE, for the aforementioned grounds, the Board grants the Petition for Declaratory Statement.

This Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED, this 30 day of August, 2017.

BOARD OF PHYSICAL THERAPY PRACTICE

Allen Hall

Allen Hall, Executive Director

NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE FLORIDA APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF THE FILING DATE OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by: U.S. Mail to **Thomas W. Caufman, Esq., and Sheila K. Nicholson, Esq.**, 1410 N. Westshore Blvd., Suite 200, Tampa, FL 33607; and, **electronic mail** to **Lynette Norr**, Assistant Attorney General, Office of the Attorney General, Lynette.Norr@myfloridalegal.com, **Marlene Stern**, Assistant Attorney General, Office of the Attorney General, Marlene.Stern@myfloridalegal.com, and **Maria LaRue**, Paralegal Specialist, Office of the Attorney General, Maria.LaRue@myfloridalegal.com, on 30, August, 2017.

Bridget Coates

Deputy Agency Clerk

5501 / 14672

RECEIVED
DEPARTMENT OF HEALTH
17 JUN -8 PM 12:14
OFFICE OF THE CLERK

STATE OF FLORIDA
FLORIDA DEPARTMENT OF HEALTH

IN RE: The Petition for Declaratory
Relief of ROBERT STANBOROUGH,

Petitioner

_____ /

#214
Tyrel
Stable
6/8/17
12:10pm

PETITION FOR DECLARATORY RELIEF

PETITIONER, ROBERT STANBOROUGH, by and through his undersigned attorneys, petitions the Florida Department of Health, Board of Physical Therapy Practice for declaratory relief and states as follows:

Petitioner, ROBERT STANBOROUGH, is a licensed Physical Therapist holding License No: PT18156 that has been in good standing in the State of Florida since April 6, 1999.

1. Petitioner practices as First Coast Rehabilitation located in St. Augustine, Florida 32086 where he serves as President.

2. Many of the Petitioner's patients would benefit from a technique known as dry-needling, which is a skilled intervention using a solid a filiform needle to penetrate the skin and stimulate underlying myofascial trigger points, muscular, and connective tissues for the management of neuromusculoskeletal pain and movement impairments. It is a technique used to treat dysfunctions in skeletal muscle, fascia, and connective tissue, as well as nervous system, diminishing persistent peripheral nociceptive input, central sensitization, reduce impairments, and restore and/or improve patient activity and function. See American Physical Therapy Association *Description of Dry-needling and Clinical Practice: An Educational Resource Paper*. The performance of dry-needling by physical therapists has been approved in many countries and 35 states, although no clear authority for the practice exists in Florida. Dry-needling, as

performed by physical therapists stems from the medical model of Janet Travel, MD, which did/does not use rely on traditional acupuncture theories or acupuncture terminology. Rather, physical therapists use dry-needling based on western neuroanatomy, modern scientific study of the musculoskeletal and nervous system, including knowledge of pain science and skilled palpation.

3. The Petitioner would like to use dry-needling as one additional modality with which to treat appropriate patients. However, the Petitioner is uncertain as to his right to perform dry-needling because the definition of physical therapy contained in the Physical Therapy Practice Act at Section 486.021(11) allows for "the performance of acupuncture or upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs...". Petitioner is not aware of any such criteria and maintains that dry-needling is not acupuncture even if needles are used that break the skin because the purpose of dry needling, when used in the physical therapy practice, the underlying philosophy is to manipulate soft tissue for the purpose of correcting a dysfunctional muscle(s) and nervous system. The underlying philosophy of dry needling in the physical therapy context is completely different than acupuncture.

4. As a licensed physical therapist in good standing with the Board of Physical Therapy since 1999, testified before the Board in 2014 regarding dry needling and was told the Board believed dry needling was not acupuncture and within the scope of physical therapy yet the Petitioner does not wish to begin the practice of dry-needling only to later receive sanctions from the Board of Physical Therapy. This scenario, where a practitioner is in doubt about some statutory right is precisely the scenario that the declaratory statement process was designed to cure. See *Rosenkrantz v. Feit*, 81 So.3d 526 (Fla. 3rd DCA 2012). The Petitioner files this

Petition for proper purposes and is not merely curious about the subject or seeking legal advice.

5. Section 120.565, Florida Statutes provides that:

“(1) any substantially affected person may seek a declaratory statement regarding an Agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the Agency, as it applies to the Petitioner’s particular set of circumstances.

(2) the Petition seeking a declaratory statement shall state with particularity the Petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the Petitioner believes may apply to the set of circumstances.

6. Rule 28-105.001, Florida Administrative Code, which implements Section 120.565, Florida Statutes provides:

“a declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the Agency has authority. A Petition for Declaratory Statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to Petitioner’s particular circumstances....”

The purpose of a declaratory statement is to resolve a controversy or answer questions concerning the applicability of statutes which an administrative agency enforces. Citizens of the State ex rel. Office of Pub. Counsel v. Fla. Pub. Serv. Commission, 164 So.3d 58, 59 (Fla. 1st DCA 2015).

7. Petitioner is uniquely qualified to provide dry-needling services to his patients. He has studied this procedure for years and has taught the procedure in other states. He has far exceeded the most stringent requirements set forth by states where dry needling is approved. He has received over 140 hours of supervised dry needling training; certified in dry needling through Myopain Seminars; been a senior instructor for Myopain Seminars since 2011 providing dry needling instruction to PT’s, MD’s, ARNP’s, chiropractors, dentists, and acupuncturists from the U.S.; instructor of Myofascial Manipulation continued education through the University of St.

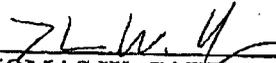
Augustine since 2005, which includes lectures and labs on trigger points, and pain science; entry level instructor and course coordinator for three (3) campuses and six (6) co-horts of Myofascial Manipulation since 2006, which includes lectures and labs on trigger points, pain sciences and an introduction to dry needling; published "Myofascial Manipulation: Theory and Application" 3rd Ed 2012, which includes soft tissue examination, palpation, manipulation, pain science and trigger point dry needling; and has instructed both nationally and internationally on the same subjects, including Chile, Japan, Canada, and India.

8. Petitioner desires a determination of his rights, duties and a declaration as to whether he may practice dry-needling as a licensed physical therapist in the State of Florida.

WHEREFORE, Petitioner requests a declaration that he may practice dry-needling in the State of Florida under his physical therapy license without violating the Physical Therapy Practice Act.

RESPECTFULLY SUBMITTED on this 7th day of June, 2017.

QUINTAIROS, PRIETO, WOOD & BOYER, P.A.



THOMAS W. KAUFMAN, ESQ.

FBN: 831107

SHEILA K. NICHOLSON, ESQ.

Florida Bar No.: 0629413

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(813) 286-9998 facsimile

Zeh, Traci

Subject: FW: Letter for Rule Workshop on 64B17-6 regarding "Dry Needling"
Attachments: Letter to Florida Board of Physical Therapy - Dry Needling.docx

From: K [<mailto:radianthealth@msn.com>]
Sent: Friday, October 06, 2017 2:23 PM
To: zzzz Feedback, MQA_PhysicalTherapy
Subject: Letter for Rule Workshop on 64B17-6 regarding "Dry Needling"

October 5, 2017

Florida Board of Physical Therapy

Florida Department of Health

Tallahassee, FL

Dear Honorable Members of Florida Board of Physical Therapy:

My name is Karen Gordon (DOB: March 26, 1950, last 4 digits of social: 3771).

This email serves as a cover letter for attached letter for the Rule Workshop on 64B17-6 regarding "Dry Needling". Since I am fully licensed in both professions, my position is clearly not "territorial" but in the best interest of the public, patients who are seeking care. I know that my PT colleagues want the best intervention possible for all patients and would not ever advise patients to undertake a "watered down" version of any therapeutic approach. Practitioners who engage in therapeutic activities without full training "do not know what they do not know". This would be similar to teaching joint mobilization, which requires many course hours to be proficient and safe, to massage therapists in an abbreviated weekend course when they do not have the background or experience in so many aspects such as mechanics of the joint, joint physiology, kinesiology, positioning, etc. etc.

PTs who evidently think that "dry needling" is simply a local intervention and only affects the area needed are very mistaken. The effects of needling these points is far-reaching and profoundly affects the PHYSIOLOGY of the patient in ways that a practitioner can only begin to understand when they have studied the full body of information and passed the Board exam for acupuncturists. Sterile technique, point location, needle depth and angle, contraindications, are only some of the considerations and could be learned to provide even the minimum

standards of safety. However, the non-local, physiologic effects of needling are far beyond the scope of a PT. Patients may experience changes in digestion, bowel and bladder function, gynecological issues and pregnancy, sleep, energy, feelings of hot or cold, thirst, excessive sweating or cessation of normal sweating, to name only a few scenarios and the untrained therapist would have no idea that the "local dry needling" may have caused adverse events in these and other areas.

When I have patients who are out of my area of expertise, I refer them to the appropriate professional and have always worked with others for the greater good of the patient. Acupuncturists should refer patients to PTs for the care that they can expertly render and PTs should refer patients for acupuncture when they see the need. It is in harmony with the PT Standards of Ethics that we do so.

Respectfully Submitted,

Karen L. Gordon PT 3466 AP 370

Honorable Florida Board of Physical Therapy:

My name is Karen Gordon, I am licensed under both Chapter 486 and Chapter 457.

As a physical therapist who has been in practice since 1982 and as an acupuncture physician since 1991, I am in a unique position to make a statement regarding the issue of “dry needling”. I am vehemently opposed to allowing physical therapist to practice dry needling. “Dry Needling” is Acupuncture. “Dry Needling” is clearly a ploy on the part of those who hope to take short cuts in order to use therapeutic tool of acupuncture without having to have the required essential training to become a licensed acupuncturist. Physical therapist or any other practitioners should be required essential training and go through the entire course of training as an acupuncture physician, and take the national certification exams as required for licensed acupuncturist to perform dry needling.

1. ACUPUNCTURE IS A SOPHISTICATED MEDICAL PRACTICE

Definition: ACUPUNCTURE- ACUPUNCTURE MEANS A FORM OF PRIMARY HEALTH CARE THAT EMPLOYS ACUPUNCTURE DIAGNOSIS AND TREATMENT FOR THE PROMOTION, MAINTENANCE, AND RESTORATION OF HEALTH AND THE PREVENTION OF DISEASE. (See section 457.102(1), Florida Statutes). Florida licensed acupuncturists are required to successfully complete over 2,700 hours of supervised instruction. See Administrative Code Rule, 64B1-4.001, F.A.C.

Additionally, In Florida the students in acupuncture training, before using acupuncture needles, are required to successfully pass a clean needle technique examination.

Simply learning specific acupuncture points and how to insert needles is not enough to use the very sophisticated therapeutic approach of acupuncture to benefit the patients. It is a disservice to the public.

2. DRY NEEDLING

The practice of “dry needling” (i.e. acupuncture) is an invasive procedure that is being circumvented by unlicensed practitioners of acupuncture by calling it other names.

“DRY NEEDLING” is done by the insertion of acupuncture needles in what are known as ashi points. Ashi points are an integral part of the complete system of acupuncture known to well-trained qualified Acupuncturists. Physical Therapists and other allied health professionals have recognized the benefit of this form of medicine (i.e. acupuncture) and have renamed it in order to circumvent licensing and educational requirements and have begun using dry needling on their own without legislative authority. “Dry Needling” is not new, it is the practice of acupuncture which has been around for over 2000 years.

Therefore, the argument that “dry needling” is not the same as acupuncture is clearly not valid. “Dry Needling” has become a popular pseudonym for short course in order to circumvent the national safe minimum education of didactic and clinical trainings by other health care providers, including physical therapists.

3. PUBLIC SAFETY

“Dry Needling” is the practice of acupuncture and is being administered by other health care providers without proper licensure or training. This poses a great risk to the public allowing acupuncture to be administered by untrained and/or unlicensed acupuncturists.

The definitions of the scope of practice of Physical Therapists in Florida states “When no penetration of the skin occurs” per 2010 Florida Statutes- Regulation of professions and occupations physical therapy, practice, section 486.021.11, Florida Statutes.

The physical therapist do not have the educational background in : skin penetration; knowledge of all myriad effects that inserting an acupuncture needle has; knowledge of all of the contraindication a qualified acupuncturist knows; associated infection control; and visceral penetration risks.

In the hands of the unqualified, “dry needling” is likely to result in an increased incidence of serious risks and in particular pneumothorax due to the failure of those practitioners to obtain the minimal basic didactic and clinical training. In the interest of safety and public health, the practice of “dry needling” (i.e. acupuncture) should continue to be restricted and limited to licensed, qualified Acupuncture Practitioners pursuant to Chapter 457, Florida Statute.

"Janet Travell, M.D. never acknowledged that her "discovery" of Trigger Points was indeed nothing other than "rediscovering" acupuncture points. Her lack of acknowledgement is incorrect and does not lend validity to the current proponents of the false, fraudulent term "Dry Needling". Two wrongs do not make it true. These specific anatomic locations have been well established for centuries as acupuncture points. To deny that fact and just call it something else is intellectually and professionally disingenuous and lacking integrity. I am truly disappointed and embarrassed by my PT colleagues. To acknowledge that there is therapeutic benefit from needling these acupuncture points is a step in the right direction, however it is only a step. There is a long path to follow before being well qualified to render this very valuable therapeutic tool. That path for those who are to add it to their skill set is to undergo the FULL course of study to become a licensed acupuncture practitioner and pass the board exams, ensuring public safety and quality of care. there are no short cuts."

It is my position as a Licensed Physical Therapist and a Licensed Acupuncturist in Florida, I strongly support that “dry needling” is the practice of acupuncture. I appeal to the Board to disallow anyone from practicing “Dry Needling” and/or acupuncture unless they have completed the necessary full course of study and successfully passed the national board exam as an acupuncturist.

Karen Gordon, A.P.; P.T.

FL Lic. PT3466

FL Lic. AP370

Zeh, Traci

From: zzzz Feedback, MQA_PhysicalTherapy
Subject: FW: Correspondence documents for Rule Workshop on 64B17-6 regarding "Dry Needling"

From: zonglan xu [<mailto:xuzonglan@hotmail.com>]
Sent: Thursday, October 05, 2017 10:57 PM
To: zzzz Feedback, MQA_PhysicalTherapy
Cc: Karen Gordon
Subject: Correspondence documents for Rule Workshop on 64B17-6 regarding "Dry Needling"

October 5, 2017

Florida Board of Physical Therapy
Florida Department of Health
Tallahassee, FL

Dear Honorable Members of Florida Board of Physical Therapy:

My name is Zonglan Xu (DOB: 12/19/1958, last 4 digits of social: 2644). I am a Chapter 457 licensee (Lic. # AP314).

This email serves as a cover letter for attached documentations as the correspondence items for the Rule Workshop on 64B17-6 regarding "Dry Needling"

Many National professional organizations, including the American Medical Association, all issued position statements: DRY NEEDLING IS ACUPUNCTURE.

MTrP and Dry needling is a part of Modern Acupuncture and Oriental Medicine treatment. In State of Florida, Acupuncture training includes more than 2700 hours didactic and clinical training before one can qualified to take the National Board exams. Florida Statute Chapter 457 governs and regulates the practice of Acupuncture and Oriental Medicine as a form of Primary Health Care. It is my professional opinion that if any licensed healthcare professional would like to perform dry needling, then they should get training equivalent to what is taught in acupuncture schools and pass the National Board exams. This will assure the Florida public that they have the proper training to safely and effectively, practice Acupuncture (Dry Needling).

Although acupuncture is relatively safe compared to some invasive medical procedures, this does not mean it should be done without proper training. It is just like Dentists and Physical Therapists, they very rarely cause a patient's death, but they should be properly trained and tested for the public safety.

The purpose of regulation is to protect public. In order to make an informed decision, it is important understand the history behind the practice of Acupuncture in the United States. In 1972, Richard Nixon opened China to the US. One of the many things that came from that was the practice of Acupuncture and Oriental Medicine. In its wisdom, the Florida legislature was pro-active and regulated the practice of Acupuncture in 1980 by creating FS Chapter 457.

Florida Statute 457.102 defines acupuncture as "a form of primary healthcare, based on traditional Chinese medical concepts and modern Oriental Medical techniques, that employs acupuncture diagnosis and treatment, as well as at adjunctive therapies and diagnostic techniques, for promotion, maintenance, and restoration of health and the prevention of disease. Acupuncture shall include, but not be limited to, the insertion of acupuncture needles and application of moxibustion to specific areas of the human body and use of electro acupuncture, Qi Gong, oriental massage, herbal therapy, dietary guidelines, and other adjunctive therapies, as defined by board rule."

Dry needling as currently practiced, is an effective acupuncture technique. Acupuncturists use it daily, they just do not call it dry needling. The efficacy is not the issue. The issue is: some licensed healthcare professionals want to practice acupuncture techniques without a proper training. Since we are all experts in our chosen disciplines, and cannot be expert in all, it is vital that we know when to refer and how to collaborate, so we can provide the best health care for the citizens of Florida.

Please see the attached letter from my colleague Dr. Karen Gordon (a licensee under both Chapter 486 and Chapter 457), and the Position Statement from NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) and the NCCAOM Academy of Diplomates. The NCCAOM is the only National Board in the United States that certifies the practitioners of Acupuncture and Oriental Medicine. Included in NCCAOM's position statement, there are eight links to other major National Organizations' position statements for your reference. Hope this will be informative for your considerations.

Respectfully submitted.

Zonglan Xu

National Board Certified and Florida Licensed Acupuncturist



NCCAOM® and the NCCAOM® Academy of Diplomates Dry Needling Position

What is Dry Needling?

“Dry needling” is acupuncture. Acupuncture is the insertion of thin solid needles into anatomical locations to treat disease, injury, pain, or dysfunction, and to promote health and wellness. “Dry needling” is a recently coined name for an acupuncture technique that involves the insertion of acupuncture needles directly into muscles and “trigger points” for the relief of musculoskeletal pain.

Licensed acupuncturists have practiced and documented this acupuncture technique, now referred to as “dry needling”, for decades in the US.

Some physical therapists and other healthcare providers have claimed that “dry needling” is “new” and “not acupuncture”, because the point locations and needling style are based on anatomical structures and physiological function rather than on traditional Chinese medicine acupuncture theory. In fact, licensed acupuncturists receive training in the application of both traditional foundations of acupuncture and modern biomedical theories, and have done so since long before the term “dry needling” was invented.

“Dry needling” is an advanced and invasive procedure. In the hands of a practitioner who has received limited and/or substandard training, it has the potential to cause great harm. It can be considered safe only when performed by properly trained and experienced acupuncturists.

NCCAOM National Board Certified Acupuncturists™ receive hundreds of hours in the core skills required to correctly perform invasive and potentially dangerous needling techniques, assuring their competencies to insert and manipulate acupuncture needles safely.

Is there a required accredited academic program for the training of physical therapists to practice dry needling acupuncture?

There is no national standard entry-level academic curriculum that offers training or education in any form of needling for physical therapists. The only training in dry needling acupuncture for physical therapists are abbreviated continuing education workshops. There are no minimum hours or curriculum standards for these workshops.

Is there a valid and reliable examination to test competency of physical therapists in the practice of dry needling acupuncture?

No. There are no national psychometrically validated examinations to test competency of physical therapists in the practice of dry needling acupuncture.

What academic and clinical practice training are required for licensed acupuncturists to practice dry needling acupuncture?



Licensed acupuncturists receive years of academic education and training in many acupuncture techniques, including what is now termed “dry needling”. Nearly all states require licensed acupuncturists to meet NCCAOM standards of eligibility and pass national board certification exams.

What are the specific requirements for NCCAOM Nationally Board-Certified Acupuncturists™?

To become an NCCAOM Nationally Board-Certified Acupuncturist™, applicants must, at a minimum:

- Complete a minimum of three years or 1,905 hours of postgraduate education, including a minimum of 660 hours of supervised clinical training.
- Graduate with a Masters degree or Professional Doctorate degree in Acupuncture or Oriental Medicine that is accredited by the [Accreditation Commission for Acupuncture and Oriental Medicine \(ACAOM\)](#). ACAOM is the only accreditation agency recognized for this purpose by the United States Department of Education.
- Successfully pass three psychometrically validated NCCAOM National Board Examinations:
 - Foundations of Oriental Medicine
 - Acupuncture with Point Location
 - Biomedicine
- Document completion of an NCCAOM approved course and assessment in Clean Needle Technique.
- Sign and be held accountable to the [NCCAOM® Code of Ethics and Grounds for Professional Discipline](#). Failure to comply is subject to disciplinary action.

NCCAOM National Board Certification and/or a passing score on the NCCAOM certification examinations are required for acupuncturist licensure in 46 states plus the District of Columbia.

What is the NCCAOM?

The National Certification Commission for Acupuncture and Oriental Medicine ([NCCAOM](#)) is the only nationally accredited certification organization that assures entry-level competency of acupuncturists. The NCCAOM's credentialing program in Acupuncture is accredited by a third-party accrediting body, [National Commission for Certification Agencies \(NCCA\)](#).



The NCCAOM's mission is to assure the safety and well-being of the public and to advance the professional practice of acupuncture and Oriental medicine by establishing and promoting national evidence-based standards of competence and credentialing.

NCCAOM's top priority is to protect the public from the unsafe practice of acupuncture and Oriental medicine by individuals who do not have appropriate training and meet competency standards.

What are the position statements of other professional organizations regarding the practice of "dry needling"?

Please follow these links:

[American Academy of Medical Acupuncture Position Statement](#)

[American Academy of Physical Medicine and Rehabilitation Position Statement](#)

[American Alliance for Professional Acupuncture Safety White Paper](#)

[American Association of Acupuncture and Oriental Medicine Position Statement](#)

[American Medical Association Position Statement](#)

[American Society of Acupuncturists Position Statement](#)

[American Traditional Chinese Medical Association Paper on Dry Needling](#)

[Council of Colleges of Acupuncture and Oriental Medicine Position Paper](#)