



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein M.D., Secretary

November 9, 2012

Dr. John Baker
Chair, Maryland Board of Physical Therapy Examiners
4201 Patterson Avenue
Baltimore, MD 21215

Dear Dr. Baker:

The Department of Health and Mental Hygiene has completed its public comment period on regulations sought by the Board of Physical Therapy Examiners relating to the practice of dry needling by physical therapists in Maryland. The Department sought public comment on the regulations due to a disagreement between the Board of Acupuncture and the Board of Physical Therapy Examiners over the content of the regulations.

In addition to general comments, the Department asked for feedback on the following questions:

- What are the potential advantages to public health of physical therapists performing dry needling?
- What are the potential disadvantages to public health of physical therapists performing dry needling?
- What training and safeguards, if any, would be appropriate to maximize the advantages and minimize the disadvantages of physical therapists performing dry needling?

The comment period closed on September 28.

More than 950 comments on the regulations were received and reviewed by the Department.

Approximately 800 of the comments were in support of the proposed regulations. A significant portion of these comments were from patients, describing their positive experiences with dry needling, that they understood that it was not acupuncture, and that they supported the regulations. These positive experiences included pain relief and improvement of muscular function. Other comments in support of the regulations were from physical therapists, writing

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about the benefits of trigger point dry needling and how it can be distinguished from acupuncture. Comments were received from physical therapists in Maryland, physical therapists from other states, and even physical therapists from other countries (such as South Africa). Finally, other health care providers also wrote in support of the regulations. Comments responding to the specific questions posed by the Department emphasized the benefits of dry needling to patients, and that physical therapists have extensive knowledge in training in musculoskeletal anatomy and treatment. Some comments also took the position that the training contained in the proposed regulations was more extensive than that required in other states that allow physical therapists to perform dry needling. Comments also praised the process undertaken by the Board to develop the regulations.

Approximately 153 comments were in opposition to the regulations. These comments were primarily from licensed acupuncturists, as well as organizations representing licensed acupuncturists in Maryland and other states. Many of these comments questioned whether dry needling was fundamentally different from acupuncture. Some comments argued that dry needling was not an effective therapy and also expressed concern that it is not in the scope of practice of physical therapists. Others stated that physical therapists should complete at least the same hours of training needed by medical doctors to perform acupuncture. Specifically, comments questioned the rigor of the requirements in the proposed regulations, which do not expressly set standards related to quality of educational instruction. Potential dangers of both acupuncture and dry needling cited by these comments included injuries, infection due to improper sterilization, and inducing miscarriage.

In August, 2010, the Office of the Attorney General issued a memorandum on the authority of the Board of Physical Therapy with respect to dry needling. The Office found that the Board must adopt regulations to define how dry needling is within the scope of practice of physical therapists. In addition, the Opinion stated:

“Given that the Legislature has placed specific limitations on a physician’s use of acupuncture needles in the Medical Practice Act, any rulemaking process adopted by the Physical Therapy Board [relating to dry needling] would presumably need to consider standards and restrictions at least as stringent as those imposed on physicians.”

After a review of the comments in the context of the letter from the Office of the Attorney General, the Department is prepared to support regulations that permit dry needling by physical therapists in Maryland. This conclusion is built on the presumption of deference to a professional board about its scope of practice and the input of numerous Marylanders from various backgrounds and professions.

However, the Department requests that three changes be made to the proposal.

These three changes relate to (1) the adequacy of the training required for dry needling; (2) a transition plan for physical therapists who already practice dry needling in Maryland (3) and a plan for oversight of dry needling by physical therapists. More detail on these requested changes is below.

Adequacy of Training for Dry Needling

The Attorney General's letter to the Board of Acupuncture in 2010 about the practice of dry needling recommended that the Board of Physical Therapy Examiners include requirements at least comparable to the requirements for physicians to practice acupuncture. Section 14-504 of the Health-General Article requires physicians to complete a 200 hour course in acupuncture, as well as meet any other requirements established by the Board.

The Board of Physical Therapy Examiners accepts the goal of an equivalent training course in their comments on the proposed regulations, while noting that certain requirements (such as for training in the theory and practice of traditional Chinese medicine) are not applicable to dry needling.

However, we do not find the proposed training to be equivalent. Specifically:

- a. the proposed regulation does not provide any quality standards for the training, stating only that instruction is required in particular topic areas, and leaving open the possibility that wholly inadequate training could count. By comparison, the Board of Physicians' requirements for acupuncture include requirements for a course that is "approved for category 1 continuing medical education credit by an institution accredited or recognized by the Accreditation Council on Continuing Medical Education" or "approved by the Board". (See section 14-504 of the Health-General Article, Maryland Annotated Code.)
- b. the proposed training overlaps with the core education of physical therapists, which the prescribed training for physicians does not;
- c. there is no clear explanation from the board on why it believes the training to be equivalent.

We request that the board revise the training requirements and provide a full explanation for their equivalency to physician training.

Transition Plan for Physical Therapists Now Practicing Dry Needling

The Department notes that the proposed regulations provide no transition plan for physical therapists who are currently performing dry needling in the State, and may or may not meet training requirements that the Board will adopt. The absence of a transition plan will leave many therapists and patients confused about their status and leave open the possibility of challenges that the Board will find difficult to resolve.

A transition plan should cover whether none, some, or all physical therapists who practice dry needling may continue to do so while obtaining required educational credentials; the deadline by which all physical therapists must meet training requirements; and disclosures that must be made to patients during the transition period; and other matters considered important by the board.

Oversight for Physical Therapists Practicing Dry Needling

The Department accepts the point from the Board of Acupuncture that dry needling is not without its risks to the patient. Virtually every procedure related to health has risks and benefits, and the use of sharp needles for pain relief is no exception.

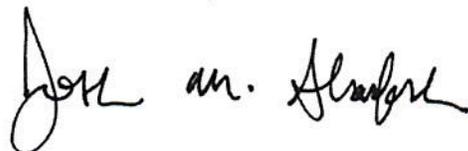
It is always the hope that new regulations will be perfect the first time. However, experience suggests that it is wise to gather data and adjust policies based on periodic review. This is especially true on issues where there are sharp disagreements between well-intentioned Marylanders.

We therefore request that the Board of Physical Therapy Examiners propose a plan by which it will assess the use of dry needling and consider whether regulatory changes, such as changes to the required training, are necessary. We request that this plan include periodic reports to the General Assembly and the Department on the Board's findings.

If a new version of the proposed regulations regarding dry needling includes the recommended changes described in this letter, the Department will support the regulations moving forward.

Thank you for your consideration of these requests.

Sincerely,

A handwritten signature in black ink that reads "Josh M. Sharfstein". The signature is written in a cursive, flowing style.

Joshua M. Sharfstein, M.D.
Secretary