Council of Colleges of Acupuncture and Oriental Medicine

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July 14, 2017

Honorable Senator Jason Lewis, Chair, Joint Committee on Public Health
Honorable Representative Kate Hogan, Chair, Joint Committee on Public Health
Honorable Senator Jen Flanagan, Vice Chair, Joint Committee on Public Health
Honorable Representative Evandro Carvalho, Vice Chair, Joint Committee on Public Health

Dear Joint Committee Chairs and Vice-chairs:

This letter is submitted by the Council of Colleges of Acupuncture and Oriental Medicine (Council) in support of the efforts of the Acupuncture Society of Massachusetts (ASM) to ensure that only those health care providers in the state that have received appropriate training in the acupuncture technique of dry needling are legally authorized to perform such needling. The Council is specifically opposed to the practice of dry needling by physical therapists who have not received the same amount of training that professionally trained and licensed acupuncturists in the state have received to perform this technique. For reasons more fully presented below, the Council supports the enactment of S. 1182 (Senator Cyr), which provides that "Any insertion of a filiform or metal needle for therapeutic purpose into a body constitutes the practice of acupuncture." This bill would thus codify what has long been true for the practice of acupuncture that the technique of dry needling is part of the armamentarium of acupuncture.

The Council since 1982 has been the national membership association for accredited acupuncture and Oriental medicine (AOM) colleges and programs in the U.S. (www.ccaom.org). The Council's membership currently consists of 56 AOM colleges in 21 states, all of which have accreditation status with the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), the national accrediting agency for acupuncture and Oriental medicine programs recognized by the U.S. Department of Education (www.acaom.org).

The Council's general opposition to the practice of dry needling by physical therapists and its support for S. 1182 is based upon the following points:

1. Dry Needling is Acupuncture.

Dry needling is an invasive procedure that uses acupuncture needles, is indistinguishable from acupuncture, and is part of the armamentarium of acupuncture. In its Position Paper on Dry

Needling,[1] the Council, whose member college representatives consist of higher education faculty, active practitioners, and administrators, has documented the collective work of scholars and physicians over centuries and the work of modern practitioners to show decisively that the claims by physical therapists concerning the alleged "differences" between acupuncture and dry needling do not exist and that acupuncture historically and scholastically/academically encompasses all dry needling.[2] Recent attempts by physical therapists to redefine acupuncture in a limited way as based on "meridians" and "energy flows" are invalid. While some acupuncture locations are located on meridians, these are only one classification of acupuncture locations based on a single theory. Additional locations, commonly referred to as "extra points" are not located on meridians. Trigger points, referred to historically as "ASHI" points, are fully included in historical and modern acupuncture theory and are also not located on meridians.[3] By superimposing a definition of acupuncture that is not comprehensive, physical therapists not only attempt to separate themselves from acupuncture regulation, they also seek to limit a profession over which they have no knowledge or regulatory jurisdiction.

2. As acupuncture uses biomedical terminology, the use of biomedical language cannot be a basis for defining dry needling as distinct from acupuncture.

The Council has taken the position that any intervention utilizing dry needling is the practice of acupuncture, regardless of the language used to describe the procedure. Physical therapists have misled the public by attempting to claim that their use of biomedical terminology distinguishes dry needling from acupuncture practice. The curriculums of the Council's AOM member colleges make no such distinction. National acupuncture accreditation and certification bodies require the study of biomedicine, evidenced-informed practice, and bioscience courses such as anatomy and physiology as part of standard training for modern acupuncture practice.[4] In addition, the national certification agency for the acupuncture profession (NCCAOM) provides a national certification examination in biomedicine.[5] The idea that acupuncturists use energetic language that is different from the biomedical terminology used by physical therapists, and that

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[1] *See* http://www.ccaom.org/downloads/CCAOM_Position_Paper__May_2011_Update.pdf.

[2] *See* Zhou, K, Ma Y, Brogan MS, *Acupunct Med* "Dry needling versus acupuncture: the ongoing debate." Published Online First: 6 November 2015 doi:10.1136/acumed-2015-010911: http://aim.bmj.com/content/33/6/485.full?sid=b148da55-4902-4ec2-b4e7-4823a5ef8e05; and Arthur Yin Fan and Hongjian He. Letter: Dry needling is Acupuncture. *Acupunct Med* Published Online First: 15 December 2015. Doi:10.1136/acumed-2015-011010, http://aim.bmj.com/content/early/2015/12/15/acupmed-2015-011010.full and http://aim.bmj.com/content/34/3/241.

[3] Specific reference is made to ASHI or Ah Shi points as "acupuncture points" in the minimum core curriculum requirements mandated by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM). *See* ACAOM, *Accreditation Manual*, Standard 8 (Program of Study-Minimum Core Curriculum), Item 3, Bullet 10, http://acaom.org/wp-content/uploads/2016/11/160227_acaom_accreditation_manual.pdf [hereinafter cited as *ACAOM Accreditation Manual*].

[4] *Id*., Item 10 (Equipment and Safety) and Criterion 8.1(a), requiring a minimum of 30 semester credits/450 hours in biomedical clinical sciences for the professional acupuncture curriculum, and 34 semester credits/510 hours in biomedical clinical sciences for the professional Oriental medicine curriculum.

[5] *See* http://www.nccaom.org/applicants/board-examination-process/take-certification-exams (NCCAOM's biomedicine exam required for national certification in acupuncture) and http://www.nccaom.org/applicants/board-examination-process/take-certification-exams (NCCAOM's biomedicine exam required for national certification in Oriental medicine). *See also* http://www.nccaom.org/wp-content/uploads/pdf/2017%20BIO%20Expanded%20Content%20Outline.pdf for the content outline for NCCAOM's national biomedicine exam.

for this reason dry needling through the use of an acupuncture needle is not acupuncture, is false and has no correlation to actual standards of practice and education in the acupuncture field. It is therefore inaccurate and inappropriate that physical therapists make any statements about any procedure or practice of acupuncture in an attempt to declare that dry needling is distinct from the practice of acupuncture.

3. Because dry needling is an incisive procedure, it may not be within the scope of practice for physical therapists if a state prohibits physical therapists from engaging in surgery or other incisive procedures.

The use of an acupuncture needle for purposes of dry needling or for any other purpose is an *incisive procedure* inasmuch as the documented presence of bleeding after acupuncture and the risk for nerve injury and pneumothorax indicate that acupuncture involves puncturing body tissues.[6] Accordingly, the inherently incisive nature of dry needling raises an issue whether a physical therapist who uses this procedure may be engaged in prohibited surgery under an applicable state law. Concern about physical therapists performing dry needling based on the incisive nature of the procedure is reflected in an opinion of the New Jersey Attorney General earlier this year.[7] Of particular note is the Attorney General's statement that:

> For the purpose of this opinion we need not address the differences in the philosophical underpinning for the respective practices of physical therapy and acupuncture. That the purposes for which needles are used in acupuncture have a theoretical basis in Oriental medicine, distinct from the purposes that advocates for the inclusion of "IMS/dry needling" in physical therapy practice would claim is not determinative. The activity itself -- the insertion of needles in points in the body -- as with most medical procedures, has risks and contraindications, for which training is required.[8]

Safety concerns regarding the invasive practice of dry needling by physical therapists have also been noted by the American Medical Association,[9] American Academy of Medical Acupuncturists,[10] American Academy of Physical Medicine and Rehabilitation,[11] American

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[6] *See* Council of Colleges of Acupuncture and Oriental Medicine, *Clean Needle Technique (CNT) Manual—Best Practices for Acupuncture Needle Safety and Related Procedures* (7th ed. 2015), at 3-23, at http://www.ccaom.org/downloads/7th_Edition_Manual_English_June_2017.pdf.

[7] http://www.thsu.edu/wp-content/uploads/2017/02/Dry-Needling-opinion-NJ-AG-2.9.17.pdf.

[8] *Id*. at p. 6.

[9] https://www.aapmr.org/docs/default-source/advocacy/final-ama-annual-june-2016-meeting-report-copy.pdf?sfvrsn=0 (recognizing dry needling as an "invasive procedure" that "should only be performed by practitioners with standard training and familiarity with routine use of needles in their practice, such as licensed medical physicians and licensed acupuncturists"). Resolution 223, AMA Annual Meeting, June 11-15, 2016 (Report).

[10] http://www.medicalacupuncture.org/Portals/2/PDFs/DryNeedlingPolicyMar2017.pdf. AAMA Policy adopted December 9, 2014, and reaffirmed March 21, 2017 [hereinafter cited as *AAMA Policy*]. *See also* text accompanying n. 16 *infra*.

[11] https://www.aapmr.org/docs/default-source/advocacy/aapmr-resolution-on-dry-needling.pdf (Resolution). See also http://www.aapmr.org/advocacy/position-statements (Position Statement).

Association of Acupuncture and Oriental Medicine,[12] American Society of Acupuncture,[13] National Center for Acupuncture Safety and Integrity,[14] and the World Federation of Chinese Medical Societies.[15] The following statement by the American Academy of Medical Acupuncturists, the premier organization of physician acupuncturists in North America, highlights the significant public safety concerns associated with the practice of dry needling by physical therapists:

> …Regardless of the theory, it is incontrovertible that dry needling is an invasive procedure. Needle length can range up to 4 inches in order to reach the affected muscles. It is critical to understand that dry needling, in the hands of minimally educated practitioners can cause extreme harm. Any invasive procedure has associated and potentially serious medical risks and is safe only if performed by a properly educated, trained and experienced health professional. The technique of dry needling frequently involves needling of muscular structures that may be deep and/or hidden under layers of other muscles and tissues and close to sensitive structures and organs including blood vessels, nerves and organs as, for example, the lungs. The patient can develop painful bruises after the procedure and adverse sequelae may include hematoma, pneumothorax, nerve injury, vascular injury and infection. Angle the needle incorrectly and, for example, the lung may be punctured. Post procedure analgesic medications may be necessary (usually over the counter medications are sufficient). In the worse case scenario, vital organs can be pierced, resulting in complex medical situations or even death.
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> Physical therapy is not a field that has historically included the use of needles. The recent trend of some physical therapists to embrace dry needling under the umbrella of physical therapy practice is one that marks a distinct departure from traditional physical therapy practice. The fact that many physical therapists receive only minimal hours of training speaks to the potential danger of their practice.
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> To include dry needling into the scope of practice by physical therapists is unnecessarily to expose the public to serious and potentially hazardous risks. Because of this we feel a duty to inform legislators and regulating bodies about the inherent danger to the public of this practice.
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> Therefore, the AAMA strongly believes that, for the health and safety of the public, this procedure should be performed only by practitioners with extensive training and familiarity with routine use of needles in their practice and who are duly licensed to

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[12] http://www.aaaomonline.org/Dry-Needling-Position-Paper.

[13] http://www.ewsportsacupuncture.com/uploads/American_Society_of_Acupuncturists_Position_on_Dry_Needling_-_Copy.pdf.

[14] https://www.acupuncturesafety.org. The National Center for Acupuncture Safety and Integrity also states that "Medicare does not cover acupuncture" and that "It is illegal for unqualified practitioners of acupuncture, such as physical therapists, to submit a claim for payment to Medicare for dry needling disguised, for example, as electrical stimulation (Current Procedural Terminology [CPT] code 97032), therapeutic exercises (CPT code 97110), neuromuscular reeducation (CPT code 97112), or manual therapy (CPT code 97140). *See* 31 U.S.C. §§ 3729–3733," https://www.acupuncturesafety.org/dry-needling/report-medicare-fraud.

[15] https://dryneedlingatlanta.org/wp-content/uploads/2017/02/WFCMS-Statement-re-Dry-Needling-02.22.16.pdf.

perform these procedures, such as licensed medical physicians or licensed acupuncturists. In our experience and medical opinion, it is inadvisable legally to expand the scope of physical therapists to include dry needling as part of their practice.[16]

4. There is no national standard in the physical therapy profession for the provision of education and training for dry needling, and the lack of such a national standard has resulted in public harm.

In the U.S., dry needling is taught to physical therapists in continuing education courses for which there is no regulation of content. Providers of continuing education for physical therapists are teaching techniques indistinguishable from what is commonly practiced as acupuncture, in some instances teaching acupuncture meridians and points, and renaming classical acupuncture points as "homeostatic points." Moreover, continuing education instruction for dry needling is usually carried out during a weekend seminar of 24-27 hours with no supervised clinical time.

In view of reports to the FDA and separately by a malpractice insurer of serious adverse events caused by physical therapists and other non-acupuncturist providers performing dry needling, including pneumothorax,[17] the state of Massachusetts must exercise its duty to protect the public by refusing to allow this practice by health care providers who are not professionally licensed acupuncturists until adequate educational standards are in place.

5. Attendance in dry needling courses is not limited to practitioners with a doctorate in physical therapy and less than one-half of physical therapists are trained at this level.

The physical therapy lobby claims that because physical therapists are trained at the doctoral level, they already have the competencies to learn invasive techniques such as dry needling. However, only an estimated 41% of licensed physical therapists are trained at the doctoral level.[18] Since dry needling education courses are not limited to doctorally-trained physical

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[16] *AAMA Policy*, *supra* n. 10.

[17] *See* U.S. Food and Drug Administration, MAUDE Adverse Event Report: Acupuncture Needle, http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfmaude/detail.cfm?mdrfoi__id=3122096, (March 25, 2013) [MDR Report Key 3122096], and https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfmaude/detail.cfm?mdrfoi__id=5383935 (Jan. 17, 2016) [MDR Report Key 5383935]. *See also* CNA, *Physical Therapy Liability Exposure: 2016 Claim Report Update* at pp. 19 and 22, stating that dry needling by physical therapists is "an emerging area of risk" and noting three instances of pneumothorax in 2015.

[18] This estimate was drawn from currently available statistics. The various state boards of physical therapy may keep an exact number of licensed doctors of physical therapy (DPT), but this data is not readily available to the public. Between 2001-2015, there were 70,803 graduates of doctoral-level PT programs. As employment rates are an average of 98% of the graduates, the number of graduates who passed their licensing exam and entered employment can be reduced by 1,416 to 69,387. Data Sources: Years 2001, 2003, 2004, 2005, 2006, 2008 http://www.capteonline.org/uploadedFiles/CAPTEorg/About_CAPTE/Resources/Aggregate_Program_Data/Archived_Aggregate_Program_Data/CAPTEPTAggregateData_2010.pdf, p. 16. Accessed July 9, 2017. Years 2009, 2010, 2011, 2012 http://www.capteonline.org/uploadedFiles/CAPTEorg/About_CAPTE/Resources/Aggregate_Program_Data/Archived_Aggregate_Program_Data/CAPTEPTAggregateData_2013.pdf, pp. 14-15. Accessed July 9, 2017. Years 2007, 2013, 2014, 2015 http://www.capteonline.org/uploadedFiles/CAPTEorg/About_CAPTE/Resources/Aggregate_Program_Data/Archived_Aggregate_Program_Data/PTAggregateData2016.pdf, p. 11. Accessed July 9, 2017.

therapists, and less than one-half of currently licensed physical therapists have attained doctoral level education, the advanced educational rationale put forward by physical therapists cannot be used to support an expanded scope of practice for all licensed physical therapists. This would effectively extend this new scope of practice right to some 59% of physical therapists who do not have this higher level of education, may be at the bachelor or masters level of education, and who complete a dry needling continuing education course. Moreover, current dry needling continuing education courses have failed to prevent practitioners from improperly needling through clothing or treating patients far beyond the defined scope of dry needling practice. Regular postings of needling through clothing and unsafe insertion of needles up to the handle are found on social media in the U.S.

6. Physical therapy regulators must specify adequate training for dry needling.

The Federation of State Boards of Physical Therapy commissioned the *Analysis of Competencies for Dry Needling by Physical Therapists*, which is also known as the HumRRO Report.[19] This document has been cited by physical therapy boards as a reason to eliminate any required training. The HumRRO Report is unusual in its non-disclosure that five of the seven Task Force members[20] used to develop the report have a financial interest as instructors or owners in for-profit providers of dry needling education for physical therapists. The report, and testimony by physical therapists in support of their continued use of inadequate weekend-length programs, concludes that 86% of the competencies needed to perform dry needling are competencies contained in existing physical therapy programs. These competencies, however, involve the general evaluation and delivery of care and have no relevance to dry needling. As the ability to take a patient history and evaluate a patient for physical therapy does not confer knowledge or skill about acupuncture needling therapies, the comparative statement that physical therapists lack only 14% of dry needling competencies is meaningless. Additional problems with the report include the following:

1. The basic definition of dry needling adopted by the report[21] is not restricted to trigger point therapy and could include every needling technique in acupuncture, including auriculotherapy and microsystems such as scalp acupuncture as long as they are defined in biomedical terms. Therefore, the definition of dry needling adopted by the report is overly broad and vague. It is impossible to define all the competencies

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This number may be further reduced by 2.5% for workforce attrition to an estimated number of currently practicing doctoral-level trained PTs at 67,652. http://www.apta.org/WorkforceData/ModelDescriptionFigures/ (The PT profession has not gathered statistics on attrition. They have used figures of 3.5%, 2.5%, and 1.5% to calculate projections of surplus/shortage in projected workforce. The middle number was used here). Added to this are the 15,000 graduates of transitional doctor of physical therapy (tDPT) programs (as of October 2012) http://www.apta.org/PostprofessionalDegree/TransitionDPTFAQs/ (FAQ No. 13), for a total of 82,652. APTA estimates the number of licensed PTs at 204,000. *See* http://www.apta.org/AboutPTs/. Therefore the number of all licensed physical therapists who are doctorally trained would be approximately 82,652/204,000 or 41%.

[19] *See* https://www.apta.org/uploadedFiles/APTAorg/Advocacy/State/Issues/Dry_Needling/AnalysisCompetenciesforDryNeedlingbyPT.pdf (July 10. 2915) [hereinafter cited as *HumRRO Report*].

[20] http://myopainseminars.com/directors-faculty/ (Joe Donnelly and Michelle Layton are instructors for Myopain Seminars); http://www.kinetacore.com/about/faculty/ (Edo Zylstra is founder, CEO, and lead instructor for Kinetacore and Keri Maywhort and J.J. Thomas are instructors for Kinetacore).

[21] *HumRRO Report* at 1.

needed under an overly broad definition because without a content standard, all the related job tasks and knowledge competencies cannot be reliably identified.

2. The report identifies 16 dry-needling-specific knowledge competencies that comprise the 14% of the additional competencies that must be gained in post-graduate coursework. It is important to note that when physical therapists are testifying that they already have within their programs 86% of the competencies needed, they have completely left out any competencies related to the attainment of skills or supervised clinical experience necessary to perform dry needling. All of the deficient competencies are knowledge-based. In a single footnote, the report states that "although additional training is needed for the development of psychomotor skills…there does not appear to be widespread agreement regarding the minimum of practice hours necessary…Variation across individuals in terms of their aptitude, education, experience, and clinical specialization results in different rates of development."[22] In other words, the report fails to identify ANY hours that are needed for skill attainment. With the insertion of 3-inch needles into a human body as the core skill being taught, the failure to identify the amount of necessary clinical practice underscores the inherent bias in the report.

3. The report is based on doctoral-level competencies. As discussed under item #5 above, only an estimated 41% of licensed physical therapists are trained at the doctoral level. Since dry needling education courses are not limited to doctorally-trained physical therapists, and less than one-half of currently licensed physical therapists have attained the educational level upon which the report is based, the report cannot be used to support the proposed expanded scope expansion for all licensed physical therapists. The attainment of a DPT degree is not required for licensure in physical therapy.[23] Therefore, physical therapists must rectify the reality of current training of their licensees by mandating a minimum requirement to attain this advanced skill.

4. Independent certification bodies usually carry out the development of a job task analysis and competencies for professional practice in order to avoid bias. Since this report relies on for-profit vendor experts, avoids altogether the issue of a lack of an educational standard in the field, and fails to set any minimum hours for skills training, none of its conclusions can be depended upon for policy-making to promote public safety.

7. Physical therapy regulators must conduct adverse event monitoring.

In spite of documentation of life-threatening adverse events, the Council is not aware of a call within the physical therapy community to monitor adverse events through appropriate reporting. The Council believes the absence of such a call in view of the presence of known life-threatening injury calls into question whether the motivation of physical therapists in proposing to expand their scope to include dry needling is in the best interest of this profession and the safety of its

[22] *Id*. at 13.
[23] http://www.apta.org/PostprofessionalDegree/TransitionDPTFAQs (FAQ # 30).

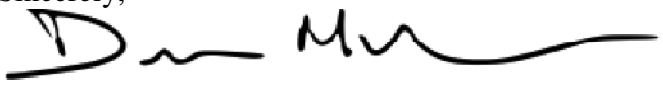
patients.

8. In many states where similar dry needling regulations have been adopted, physical therapists have practiced far beyond the intended scope of the regulations free from any disciplinary consequences.

In Colorado, where regulations also define dry needling as a technique applied to trigger points, physical therapists have advertised services for cosmetic dry needling. Social media sites advertise treatment of headaches by using acupuncture points on the hand and dry needling treatment of sinusitis. Placing the responsibility on the physical therapist rather than on the appropriate regulatory authority in Massachusetts for proper adherence to scope of practice may lead to a similar breach of scope in Massachusetts.

The Council is very aware that acupuncture is effective and that there are many patient benefits derived from acupuncture treatments. It is incumbent on the physical therapy profession, however, not to mislead the public when that profession seeks to expand its scope of practice into a well-established domain of practice belonging to another profession, and above all to set appropriate training standards to protect the public.

Sincerely,



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