



## **Getting to the Point - Experiences in Dry Needling Legislation and Regulation**

*This article is based on a presentation by Tracey Adler, PT, DPT, OCS, CMTPT; Susie Harms, PT, MHS, President, Kansas Physical Therapy Association; Emilie Jones, PT, DPT, Board Certified Geriatric Clinical Specialist, Chair, Legislative Committee, Physical Therapy Association of Washington; and Philip Vickers, Public Board Member, Texas Board of Physical Therapy Examiners, at the 2016 FSBPT Annual Meeting.*

Four states shared the very unique experiences and approaches to allowing physical therapists to perform dry needling. Representatives from Kansas, Texas, Virginia, and Washington discussed how the issue of dry needling and the professional and legal scope of physical therapist practice has been dealt with in each state.

### **Kansas**

Kansas does not have an independent PT licensure board. Instead, the Physical Therapy Advisory Council (PTAC) advises the Board of Healing Arts (BoHA) on professional issues. The PTAC consists of three PTs appointed by the governor, a BoHA member (who happens to be a chiropractor), and a physician, who is an orthopedic surgeon with a PT background and was a vocal opponent to direct access legislation. The BoHA consists of five MDs, three DOs, three chiropractors, a podiatrist, and three public members.

In 2003, Kansas adopted the FSBPT model practice act, which includes language allowing dry needling.

Still, the 2010 BoHA meeting minutes called dry needling “experimental” after an acupuncturist inquiry. But Kansas PTs who attended out-of-state courses used the practice. In response, the BoHA issued a notification of investigation and later a cease and desist letter. In 2013, two PTs who were trained out of state obtained legal counsel who determined dry needling is within the PT scope of practice. They then engaged the Kansas Physical Therapist Association (KPTA). The KPTA worked through PTAC to provide recommendations for BoHA.

In February 2014, the task force made its recommendation to the BoHA. BoHA wanted to learn more and formed an ad hoc committee and set up a multidisciplinary stakeholder meeting that included acupuncturists and chiropractors.

More than 40 people attended the stakeholder meeting. Concerns brought up included that

dry needling was acupuncture, that PTs will miss a serious medical problem and possibly needle a cancerous tumor, and that there is no national standard for education or training and certification.

In 2015, the national political climate surrounding the Affordable Care Act and the FTC ruling against the North Carolina Dental Examining Board for anti-competitive actions led the BoHA to defer to a legislative solution. The KPTA did not want to open the practice act given recent direct access gains and instead, in consultation with the APTA and others, developed best practice standards for education and training.

Between June and December, Myopain conducted two dry needling courses in Kansas. Both were sold out and included an acupuncturist and a chiropractor as attendees.

In January, the acupuncturists brought forth a licensure bill, SB 363. Kansas was one of five states where acupuncturists were not licensed. The bill defined acupuncture as also including “dry needling, trigger point therapy, and intramuscular therapy.” Unlike their unsuccessful bill a few years earlier, they chose not to exempt PTs practicing within their scope of practice.

KPTA testified before the Senate Public Health and Welfare Committee in support of acupuncturist licensure and against using the PT terms of dry needling, trigger point therapy, and intramuscular therapy. The KPTA also pointed out that in Kansas it is unlawful to grant licensure to one group if it affects the scope of practice of another. At minimum, PTs needed to be exempt from holding an acupuncturist license while dry needling.

KPTA argued that dry needling was within the PT scope of practice, even though it's not explicitly stated. KPTA referenced the APTA Guide to Practice, which defined it as a manual therapy technique; used the reference *Changes in Healthcare Professions Scope of Practice: Legislative Considerations* from the FSBPT; and referred to the Human Resources Research Organization (HumRRO) study. KPTA described the history of board discussions with PTAC recommendations, the multidisciplinary stakeholder meeting, and the board's deference to a legislative solution. KPTA pointed out that the model practice act uses language that allows for dry needling and that the attorney general issued four opinions that agreed with that. KPTA also argued it had the legal opinion that dry needling is “not prohibited in statutory language.”

After the hearing, a senator asked if KPTA would drop opposition to the acupuncturist licensure act if the legislature opened the PT practice act and exempted PTs. KPTA agreed and the APTA Legislative Action Center and KPTA lobbyists garnered widespread support from committee members for the proposed amendment before it was worked up in committee. During that time, the acupuncturists refused to meet with KPTA.

When the bill came up in committee, the committee had a new chair who the KPTA was not sure was friendly. The reviser of the bill also was out sick but sent word to members of the committee that the PT concerns would be worked out on the Senate floor. Subsequently, the bill moved out of committee without the PT amendment. Due to a number of issues, the bill was sent back to the committee. KPTA lobbying efforts resumed, asking senators to support

the PT amendment, arguing that “patients would be deprived of effective care,” and using patient testimonials to make its case.

The original sponsor of the acupuncture licensing act facilitated a meeting with all the stakeholders and was impressed with the KPTA argument. But he wanted a bill that clarified that dry needling is within the PT scope of practice.

The physicians were satisfied with adding a definition of dry needling to the PT scope of practice. Chiropractors wanted rules and regulations adopted by the BoHA for minimum education and training requirements, which were very similar to the February 2014 PTAC recommendations.

SB 490 was the vehicle to clarify dry needling in the PT statute. KPTA testified that 98% of dry needling instructors are PTs and 92% of dry needling research is done by PTs, as well as providing patient testimonials. The committee rolled SB 490 back into SB 363 so one bill could not pass without the other. It easily passed the Senate but there wasn't enough time for a House vote. Therefore, both bills were rolled into a conference committee report due to the compromise language and the fact that it passed one chamber.

The compromise bill passed and on May 13, Gov. Sam Brownback signed the bill.

The rules and regulations have been adopted by the BoHA and are now in the administrative rules process.

Under the Kansas dry needling regulations, dry needling can only be performed by a licensed PT, shall not be delegated, and can be performed solely for conditions and impairments that fall under the Kansas PT scope of practice.

PTs who did not obtain dry needling training as part of their graduate or post-graduate education must pass a dry needling course approved by CAPTE, APTA, KPTA, ABPTS, or FSBPT.

The courses must contain:

- Anatomical review
- Indications and contraindications
- Evidence-based instruction
- Sterile needle procedures as described by the CDC or OSHA
- Blood-borne pathogens
- Post-intervention care
- Assessment of the PT's dry needling technique and psychomotor skills

The instructor must be a licensed healthcare provider who has not been disciplined and who has practiced dry needling for a minimum of two years. Upon completion of the course, the PT must demonstrate:

- Competent technique
- Appropriate management of dry needling equipment
- Accurate and appropriate point selection

- Appropriate positioning and education of the patient
- Proper supervision and monitoring of the patient during treatment
- Appropriate communication of informed consent
- Appropriate patient selection, considering expected outcome, contraindications, and the patient's ability to understand and comply with treatment requirements

Regulations also outline in detail the requirements for a patient's informed consent.

## **Virginia**

In Virginia, years after the Virginia Board of Physical Therapy (VBPT) ruled that dry needling was within the PT scope of practice, a physician brought a concern to the board that a licensed PT in the state was dry needling. Subsequently, the VBPT appointed a task force to develop Guidance Document 112-9 on dry needling.

Currently, there are no regulations regarding the practice of dry needling.

The Guidance Document, however, notes dry needling is not an entry-level skill but an advanced procedure that requires additional training.

A PT using dry needling must complete at least 54 hours of post-professional training, including providing evidence of meeting expected competencies that include demonstration of cognitive and psychomotor knowledge and skills. The task force settled on 54 hours because at the time there weren't a lot of opportunities for dry needling training in the United States. But it was also determined the PT bears the burden of proof of sufficient education and training to ensure competence with the treatment of intervention.

Dry needling is an invasive procedure and for that reason the state practice act does require a referral to perform it. Now that PTs in Virginia have direct access, it is hoped this requirement will be dropped, but for now it does require a written referral.

A physician on the task force, who started out as a PT, noted physicians are required to write up a procedure note whenever they give an injection and thought it was appropriate for dry needling too. The notes must indicate how the patient tolerated the technique as well as the outcome after the procedure.

There is also a consent form so the patient knows what kind of treatment they are going to get.

The acupuncturist on the task force insisted on language that informed the patient that dry needling is not acupuncture.

Because of what happened to the North Carolina dental board, in 2015 a notice of intended regulatory action (NOIRA) was issued to create regulations because the Guidance Document provided no meat. If a PT violated standards, all the board could do is send them the document and ask that they read it. A two-month open comment period yielded 1,496 comments, mostly from acupuncture-related organizations against the board going ahead with regulations. In January 2016, an ad hoc committee formed and met.

The board approved the recommendations of the ad hoc committee in May and sent the

proposed regulations to the governor's office in June.

There was a discussion on whether a number of training or education hours should be in the regulations. It was determined that nowhere else in the regulations were hours of training specified and that the burden of proof of sufficient education and training should be placed on the licensee.

The proposed regulation is very similar to the guidelines. It states dry needling is an invasive procedure that requires a written referral.

It notes dry needling is not an entry-level skill and that "training shall be specific to dry needling and shall include emergency preparedness and response, contraindications and precautions, secondary effects or complications, palpation and needle techniques, and physiological responses."

Patients also must provide an informed consent prior to the procedure.

The regulations are currently under review by the Secretary of Health and Human Resources with no timeline for approval.

### **Washington State**

In Washington State, a PT, who presumably took an out-of-state course, asked in 2007 if dry needling was legal in the state. The Washington Board of Physical Therapy (WBPT) responded that "nothing in the physical therapy statutes ... would authorize a physical therapist to perform trigger point injections or dry needling."

In 2011, the WBPT put dry needling on the agenda for the first time with the intent to find out more information. The Physical Therapy Association of Washington (PTWA) delivered a white paper on it. Acupuncturists who attended the meeting demanded that PTs have an acupuncture license to perform dry needling. The board took no action at that time.

In 2012, the WBPT looked at the issue again. It noted that PTs needed to be properly trained to perform dry needling but still took no action.

In 2013, things began to escalate. KinetaCore announced it was going to conduct a dry needling course in a clinic outside Seattle. In response, a letter from the Secretary of the Department of Health (DOH) was sent to KinetaCore stating that dry needling is illegal in Washington and if KinetaCore performed dry needling as part of its clinic, DOH may take action.

The National Center for Acupuncture Safety and Integrity (NCASI) formed and sent a cease and desist letter to KinetaCore in October. It also filed an FDA complaint against KinetaCore selling acupuncture needles to PTs. The South Sound Acupuncture Association (SSAA) also filed a complaint in King County Superior Court against KinetaCore, citing a DOH opinion that "dry needling is essentially acupuncture using different terminology."

In December, the PTWA formally asked the WBPT to determine if dry needling is within the PT scope of practice. The legislature also took notice. Rep. Eileen Cody, chair of the House Healthcare Committee and a nurse, sent a letter to the WBPT warning that dry needling is

not a part of the PT scope of practice.

In 2014, the DOH sent letters to a number of PTs warning they were engaged in unprofessional conduct for performing dry needling. The SSAA v. KinetaCore case was settled in December, basically ruling that someone needs a medical or acupuncture license to perform dry needling. The case is only binding in King County, where Seattle is located. Still, as a result of the ruling, KinetaCore is banned from teaching in Washington and the Salmon Bay physical therapists, which held the clinic, can't practice dry needling.

At about the same time, the DOH secretary sent a letter to the WBPT warning it not to determine that dry needling is within the PT scope of practice and to let the legislature make that determination, that PTs are prohibited from tissue penetration, and suggested a sunrise review. A sunrise review is undertaken when a legislative committee chair asks for a ruling from the DOH. The PTWA replied that the board has the authority to make decisions on modalities and again asked the WBPT to determine if dry needling is within the PT scope of practice.

In December, the WBPT voted to table any further discussion on dry needling and punted the issue to the legislature.

In January 2015, Cody introduced HB 1042, which would prohibit PTs from performing dry needling. It passed out of the House but died in the Senate Health Care Committee in March. Sen. Randi Becker, chair of the committee, asked PTWA to bring forward a bill to add dry needling to the PT scope of practice. In April, PTWA published a notice to its members urging them to refrain from performing dry needling for now. In May, Cody requested a formal AG opinion on dry needling.

In January 2016, a bill was introduced in the state Senate to add dry needling as an endorsement to PT practice. In February, it died in committee. Subsequently, PTWA asked Becker to request a sunrise review.

PTWA submitted about 60 pages of evidence supporting its position. A well-attended public hearing with more than 50 PTs in attendance was conducted on August 2.

The draft report was not favorable. Among the findings were that the HumRRO report only contained PTs and not acupuncturists or others, that the definition of dry needling is problematic, and that the majority of PTs currently do not meet the standard of having an entry-level PT doctoral education.

It was recommended that training levels be further studied and that the PTWA collaborate with acupuncturists, to acknowledge that dry needling overlaps with acupuncture, and that any further bills should limit that definition to treatment of trigger points. PTWA sent a strongly worded letter in response and is awaiting the final report.

## **Texas**

The Texas Board had been discussing dry needling for several years. In 2014, the Board took notice of the fact that the APTA was adding dry needling to the next Guide to Physical Therapist Practice. As the Board became more supportive of physical therapists performing



dry needling, the acupuncturist community in Texas became more threatened. The PT and Acupuncture Boards attempted discussions on the topic of dry needling. The Chairman of the Texas State Board of Acupuncture Examiners requested an opinion of the Attorney General of Texas (AG) after no resolution could be reached with the Executive Council Board of PT & OT Examiners as to whether dry needling is, or is not, within the scope of practice of a physical therapist.

The Acupuncture Examiners Board Chairman's actual questions were whether "trigger point dry needling" is the practice of acupuncture, and, in turn, whether physical therapists may practice acupuncture. This question does not allow room for the possibility that scopes of practice overlap between professions and it is possible that dry needling could be performed in Texas by both physical therapists and acupuncturists. However, the AG opinion notes that the overlap is quite possible and expected in many professions. The acupuncture and physical therapist practice acts both include language that nothing in this act is applicable to another licensed professional under another statute of this state and acting within the scope of that license. The AG was clear that the answer to the question can only come from the PT Practice Act, not the Acupuncture Practice Act.

In its opinion, the AG noted that the legislature has expressly prohibited the use of certain agents such as roentgen rays in the practice of physical therapy. There is no prohibition of needles being used by PTs in any statute. Texas PTs are in fact, allowed to perform needle EMGs.

The summary conclusion by the Attorney General was that "a court would likely conclude that the Board of Physical Therapy Examiners has authority to determine that trigger point dry needling is within the scope of practice of physical therapy." The AG Opinion was request in early November 2015. The final opinion was published May 9, 2016.



**Tracey Adler**, PT, DPT, OCS, CMTPT received a BS in Physical Therapy from Georgia State University in 1979. In 1984, after doing research on abdominal and pelvic pain, Dr. Adler received a Master of Science specializing in orthopedic physical therapy from the Medical College of Virginia. Dr. Adler was Board Certified as an Orthopedic Specialist in 1993, recertified in 2003, and has concentrated on patients with spinal, TMJ/TMD, pelvic pain, and musculoskeletal dysfunctions. Dr. Adler completed her Doctorate of Physical Therapy from the Medical College of Virginia Campus at Virginia Commonwealth University in May 2007. Dr. Adler has been utilizing trigger point dry needling since 2003 and received international post-graduate certification in Dry Needling by Myopain Seminars and Janet G. Travell, MD Seminar Series in June 2007. She serves as senior faculty teaching the technique throughout North America. Dr. Adler is also on the adjunct faculty at MCV/VCU. In July of 2015, Gov. Terry McAuliffe appointed Dr. Adler to the Virginia Board of Physical Therapy.



unanticipated surprise

**Susie Harms, PT, MHS** was elected president of the Kansas Physical Therapy Association in 2013. She has been a practicing physical therapist for 34 years, predominantly in hospital out-patient settings. Early into her first term of service, she was approached by two physical therapists in Kansas, requesting that KPTA partner with them in paying legal fees as they were under a Board of Healing Arts challenge for engaging in dry needling. Consulting APTA, the KPTA decided to begin their professional advocacy through garnering the supportive recommendation from the Kansas Physical Therapy Advisory Council. Thus began the KPTA advocacy journey of engaging and educating all stakeholders reaching its peak in an



**Emilie Jones, PT, DPT** is a Board Certified Geriatric Clinical Specialist and has served as chair of Physical Therapy Association of Washington's (PTWA) Legislative Committee for the past two years. Dr. Jones has overseen successful legislation to regulate insurance prior authorizations and has been instrumental in attempts to pass legislation allowing physical therapists to perform dry needling in the state of Washington. Most recently she has facilitated a sunrise review process through the Washington State Department of Health.



**Philip Vickers** is a licensed attorney and has been a public member of the Texas Board of Physical Therapy Examiners since 2013. He assisted in preparing the Texas Board's successful brief challenging the Texas Board of Acupuncture Examiners' attempt to obtain an opinion from the Texas Attorney General finding that dry needling is outside the scope of practice for a physical therapist in Texas.