

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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John Sylvia
Director

September 25, 2019

The Honorable Greg Boso
Room 217W, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

The Honorable Gary G. Howell
Room 213E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Dear Chairmen:

This letter-report is in response to your request that the Performance Evaluation and Research Division (PERD) review whether the Board of Physical Therapy (Board) is allowing licensed physical therapists to perform dry needling. PERD was also requested to review whether the Board was allowing licensed physical therapists to perform auricular acudetox therapy. The Joint Committee on Government Organization is also concerned that if the Board is permitting these practices, it has no record as to who is trained in them and that there may not be a formal acknowledgement by the Board that those individuals are properly trained in either form of treatment. There is also concern that the Board may not require the individuals to post a certificate or license which indicates training in either modality.

The Board Is of the Opinion That Dry Needling Is Within the Scope of Practice of a West Virginia Licensed Physical Therapist.

According to the American Physical Therapy Association (APTA), dry needling is a skilled intervention used by physical therapists (where allowed by state law) that uses a thin 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. A trigger point describes a taut band of skeletal muscle located within a larger muscle group.

Trigger points can be tender to the touch and can refer pain to distant parts of the body. Physical therapists utilize dry needling with the goal of releasing/inactivating the trigger points and relieving pain.

On July 18, 2012, the Board responded to an inquiry from a licensed physical therapist who requested whether dry needling by a physical therapist is permitted under the West Virginia Physical Therapy law and regulations. According to the Board, *“Physical Therapists may be trained to utilize dry manual needling in conjunction with manual physical therapy interventions. As such, dry needling falls within the definition of physical therapy as defined under West Virginia law and regulations. There is nothing contained in the statute or regulations promulgated by this Board and approved by the Legislature to prohibit a licensed physical therapist from performing dry needling so long as the physical therapist is competent in performing this intervention. Therefore, the Board is of the opinion dry needling is within the scope of practice of “physical therapy” as defined in West Virginia law by the Legislature in WV Code § 30-20-9.”*

The Joint Committee on Government Organization expressed concern that dry needling is arguably a form of acupuncture and the Board’s enabling statute does not authorize the use of needles in the performance of physical therapy treatments. West Virginia Code §30-20-9 describes the scope of practice for physical therapists and it does not explicitly mention dry needling or the use of needles. However, the code section has language that a physical therapist may conduct manual therapy techniques. These manual therapy techniques have been used as the basis for including dry needling in the scope of practice for physical therapists. According to the APTA, manual therapy techniques are skilled hand movements that are intended to improve tissue extensibility, increase range of motion, induce relaxation, manipulate soft tissue and joints modulate pain and reduce soft tissue swelling. Nevertheless, the description of manual therapy techniques does not specifically mention the use of needles.

Physical therapists select, prescribe, and implement manual therapy techniques when the examination findings warrant the use. Therefore, it is the Board’s opinion that while the term dry needling is not contained within statute, manual therapy intervention has a broad enough definition to allow dry needling if a therapist is trained in the intervention.

Dry Needling Is Allowed in Some States But Prohibited in Others.

The issue of whether physical therapists should be allowed to perform dry needling has been debated since at least 2010. Acupuncturists have argued that dry needling is a form of acupuncture and that physical therapists who practice dry needling are circumventing the regulatory authority of acupuncture and placing the public at risk. Dry needling started to gain support of national organizations of the physical therapy profession around 2010. Prior to the Board’s official opinion in July 2012, the APTA released an educational resource paper in January 2012 titled *“Physical Therapists and The Performance of Dry Needling.”* The document stated that the APTA *“...recognizes dry needling as being part of the physical therapist professional scope of practice.”*

Currently, 21 state physical therapy boards (Alabama, Alaska, Arkansas, Delaware, Kentucky, Iowa, Maine, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Texas, Vermont, West Virginia, Wisconsin, and Wyoming) and the District of Columbia have issued opinions affirming dry needling is within the scope of practice for physical therapists. Of these states, Kentucky issued an opinion in 2010 that is similar to what West Virginia's board uses. The Kentucky Board of Physical Therapy reported that *"While dry needling is within the scope of practice of physical therapy, a physical therapist must practice only those procedures that the physical therapist is competent to perform."*

However, as of the most recent data, seven state physical therapy boards (California, Florida, Hawaii, New Jersey, New York, Oregon, Washington) have issued opinions that dry needling is not within the scope of practice of physical therapists, and thus prohibit dry needling by their licensees. For example, Florida's and Hawaii's physical therapy statutes contain explicit language prohibiting physical therapists from puncturing the skin for any purpose. The Washington State Department of Health conducted a Sunrise Review in 2016 to review a proposal to add dry needling to the physical therapist scope of practice. The department did not support the applicant's proposal on the grounds that the procedure is invasive with the potential for serious risk of injury, the applicant did not include a supervised clinical experience requirement, the applicant did not demonstrate that 54 hours of training was sufficient to ensure therapists could adequately perform dry needling, and the applicant reported that the majority of education necessary to perform the technique is taught as part of doctorate education. However, not all physical therapists practicing have completed doctorate-level training.

In addition, the American Traditional Chinese Medicine Association (ATCMA), and the American Medical Association (AMA) opined that dry needling is not within the scope of practice for physical therapists. The ATCMA reported in 2017 that dry needling practitioners such as physical therapists are attempting to bypass the legal regulations to practice acupuncture in the name of dry needling. The ATCMA also agreed with an AMA report issued in the American Medical Association's 2016 Annual Meeting on the topic which reported that *"Physical therapists are increasingly incorporating dry needling into their practice. Dry needling is indistinguishable from acupuncture, yet physical therapists are using this invasive procedure with as little as 12 hours of training while the industry standard minimum for physicians to practice acupuncture is 300 hours of training. Delegates agreed that the practice of dry needling by physical therapists and other non-physician groups should include-at a minimum-the benchmarking of training and standards to already existing standards of training, certification and continuing education that exist for the practice of acupuncture."*

The Board Does Not Offer Dry Needling Training or Certification, Nor Does It Know How Many Are Certified Within the State.

When asked if the Board has documentation of the number of licensed physical therapists who perform dry needling, it reported, *"The WV Board of Physical Therapy does not offer an additional certification for functional dry needling, nor a certificate to display. It is the responsibility of the licensed physical therapist to produce documentation regarding coursework and training in functional dry needling. If an issue arose regarding competency."* Also, the Board

does not require this information of certification be provided to the Board from a licensed physical therapist. In fact, it would only be required if a situation such as a complaint occurred. PERD found this is not uncommon as at least 13 states follow the same protocol. Since the Board issued the opinion in 2012 there has been one complaint made against a therapist which resulted in a no probable cause decision.

The Board Reports Physical Therapists Do Not Perform Acupuncture But They Do Perform Manual Techniques in Auricular Therapy.

The Board also indicated that it allows physical therapists to perform auricular therapy, which is similar to the acupuncture technique auricular acudetox therapy. Auricular therapy is a form of medicine which treats physical or emotional health by manipulating the ear with or without needles. There are over 200 points on the outer ear, with each named after an area of the human anatomy. When the point is touched, it triggers an electrical impulse from the ear via the brain to the part of the body being treated. House Bill 2324 passed during the 2019 regular session and authorizes the West Virginia Board of Acupuncture to issue certificates to perform auricular acudetox therapy. The Bill requires the Board of Acupuncture to certify anyone who desires to perform these procedures which can be treatment for substance abuse, alcoholism, chemical dependency, detoxification, behavioral therapy, or trauma recovery. Applicants for certification shall be either a performing acupuncture or a physician's assistant, dentist, registered professional nurse, practical nurse, psychologist, occupational therapist, social worker, professional counselor, emergency medical services provider, or a correction medical provider. Each professional listed must provide evidence of successful completion of a board-approved auricular acudetox program, submit a completed application, and submit the appropriate fees. Absent from this list of professionals are licensed physical therapists.

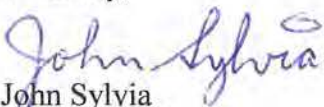
When asked if the Board will continue to practice auricular therapy after the passage of House Bill 2324, the Board responded by stating, "*HB 2324 refers to acupuncture for auricular therapy. Functional dry needling is a manual technique to treat myofascial tissue dysfunction. Both acupuncture and functional dry needling employ solid monofilament needles. Since physical therapists are not performing acupuncture this does not apply.*" It is the Board's interpretation of the bill and what its licensees perform, that the bill does not prohibit physical therapists from performing auricular therapy. In fact, the Board reported that its licensees conduct auricular therapy, not auricular acudetox therapy. The Board indicated that during the practice of auricular therapy, therapists do not use techniques with needles, like dry needling, on the ear but some may use direct pressure or a stimulator machine each with the same goal to achieve recovery of an area of the body. As with dry needling, the Board reported that those licensed physical therapists who perform auricular therapy should be credentialed. However, as with dry needling, the Board will not require a certification unless an issue arises. This can create the potential for harm to the public if an untrained/uncredentialed therapist performs the procedure without proper training.

Conclusion

After reviewing these issues within West Virginia and the country, the Legislative Auditor concludes that West Virginia is behind in adequately addressing whether dry needling and auricular therapy are within the scope of practice for physical therapists. First, whether dry needling is within the scope of practice for physical therapists should be studied by West Virginia, as several states have done, in order to reach a consensus **that includes the Legislature**. Although the Board has concluded that dry needling and auricular therapy are in the scope of practice of physical therapists, **the Legislature has not formally weighed in on these issues**. Many states have concluded in favor or against including dry needling in the scope of practice for physical therapists with their respective Legislature's involvement. West Virginia has not done this. Many state Legislatures have included explicit statutory language in the scope of practice of physical therapists, in favor or against dry needling. West Virginia has not done this. Fourteen states (Arizona, Georgia, Colorado, Idaho, Illinois, Kansas, Louisiana, Maryland, Mississippi, Montana, Nebraska, Tennessee, Utah, and Virginia) and the District of Columbia have instituted state training guidelines that provide the number of hours of successful completion of a dry needling course and in some cases require therapists who perform dry needling to produce documentation of meeting the requirements immediately upon request by the board. West Virginia's Board of Physical Therapy maintains it is the responsibility of therapists to only provide documentation of training if an issue arises. Furthermore, the Board does not have specific training requirements to perform dry needling, nor does the Board have knowledge on the number of therapists who may be performing dry needling or auricular therapy and if they have received adequate training. Given the potential harm to the general public from dry needling and auricular therapy, the Board is not adequately protecting the public. The Legislative Auditor concludes that these issues are important to the safety and well-being of the public and deserve adequate study. **Therefore, the Legislative Auditor recommends that the Legislature formally weigh in on these matters by considering statutorily prohibiting the practice of dry needling and auricular therapy by physical therapists until the Board submits a Sunrise application pursuant to *West Virginia Code §30-1A***. However, a statutory mandate may not be necessary if the Board agrees to timely submit a Sunrise application.

I hope this addresses your inquiry of the Board of Physical Therapy and its process involving dry needling and auricular therapy. If we can be of further assistance, please let us know.

Sincerely,


John Sylvia



WEST VIRGINIA BOARD OF PHYSICAL THERAPY
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Charleston, West Virginia 25311
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September 5, 2019

John Sylvia
West Virginia Legislature
Performance Evaluation and Research Division
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1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610



Dear Mr. Sylvia:

This letter is the written response of the West Virginia Board of Physical Therapy (Board) to the Performance Evaluation and Research Division (PERD) review on the Board's position on dry needling and auricular acudetox therapy. It is written as requested by PERD, after our exit conference with Brandon Burton on August 26, 2019.

The members of the Board do not understand why the Board is being questioned at this time about the perceived harm to the public from dry needling or auricular acudetox therapy, or why these interventions have been intertwined. The letter from PERD attached to the draft copy of the letter report states it is regarding the Board's decision to permit licensed physical therapists to perform dry needling and auricular therapy. In order to adequately address the PERD review, the topics of dry needling, acupuncture, auricular therapy, and auricular acudetox therapy (as described in HB 2324) must be defined and addressed separately.

Dry Needling is a skilled intervention performed by a clinician that uses a thin 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. (APTA 2012). Dry needling requires manual manipulation of the thin filiform needle that provides a mechanical treatment intervention. The American Physical Therapy Association (APTA) and the American Chiropractic Association (ACA) have been in collaboration for nine years regarding dry needling. They together presented an application for a dry needling CPT code to enable the healthcare industry to better examine the overall utilization of dry needling and its associated outcomes by collecting data via the CPT code.

Acupuncture is a treatment based on eastern medical diagnosis requiring training in Traditional Chinese Medicine (TCM). "Acupuncture" means a form of health care, based on a theory of energetic physiology that describes the interrelationship of the body organs or functions with an associated point or combination of points (§30-36-2-a-1).

The similarity between acupuncture in TCM and dry needling in Physical Therapy begins and ends with the use of a thin filiform needle used by the practitioner. Often confusion exists due to the fact that these thin filiform needles are referred to as “acupuncture needles” by many people. The WV statute for acupuncturists (§30-36-1) includes the following language: “The provisions of this article are not intended to limit, preclude, or otherwise interfere with the practice of other health care providers working in any setting and licensed by appropriate agencies or boards of the State of West Virginia whose practices and training may include elements of the same nature as the practice of a licensed acupuncturist.”

Auricular therapy has its roots in Chinese medicine but also had use in other cultures. It was discussed in Yellow Emperor’s Classic of Internal Medicine (circa 200 BCE). Hippocrates bled points behind the ears for impotence and sciatic pain. Ancient Persia & European Middle Ages medical texts report cauterization of the ear for sciatic pain. Then, from 1950 to 1956, Dr. Paul Nogier of France, the “Father of Auriculotherapy” developed a complete somatotopic map of the ear as a reflex system. The ear is one of many reflex systems. A reflex system is where the whole body can be represented in a part of the body. Physical therapists may be familiar with the reflex systems seen in hand and foot reflexology. Auricular therapy utilizes the external ear for the diagnosis and treatment of health conditions in other parts of the body. Points on the ear can be stimulated by manual pressure, electrical stimulation, thin filiform needles, lasers, magnets, and ear acupressure pellets. Acupuncturists, physical therapists, massage therapists, physicians, chiropractors, psychiatrists and others, can apply this treatment intervention. Experience and research show that auricular therapy without needles can be as effective as body acupuncture. In summary, not all auricular therapy is done using thin filiform needles.

According to the training materials on the WV Board of Acupuncture website, National Acupuncture Detoxification Association (NADA) auricular acudetox therapy involves acupuncture to five specific auricular reflex points and requires no diagnosis. The training to become an Auricular Acudetox Specialist (ADS) is performed by the NADA over a three-day period. To qualify for a certificate as an ADS, an applicant shall: (1) Be at least 18 years old; (2) Be authorized in this state to engage in any of the following: (A) Physician assistant, pursuant to §30-3E-1 et seq. of this code; (B) Dentist, pursuant to §30-4-1 et seq. of this code; (C) Registered professional nurse, pursuant to §30-7-1 et seq. of this code; (D) Practical nurse, pursuant to §30-7A-1 et seq. of this code; (E) Psychologist, pursuant to §30-21-1 et seq. of this code; (F) Occupational therapist, pursuant to §30-28-1 et seq. of this code; (G) Social worker, pursuant to §30-30-1 et seq. of this code; (H) Professional counselor, pursuant to §30-31-1 et seq. of this code; (I) Emergency medical services provider, pursuant to §16-4C-1 et seq. of this code; or (J) Corrections medical providers, pursuant to 15A-1-1 et seq. of this code. (3) Provide evidence of successful completion of a board-approved auricular acudetox program; (4) Submit a completed application as prescribed by the board; and (5) Submit the appropriate fees as provided for by legislative rule. The WV statute for acupuncturists (§30-36-14-g) prohibits those practitioners trained in auricular acudetox from performing acupuncture on any other part of the body or advertising themselves as acupuncturists. In summary, auricular acudetox therapy is a form of auricular therapy and an acupuncture intervention with thin filiform needles.

West Virginia House Bill 2324 signed by Governor Justice on March 1, 2019 does not include physical therapists on the list of practitioners that can be trained to perform auricular acudetox therapy. The original NADA ADS information sheet on the West Virginia Board of Acupuncture website did list physical therapists as practitioners that could participate in this training as did the original version of HB 2324. This obviously was prior to the final passage of HB 2324. Physical therapists were removed from the list of providers in committee and prior to the full vote on the bill.

In the first paragraph on page one, statements are made that both PERD and the Joint Committee on Government Organization have concern that the Board is allowing physical therapists to perform dry needling and auricular acudetox therapy. Concern is also expressed regarding no records of training in dry needling and no requirement to post a certificate that indicates training in either intervention. The Board does consider dry needling to be in the physical therapy scope of practice. WV statute for physical therapists (§30-20-9-2) refers to the scope of practice for a physical therapist that "includes, but is not limited to" a number of interventions. The Board requires physical therapists to post a WV state license in a conspicuous location in their practice. It does not require records for training or the need to post a certificate for any area of specialty certification or training. The Board has received one complaint regarding dry needling since the Board rendered an opinion that dry needling was within the physical therapy scope of practice in 2012. This complaint was found to have no probable cause and was dismissed. Auricular acudetox therapy is a form of acupuncture and not within the physical therapy scope of practice.

On page two of the report a statement is made that the Joint Committee on Government Organization expressed concern that dry needling is arguably a form of acupuncture. The Board disagrees with this statement based upon the definitions of both acupuncture and dry needling. Acupuncture is based upon a theory of energetic physiology that links body organs or functions with associated points on the body. Dry needling is based upon the science of anatomy and physiology to stimulate underlying myofascial trigger points, muscular and connective tissues for the management of neuromusculoskeletal pain and movement impairments.

At the bottom of page three, there is discussion regarding what states allow dry needling. The statement that physical therapists that practice dry needling are circumventing the regulatory authority of acupuncture and placing the public at risk is inaccurate, invalid, and inflammatory. Again, the Board disagrees based upon the definitions of the two interventions and a record of no Board complaints with probable cause in West Virginia. Currently, according to the Federation of State Boards of Physical Therapy, dry needling is considered to be in the scope of practice for physical therapists in thirty-six states, while only seven states have language in their practice acts saying that it is not. State Attorney General Opinions have been given in support that dry needling is within the physical therapy scope of practice in Kentucky, Louisiana, Maryland, Mississippi, Nebraska, North Carolina, Tennessee, and Texas (See attached AG Opinions). In antitrust legislation beginning in 2015, the North Carolina's courts have repeatedly sided with physical therapists and their dry needling patients in a series of lawsuits involving the North Carolina Acupuncture Licensing Board (NCALB). In 2016 the North Carolina courts dismissed a case brought by the NCALB against the NC Board of Physical Therapy. In *N.C. Acupuncture Licensing Board v. N.C. Board of Physical Therapy Examiners*, No. 380A17 (December 7,

2018), the North Carolina Supreme Court affirmed the decision of the Business Court affirming the Physical Therapy Board's declaratory ruling that "dry needling" falls with the scope of physical therapy practice in North Carolina (See attached Decision).

In the third paragraph on page three of the PERD report, there is an attempt to compare the education of acupuncturists to physical therapists performing dry needling. The letter states the industry standard for acupuncturists is 300 hours of training, while physical therapists performing dry needling may have as little as 12 hours of training. This is an invalid and inaccurate comparison of training. The Analysis of Competencies for Dry Needling by Physical Therapists prepared for the Federation of State Boards of Physical Therapy in July 2015 by Human Resources Research Organization (HumRRO) concluded that 86% of what physical therapists need to know to be competent in dry needling is acquired during the course of their entry level education, including knowledge related to evaluation, assessment, diagnosis, and plan of care development, documentation, safety, and professional responsibilities. Advanced training to perform dry needling is almost solely related to the needling technique and psychomotor skills needed to handle needles and palpation of tissues. Level 1 dry needling courses for physical therapists generally consist of 3-day courses of 24 to 30 hours of training. Furthermore, the training for practitioners to complete the NADA auricular acudetox training (which is acupuncture) is 3 days.

On the bottom of page three, the issue brought forth is a lack of Board training or certification courses in dry needling and the lack of documentation by the Board regarding the number of physical therapists performing dry needling in West Virginia. The Board does perform a thorough review and approve courses that teach dry needling. Individual licensees and providers may submit a course for review and Board approval. According to Board guidelines, courses sponsored by the APTA, the WVPTA, and any CAPTE accredited physical therapy school are automatically approved by the Board and are not required to be submitted for review. As stated previously, the Board has had no cases with probable cause pertaining to the performance of dry needling interventions. A logical solution to find out how many physical therapists are performing dry needling in West Virginia would be to ask that question on license applications and renewal forms, and compact applications and renewal forms.

Page four pertains to auricular therapy. Earlier in this response auricular therapy was defined. The Board does not feel that a large number of physical therapists are performing auricular therapy, but to restrict physical therapists who have been trained in non-acupuncture techniques of this intervention does not seem prudent. The potential harm to the public is negligible with zero Board complaints with or without probable cause. With specific regard to acudetox auricular therapy, the Board recognizes that this is acupuncture. Neither the Board nor the WVPTA endorse or support the practice of acupuncture by a physical therapist.

In the PERD report conclusion, the statement is made that the WV Legislature has not formally weighed in on these issues with respect to dry needling and auricular therapy. With all due respect, the WV Legislature did authorize the WV Physical Therapy Practice Act and a licensing board to determine safe parameters of practice. The Board has not received any complaints with probable cause for dry needling nor any complaints for auricular therapy. The

Board does not endorse or support the practice of acupuncture by a physical therapist. The Board would agree to ask questions regarding training and practice in dry needling and auricular therapy on the licensure and compact applications and renewal forms.

The Board considers the Legislative Auditor's recommendation to consider statutorily prohibiting the practice of dry needling and auricular therapy by physical therapists unnecessary, especially with zero complaints with probable cause. The continuing competence model of professional continuing education suggests that since there are no complaints, this is not a problem area that needs addressed or changed for greater public protection. In light of the opioid abuse across the country including West Virginia, physical therapy offers a number of safe interventions for pain control that are alternatives to opioid medications. Dry needling is considered a safe and effective, evidence based physical therapy intervention to use in the management of neuromusculoskeletal pain and movement impairments. It is unwarranted to deprive the citizens of West Virginia a healthcare intervention that is currently being provided without substantial evidence to indicate potential harm to the public.

Respectfully submitted,



John W. Brautigam
Board Chair

Enclosure



September 4, 2019

The Honorable Greg Boso
Room 217W, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

The Honorable Gary G. Howell
Room 213E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Dear Chairmen:

This letter-report is in response to the Performance Evaluation and Research Division (PERD) review whether the Board of Physical Therapy (Board) is allowing licensed physical therapists to perform dry needling. PERD was also requested to review whether the Board was allowing licensed physical therapists to perform auricular acudetox therapy. The Joint Committee on Government Organization is also concerned that if the Board is permitting these practices, it has no record as to who is trained in them and that there may not be a formal acknowledgement by the Board that those individuals are properly trained in either form of treatment. There is also concern that the Board may not require the individuals to post a certificate or license which indicates training in either modality.

The WV Board of Acupuncture would like to thank you for the opportunity to respond to this legislative audit report. The Board of Acupuncture is in agreement with this report and does not support the practice of dry needling and auricular therapy by physical therapists *as it stands within the state of West Virginia*.

The Board of Acupuncture's response is incorporated into the audit report.

The Board Is of the Opinion That Dry Needling Is Within the Scope of Practice of a West Virginia Licensed Physical Therapist.

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acupuncture and that physical therapists who practice dry needling are circumventing the regulatory authority of acupuncture and placing the public at risk. Dry needling started to gain support of national organizations of the physical therapy profession around 2010. Prior to the Board's official opinion in July 2012, the APTA released an educational resource paper in January 2012 titled "*Physical Therapists and The Performance of Dry Needling.*" The document stated that the APTA "...recognizes dry needling as being part of the physical therapist professional scope of practice."

Currently, 21 state physical therapy boards (Alabama, Alaska, Arkansas, Delaware, Kentucky, Iowa, Maine, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Texas, Vermont, West Virginia, Wisconsin, and Wyoming) and the District of Columbia have issued opinions affirming dry needling is within the scope of practice for physical therapists. Of these states, Kentucky issued an opinion in 2010 that is similar to what West Virginia's board uses. The Kentucky Board of Physical Therapy reported that "*While dry needling is within the scope of practice of physical therapy, a physical therapist must practice only those procedures that the physical therapist is competent to perform.*"

However, as of the most recent data, seven state physical therapy boards (California, Florida, Hawaii, New Jersey, New York, Oregon, Washington) have issued opinions that dry needling is not within the scope of practice of physical therapists, and thus prohibit dry needling by their licensees. For example, Florida's and Hawaii's physical therapy statutes contain explicit language prohibiting physical therapists from puncturing the skin for any purpose. The Washington State Department of Health conducted a Sunrise Review in 2016 to review a proposal to add dry needling to the physical therapist scope of practice. The department did not support the applicant's proposal on the grounds that the procedure is invasive with the potential for serious risk of injury, the applicant did not include a supervised clinical experience requirement, the applicant did not demonstrate that 54 hours of training was sufficient to ensure therapists could adequately perform dry needling, and the applicant reported that the majority of education necessary to perform the technique is taught as part of doctorate education. However, not all physical therapists practicing have completed doctorate-level training.

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The Board Does Not Offer Dry Needling Training or Certification, Nor Does It Know How Many Are Certified Within the State.

When asked if the Board has documentation of the number of licensed physical therapists who perform dry needling, it reported, *“The WV Board of Physical Therapy does not offer an additional certification for functional dry needling, nor a certificate to display. It is the responsibility of the licensed physical therapist to produce documentation regarding coursework and training in functional dry needling. If an issue arose regarding competency.”* Also, the Board does not require this information of certification be provided to the Board from a licensed physical therapist. In fact, it would only be required if a situation such as a complaint occurred. PERD found this is not uncommon as at least 13 states follow the same protocol. Since the Board issued the opinion in 2012 there has been one complaint made against a therapist which resulted in a no probable cause decision.

The WV Board of Acupuncture does not support the practice of dry needling by physical therapists *as it stands within the state of West Virginia.*

The definition of acupuncture in the WV Code §30-36-2 states “practice acupuncture” includes stimulation of points of the body by the insertion of acupuncture needles.

The Acupuncture Board supports the practice of dry needling by physical therapists, **but only** with a strict definition of what dry needling is and what it isn't, proof of completion of a proper training program and a registry of physical therapists who are trained and perform dry needling.

The ability to puncture/penetrate the skin of a living human body is currently limited to professions that have the following prerequisite training:

1. knowledge of human anatomy
2. knowledge of the handling of sharps, infectious disease spread and safe needle technique including skin penetration risks
3. knowledge of the effects of needle insertion, including recognition and appropriate management/referral of side effects
4. knowledge of contraindications to inserting a needle in specific patients (ie. the risk of labor induction in the pregnant patient)
5. knowledge of risk of permanent impairment/death, ie. visceral penetration (pneumothorax, displacing hematoma)

Physicians typically require 300+ hours in order to perform body acupuncture on a patient. NOTE: in most states it is 300 hours, in a few states, it is 200 hours. The State of WV has no requirement.

It is the opinion of the Acupuncture Board, physical therapists should be permitted to perform dry needling, **but only** with documentation/certification that they have completed training in dry needle coursework that will cover #1 through #5 above. A physician has to apply for privileges to perform every procedure in a hospital or a clinic, and be prepared to show proof of their training. In order to maintain consistent quality of care and protect the public, the same should hold true for all professions in WV.

Acupuncture needles were reclassified by the FDA from Class III (experimental/investigational use) to Class II (general use) in 1996 and require a prescriptive order (Rx) for purchase. The manufacturers had to document the materials used, needle specifications and be labeled "single use". They also had to bear a prescription labeling statement that restricts their use to qualified practitioners. See below.

[Code of Federal Regulations]
[Title 21, Volume 8]
[Revised as of April 1, 2018]
[CITE: 21CFR880.5580]

TITLE 21--FOOD AND DRUGS
CHAPTER I--FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
SUBCHAPTER H--MEDICAL DEVICES

PART 880 -- GENERAL HOSPITAL AND PERSONAL USE DEVICES

Subpart F--General Hospital and Personal Use Therapeutic Devices

Sec. 880.5580 Acupuncture needle.

(a) *Identification.* An acupuncture needle is a device intended to pierce the skin in the practice of acupuncture. 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.

(b) *Classification.* Class II (special controls). Acupuncture needles must comply with the following special controls:

- (1) Labeling for single use only and conformance to the requirements for prescription devices set out in 21 CFR 801.109,
- (2) Device material biocompatibility, and
- (3) Device sterility.

[61 FR 64617, Dec. 6, 1996]

The Board Reports Physical Therapists Do Not Perform Acupuncture But They Do Perform Manual Techniques in Auricular Therapy.

The Board also indicated that it allows physical therapists to perform auricular therapy, which is similar to the acupuncture technique auricular acudetox therapy. Auricular therapy is a form of medicine which treats physical or emotional health by manipulating the ear with or without needles. There are over 200 points on the outer ear, with each named after an area of the human anatomy. When the point is touched, it triggers an electrical impulse from the ear via the brain to the part of the body being treated. House Bill 2324 passed during the 2019 regular session and authorizes the West Virginia Board of Acupuncture to issue certificates to perform auricular

acudetox therapy. The Bill requires the Board of Acupuncture to certify anyone who desires to perform these procedures which can be treatment for substance abuse, alcoholism, chemical dependency, detoxification, behavioral therapy, or trauma recovery. Applicants for certification shall be either a performing acupuncture or a physician's assistant, dentist, registered professional nurse, practical nurse, psychologist, occupational therapist, social worker, professional counselor, emergency medical services provider, or a correction medical provider. Each professional listed must provide evidence of successful completion of a board-approved auricular acudetox program, submit a completed application, and submit the appropriate fees. Absent from this list of professionals are licensed physical therapists.

When asked if the Board will continue to practice auricular therapy after the passage of House Bill 2324, the Board responded by stating, "*HB 2324 refers to acupuncture for auricular therapy. Functional dry needling is a manual technique to treat myofascial tissue dysfunction. Both acupuncture and functional dry needling employ solid monofilament needles. Since physical therapists are not performing acupuncture this does not apply.*" It is the Board's interpretation of the bill and what its licensees perform, that the bill does not prohibit physical therapists from performing auricular therapy. In fact, the Board reported that its licensees conduct auricular therapy, not auricular acudetox therapy. The Board indicated that during the practice of auricular therapy, therapists do not use techniques with needles, like dry needling, on the ear but some may use direct pressure or a stimulator machine each with the same goal to achieve recovery of an area of the body. As with dry needling, the Board reported that those licensed physical therapists who perform auricular therapy should be credentialed. However, as with dry needling, the Board will not require a certification unless an issue arises. This can create the potential for harm to the public if an untrained/uncredentialed therapist performs the procedure without proper training.

The Acupuncture Board supports the practice of auricular therapy by physical therapists that includes needle insertion, **but only** with proof of completion of a proper required training program and a registry of physical therapists who perform this method of auricular therapy. Auricular therapy involves the stimulation of acupuncture points rather than the stimulation of muscular and connective tissue. Auricular therapy can also be performed by manual therapy that includes acupressure and acupuncture seed beads. Auricular Detoxification Therapy is a specific 5 point protocol derived from auricular therapy that treats behavioral/emotional health. It is the opinion of the Acupuncture Board that treating points in the ear by inserting needles is acupuncture. If physical therapists are inserting monofilament needles into any of the over 200 points on the outer ear, they are performing acupuncture. Therefore it is not within the scope of practice of a physical therapist. Licensed acupuncturists must complete a Clean Needle Technique Course as a requirement for licensure.

The Acupuncture Board requires proof of the completion of a board approved training program, such as, National Acupuncture Detoxification Association - NADA Acudetox training. It is limited to 5 prescriptive points. The training includes: ear anatomy, safe needle/exposure/infection control, side effects of acupuncture (ie. needle shock) and contraindications to NADA are discussed. A certificate of completion is required in order to apply for and perform Auricular Acudetox in WV. Physical therapists are absent from the list of professionals as they requested to be removed from HB 2324 during the 2019 Legislative session.

Conclusion

After reviewing these issues within West Virginia and the country, the Legislative Auditor concludes that West Virginia is behind in adequately addressing whether dry needling and auricular therapy are within the scope of practice for physical therapists. First, whether dry needling is within the scope of practice for physical therapists should be studied by West Virginia, as several states have done, in order to reach a consensus **that includes the Legislature**. Although the Board has concluded that dry needling and auricular therapy are in the scope of practice of physical therapists, **the Legislature has not formally weighed in on these issues**. Many states have concluded in favor or against including dry needling in the scope of practice for physical therapists with their respective Legislature's involvement. West Virginia has not done this. Many state Legislatures have included explicit statutory language in the scope of practice of physical therapists, in favor or against dry needling. West Virginia has not done this. Fourteen states (Arizona, Georgia, Colorado, Idaho, Illinois, Kansas, Louisiana, Maryland, Mississippi, Montana, Nebraska, Tennessee, Utah, and Virginia) and the District of Columbia have instituted state training guidelines that provide the number of hours of successful completion of a dry needling course and in some cases require therapists who perform dry needling to produce documentation of meeting the requirements immediately upon request by the board. West Virginia's Board of Physical Therapy maintains it is the responsibility of therapists to only provide documentation of training if an issue arises. Furthermore, the Board does not have specific training requirements to perform dry needling, nor does the Board have knowledge on the number of therapists who may be performing dry needling or auricular therapy and if they have received adequate training. Given the potential harm to the general public from dry needling and auricular therapy, the Board is not adequately protecting the public. The Legislative Auditor concludes that these issues are important to the safety and well-being of the public and deserve adequate study. **Therefore, the Legislative Auditor recommends that the Legislature formally weigh in on these matters by considering statutorily prohibiting the practice of dry needling and auricular therapy by physical therapists until the Board submits a Sunrise application pursuant to *West Virginia Code §30-1A***. However, a statutory mandate may not be necessary if the Board agrees to timely submit a Sunrise application.

In conclusion, the WV Board of Acupuncture is in agreement with this report. The Acupuncture Board would also recommend the WV Legislature address this issue as many other states have done. This will be the best and most effective way to determine what requirements **must** be met by physical therapists in order to practice dry needling and auricular therapy. The Acupuncture Board supports physical therapists to perform dry needling and auricular therapy that includes needle insertion, **but only** with a strict definition of what dry needling is and what it isn't, the proper training requirements, documentation of the training and a registry or some method of tracking the physical therapists that perform dry needling and auricular therapy. This would ensure that any physical therapist who performs these methods of treatment are properly trained. A chiropractor who performs acupuncture as part of their practice is required to complete a minimum of 100 hours of additional training and passage of the National Board Examination; International Academy of Medical Acupuncture with passage of this exam or other organizations of equal or greater qualifications. They must provide proof to the Chiropractic Board of hours completed and submit a copy of their certification. The Chiropractic Board does keep a list of chiropractors that have the certification to perform acupuncture within their scope of practice.

The Board of Acupuncture has standards and requirements for the practice of Auricular Acudetox Therapy by other licensed professionals. Standards and requirements for physical therapists to perform dry needling and auricular therapy with needle insertion should definitely be addressed statutorily by the Legislature. We are certainly willing to work with the Board of Physical Therapy and the Legislature to assist in this process. Thank you again for the opportunity to respond to this important matter. All of the professional licensing boards should put public protection first and foremost by ensuring their licensees are properly trained in all methods of treatment that fall within their scope of practice.