



State of Louisiana
Department of Health and Hospital
Louisiana Physical Therapy Board
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May 15, 2014

Honorable James D. "Buddy" Caldwell
Attorney General
State of Louisiana
P.O. Box 94005
Baton Rouge, LA 70804-9005

Re: Memorandum in Opposition to the
Louisiana State Board of Medical Examiners' Request
for Advisory Opinion on the Issue of Dry Needling

Dear Mr. Caldwell:

On March 6, 2014, the Louisiana State Board of Medical Examiners ("Medical Board") formally requested an opinion on the issue of physical therapy dry needling. In its Advisory Opinion Request the Medical Board alleges that: "(1) dry needling is not within the practice of physical therapy, as defined by Louisiana law; and (2) the rule adopted by the Louisiana Board of Physical Therapy permitting physical therapists to perform dry needling is an impermissible expansion of the practice of physical therapy."¹ For the reasons stated below, the Louisiana Physical Therapy Board ("PT Board") disagrees and respectfully requests that the Attorney General render an Advisory Opinion confirming that dry needling is within the scope of physical therapy and PT Board Rule 311 was lawfully promulgated.²

I. Background

In 1966, the first Louisiana Physical Therapy Practice Act ("PT Practice Act") was passed by the Louisiana State Legislature.³ Physical therapists were initially licensed and regulated by the Medical Board. Oversight by the Medical Board continued until 1987 when the PT Board was created within the Department of Health and Hospitals and became

¹ Letter from the Louisiana Board of Medical Examiners to the Louisiana Attorney General, *Request for Advisory Opinion by the Louisiana State Board of Medical Examiners; Physical Therapy Dry Needling* (March 6, 2014) (on file with the Louisiana Attorney General's office).

² La. Admin. Code (LAC). Tit.46, Pt. LIV, §311 (2011). The PT Board respectfully requests the same with regard to the definition of "dry needling" found in LAC 46:LIV.123.

³La. Rev. Stat. 37:2401-2424 (2010).

a separate entity.⁴ The PT Board was created to regulate the practice of physical therapy and "for the purpose of protecting public health, safety, and welfare."⁵ It is the PT Board's responsibility to protect the public from individuals who are practicing physical therapy in a manner that endangers the public. This purpose is achieved through rulemaking, licensing, and investigation of complaints/discipline.⁶

The rules promulgated by the PT Board ensure that licensees practice safely, professionally, and within the confines of the law. The rules are created to further clarify and define the practice of physical therapy as set forth in the PT Practice Act.⁷ All rulemaking done by the PT Board is completed pursuant to the rulemaking provisions found within the Louisiana Administrative Code.⁸ These provisions require public notice and comment on proposed rules. This procedure exists to provide all interested parties the opportunity to oppose a rule that is overly broad, is outside the scope of a profession, or is not in the best interest of the profession or citizens of the State of Louisiana.⁹

The Physical Therapy Rules (PT Rules) and PT Practice Act set the requirements for licensure. In order to be granted a physical therapy license an individual must satisfy all requirements listed therein.¹⁰ These requirements include, in part, (1) that the applicant be of good moral character, (2) possess a minimum of a bachelor's of science degree in physical therapy, (3) hold either a masters or doctor of physical therapy degree from a program accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE)¹¹, and (4) pass the National Physical Therapy Exam (NPTE).¹² These requirements exist to ensure that only individuals who have received proper education and training and who are of good moral character are permitted to practice physical therapy in the state of Louisiana.¹³

⁴ La. Rev. Stat. 37:2403 (2010).

⁵ La. Rev. Stat. 37:2402 (2010).

⁶ In part, the purpose of the PT Board is to "provide for state administrative control, supervision, licensing, and regulation of the practice of physical therapy in Louisiana." La. Rev. Stat. 37:2402(2010).

⁷ La. Rev. Stat. 37:2405(A)(1) (2010).

⁸ LAC 46:LIV.953-955(2011).

⁹ Dry needling was adopted on October 20, 2011. It was promulgated in accordance with the provisions of the Louisiana Administrative Code. Three public hearings were held. Transcripts and records of public comment will be provided at the request of the Attorney General's office. There is no record of any opposition or concern regarding LAC 46:LIV.123, Definitions (Dry Needling) or 46:LIV. 311, Treatment with Dry Needling.

¹⁰ See La. R.S. 37:2405(A)(2), 2408 – 2412 (2010); LAC Tit. 46, PT LIV, §§129, 137, 139, 145, 151 (2011).

¹¹ All Louisiana CAPTE accredited physical therapy program graduates hold a doctor of physical therapy degree. Effective January 2, 2016, a program will have to award a doctor of physical therapy degree to be CAPTE accredited. See CAPTE: Commission of Accreditation in Physical Therapy Education, *Evaluative Criteria PT Programs*, 36 <http://www.capteonline.org/uploadedfiles/capteorg/about_capte/resources/accreditation_handbook/EvaluativeCriteria_PT.pdf> (accessed May 14, 2014).

¹² LAC 46:LIV.129 (2011).

¹³ On page 4 of the Request for Advisory Opinion the Medical Board questions the level of training of physical therapists. The type or quantity of education and training necessary to perform dry needling or acupuncture is not an issue for the Louisiana Attorney General. La. R.S. 49:251(B) requires that the attorney general give an opinion within thirty (30) days of request, on "... all questions of law when requested by any state board..." As the issue of education is not a question of law, this issue not within the jurisdiction of the attorney general. See La. Atty. Gen. Op. 93-416 (March 8, 1994) (providing that "it is not within the function or funding of this office to investigate the curricula of medical schools regarding traditional Chinese acupuncture and then, based on the facts that we believe to have been proven by the evidence adduced in our investigation, to render a legal opinion declaring the whole or a part

Finally, it is the duty of the PT Board to investigate licensees following receipt of a complaint.¹⁴ A complaint can be filed by any interested party, and by the PT Board itself, upon discovery that a physical therapist is not practicing physical therapy within the confines of the PT Practice Act and PT Rules.¹⁵ Conclusion of the investigation depends upon the information gathered, and may include in part dismissal, education, consent order, or revocation of a license.¹⁶ This function of the Board protects the public from licensed physical therapists who are practicing outside the scope of their profession, not compliant with the provisions with the PT Practice Act, or are in violation of the PT Rules and Regulations.¹⁷

Understanding rulemaking, licensing, and investigation of complaints is essential when considering the allegations brought forth by the Medical Board. The Louisiana State Legislature, in its wisdom, created an administrative board with specific knowledge and expertise in the practice of physical therapy to regulate that practice. The Legislature has provided the PT Board the tools to accomplish its commission, to regulate the practice of physical therapy and to ensure public health, safety, and welfare. Since its inception, the PT Board has complied with all governing laws and has satisfactorily performed its legal duties and obligations to its licensees and to the public. This truth encompasses the practice of dry needling.

II. What is Dry Needling?

Dry Needling is a treatment for the management of neuromusculoskeletal pain and movement impairments. The treatment utilizes solid filiform needles to penetrate the skin and stimulate muscle trigger points. A twitch response results when a trigger point is stimulated by the needle. This twitch response resets the muscle and relieves pain and tension.¹⁸ Dry needling, unlike acupuncture, is based upon Western medical concepts.¹⁹ It was first explored by Karel Lewit, a Czechoslovakian physician.²⁰ In 1979, Dr. Lewit published an article entitled *The Needle Effect in the Relief of Myofascial Pain*.²¹ This publication marks the start of dry needling as it is known today.

A. Dry Needling and Acupuncture

of the state's legislative scheme regulating acupuncture to be in compliance with or in violation of the constitution.").

¹⁴ See LAC 46:LIV.375 - 389 (2011).

¹⁵ LAC 46:LIV.377 (2011).

¹⁶ LAC 46:LIV.381 (2011).

¹⁷ Under La. Rev. Stat. 37:2420(A)(7) and LAC 46:LIV.345(B)(1)(b) the PT Board has legal authority to discipline a physical therapist who ventures beyond the scope of physical therapy in his/her treatment of patients.

¹⁸ See American Physical Therapy Association, *Description of Dry Needling in Clinical Practice: An Educational Resource Paper* (February, 2013); Federation of State Boards of Physical Therapy, *FSBPT Dry Needling Resource Paper (Intramuscular Manual Therapy)*

<https://www.fsbpt.org/download/DryNeedlingResourcePaper_4thEdition.pdf> (4th ed., 2013).

¹⁹ James Dommerholt, *Dry Needling – Peripheral and Central Considerations*, 19(4) *The Journal of Manual & Manipulative Therapy* (November, 2011).

²⁰ Karel Lewit, *The Needle Effect in the Relief of Myofascial Pain* (Elsevier/North-Holland Biomedical Press, 1979).

²¹ *Id.*

Dry needling and acupuncture both utilize solid filiform needles; however, these treatments are very different.²² Dry Needling is based on Western medical concepts and utilizes trigger points located within muscle to relieve pain. Acupuncture originates in China and has been utilized for thousands of years.²³ Acupuncture is based upon Chi, vital life energy. Needles are placed into the skin along meridians through which Chi flows. Acupuncturists believe that changing the flow of Chi to create a balance of yin and yang, complimentary energy extremes, successfully treats chronic pain, symptoms related to stroke, pregnancy complications, arthritis, hypertension, hypotension, colic, depression and dysentery.²⁴ This is not a complete list, but only a small sampling of ailments treated with acupuncture. The only similarity between the two techniques is the utilization of solid filiform needles. These treatments require very different types of education, training, experience, and oversight.²⁵

III. Dry Needling is Lawful in the Practice of Physical Therapy.

In its Request for Advisory Opinion, the Medical Board first requests that the Attorney General provide an opinion as to whether dry needling is within the scope of the practice of physical therapy.²⁶ The language of the laws pertaining to physical therapy and dry needling clearly establishes that dry needling is within the scope of physical therapy.

A. Law and Analysis: PT Practice Act and PT Board Rules

The PT Practice Act provides that the

'[p]ractice of physical therapy is the health care profession practiced by a physical therapist licensed . . . and being engaged in the business of, or the actual engagement in, the evaluation and treatment of any physical or medical condition to restore normal function of the neuromuscular and skeletal system, to relieve pain, or to prevent disability by use of physical or mechanical means, including therapeutic exercise, mobilization,

²² Kinetacore: Physical Therapy Education, *The Edge*

<<http://www.kinetacore.com/physical-therapy/Media-Videos/page247.html>> (accessed May 13, 2014); National Center for Complementary & Alternative Medicine, *What Happens During and Acupuncture Session?* <<https://www.youtube.com/watch?v=JnKPNw9K2Ng>> (accessed May 13, 2014).

²³ Christian Nordqvist, *Medical News Today, What is Acupuncture? What are the Benefits of Acupuncture?* <<http://www.medicalnewstoday.com/articles/156488.php>> (July 6, 2009).

²⁴ John Amaro, *Acupuncture Today, What Conditions Does Acupuncture Treat (According to the World Health Organization)?* <<http://www.acupuncturetoday.com/archives2004/oct/10amaro.html>> (October, 2004).

²⁵ *Supra* n. 13 (The type or quantity of education and training necessary to perform dry needling or acupuncture is not an issue for the Louisiana Attorney General).

²⁶ The Medical Board argues that use of needles is invasive and outside the scope of practice. However, in 1979 when the PT Board was regulated by the Medical Board, the Medical Board approved physical therapy continuing education credits for a seminar on Acupuncture and Transcutaneous Electric Nerve Stimulation. (Attachment I: Continuing Education Certificate for Al C. Moreau, Jr., PT, for a 16 hour seminar and workshop on Acupuncture and Transcutaneous Electric Nerve Stimulation.) Why would the Medical Board approve a continuing education course to teach a skill that could not be used in practice? It would not. This certificate proves that the Medical Board considered the utilization of needles within the scope of practice of physical therapy in 1979. The scope of physical therapy practice has not decreased since 1979. Thus, based upon the Medical Board's own actions, use of needles is within the scope of physical therapy.

passive manipulation, therapeutic modalities, and activities or devices for preventative, therapeutic, or medical purposes . . .²⁷

In order for dry needling to fit within the scope of physical therapy under the PT Practice Act it must at a minimum be a treatment to restore normal function of the neuromuscular and skeletal system or to relieve pain. Under the PT Rules, dry needling is defined as

a physical intervention which utilizes filiform needles to stimulate trigger points in a patient's body for the treatment of neuromuscular pain and functional movement deficits. Dry needling is based upon Western medical concepts and does not rely upon the meridians utilized in acupuncture and other Eastern practices. A physical therapy evaluation will indicate the location, intensity and persistence of neuromuscular pain or functional deficiencies in a physical therapy patient and the propriety for utilization of dry needling as a treatment intervention. Dry needling does not include the stimulation of articular points.²⁸

Dry needling is further addressed in PT Rule 311 which states, in part, that "[d]ry needling is a physical therapy treatment which requires specialized physical therapy education and training for the utilization of such techniques."²⁹ PT Rule 311 also specifies the additional experience, education, and document requirements necessary to utilize dry needling as a physical therapy treatment.³⁰

When analyzing the language of the law, it is clear dry needling is within the scope of physical therapy. Dry needling is a "treatment of neuromuscular pain and functional movement deficits".³¹ It is a "physical therapy treatment".³² The PT Practice Act irrefutably states that the practice of physical therapy is "the . . . treatment of any physical or medical condition to restore normal function of the neuromuscular and skeletal system . . . [and] to relieve pain."³³ Under the language of the PT Practice Act, dry needling falls within the scope of the practice. Furthermore, there is nothing in the language of the PT Practice Act that prohibits the treatment of dry needling. Louisiana Civil Code Article 9 provides that "[w]hen the law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature."³⁴ The

²⁷ La. R.S. 37:2407(A)(5) (2010)(emphasis added).

²⁸ LAC Tit. 46, Pt. LIV, §123 (2011)(emphasis added).

²⁹ LAC Tit. 46, Pt. LIV, §311 (2011)(emphasis added).

³⁰ PT Rule 311 requires (1) two years of experience working as a licensed physical therapists, and (2) completion of a board approved dry needling course with at least fifty (50) face-to-face hours of instruction on treatment and safety before utilizing dry needling in practice. This requirement is in addition to the Bachelor of Science degree and physical therapist's education in a CAPTE-accredited program. Currently a program must offer at least a master's degree to be accredited, and by January 1, 2016, a program will need to offer the doctor of physical therapy degree. Physical therapists are highly educated and trained health care providers. Supra n. 11.

³¹ LAC Tit. 46, Pt. LIV, §123 (2011).

³² LAC Tit. 46, Pt. LIV, §311 (2011).

³³ La. R.S. 37:2407(A)(5) (2010) (emphasis added).

³⁴ La. C.C. Art 9 (2010) (emphasis added).

laws and rules related to physical therapy and dry needling are clear and unambiguous. Further analysis and interpretation is not warranted. Dry needling is within the scope of physical therapy under the law.

In its *Request for Advisory Opinion* the Medical Board argues that as dry needling does not involve the use of physical or mechanical means it does not fall within the parameters of the practice of physical therapy.³⁵ The Medical Board further argues that the PT Practice Act does not permit the use of invasive treatments.³⁶ It argues that under this logic dry needling is not within the scope of practice as defined in the PT Practice Act. These arguments are unfounded. The Medical Board's arguments are misleading as the full language of the law is not addressed and the physical therapy treatment of wound debridement, an extremely invasive and very well established physical therapy treatment, is not discussed.³⁷

1. The use of "Mechanical Devices" in PT Treatment is Lawful.

The legal definition of the "practice of physical therapy" in the PT Practice Act allows physical therapists to utilize "... mechanical means, including ... devices for preventative, therapeutic, or medical purposes ..." when performing physical therapy treatments³⁸ Under Article 11 of the Louisiana Civil Code, "... words of law must be given their generally prevailing meaning. Words of art and technical terms must be given their technical meaning when the law involves a technical matter." Merriam-Webster defines the word "mechanical" as "of or relating to machinery".³⁹ Merriam-Webster defines "device" as "an object, machine, or piece of equipment that has been made for some special purpose"⁴⁰. Under this broad language, "a mechanical device could be any tool designed for purposes related to physical therapy".⁴¹ As dry needling is a physical therapy treatment for neuromuscular pain and functional movement deficits, the tools utilized in this treatment, solid filiform needles, fit within the definition of "mechanical

³⁵ Letter from the Louisiana Board of Medical Examiners to the Louisiana Attorney General, *Request for Advisory Opinion by the Louisiana State Board of Medical Examiners; Physical Therapy Dry Needling*, 4 (March 6, 2014) (on file with the Louisiana Attorney General's office).

³⁶ *Id.*

³⁷ The Medical Board also argues that dry needling is an unsafe procedure for physical therapists. As the issue of safety is not questions of law, this issue is not within the jurisdiction of the attorney general and will not be addressed in this document. *Supra* n. 13 For educational purposes, please see attachments 2 and 3 to this document. Attachment 2 is the Entry Level Curriculum for a Doctor of Physical Therapy Professional at Louisiana State University Health New Orleans. Attachment 3 is an Email from Jane Eason, PhD, PT, Physical Therapy Department Head LSUHC, <JEason@lsuhsc.edu> to Courtney P. Newton, attorney for the Louisiana Physical Therapy Board, <CPNewton@CPNewtonLaw.com> (March 24, 2014), discussing the education and clinic requirements for a Doctor of Physical Therapy.

³⁸ La. R.S. 37:2407(A)(5)(2010) (emphasis added).

³⁹ Merriam-Webster, Online Dictionary: mechanical <<http://www.merriam-webster.com/dictionary/mechanical>> (accessed May 7, 2014).

⁴⁰ Merriam-Webster, Online Dictionary: device

<<http://www.merriam-webster.com/dictionary/device?show=0&t=1399520774>> (accessed May 7, 2014).

⁴¹ MD Atty. Gen. Op. 95 OAG 138 (Aug. 17, 2010); *See* KY Atty. Gen Op. OAG 13-010 (September 13, 2013); *See* MS Atty. Gen. Op. No. 2012-00428 (Sept. 10, 2012).

device."⁴² This legal analysis has been utilized by the Attorneys General in Kentucky, Maryland, and Mississippi when rendering opinions on this same issue.⁴³

2. The PT Practice Act Encompasses Invasive Treatments.

Contrary to the argument put forth by the Medical Board, the practice of physical therapy does encompass invasive procedures. One example of an invasive physical therapy treatment is "wound debridement", an intervention used in wound care. Wound debridement is

patient care provided by a PT, provisionally licensed PT, or student PT, which removes non-living tissue from pressure ulcers, burns and other wounds as part of wound management, including but not limited to, sharps debridement, debridement with other implements or agents and application of topical agents including enzymes.⁴⁴

Wound debridement has been an established part of physical therapy for decades. It is a very invasive treatment, and, depending on the type of wound, requires physical therapists to treat areas inside the abdomen, intestine, surrounding an exposed heart, inside muscle tissue to bone, etc.⁴⁵ When performing wound debridement, physical therapists utilize scalpels, forceps, scissors or enzymatic agents to remove non-living tissue and foreign objects. As is evidenced by wound debridement, utilization of invasive treatment in the practice of physical therapy is allowed under the PT Practice Act and is widely accepted in the medical community.⁴⁶ Discussion on whether dry needling is an invasive physical therapy treatment is irrelevant. The PT Practice Act permits invasive treatments.

B. PT Board is the Expert Regarding the Practice of Physical Therapy

When analyzing the PT Practice Act, great deference must be given to the PT Board's interpretation. Louisiana courts recognize that it must grant "substantial deference to an agency's construction of a statute that it administers."⁴⁷ Louisiana courts further acknowledge that an

⁴² LAC Tit. 46, Pt. LIV, §123 (2011).

⁴³ KY Atty. Gen Op. OAG 13-010 (September 13, 2013); MD Atty. Gen. Op. 95 OAG 138 (Aug. 17, 2010); MS Atty. Gen. Op. No. 2012-00428 (Sept. 10, 2012).

⁴⁴ LAC Tit. 46, Pt. LIV, §123(2011).

⁴⁵ See Joseph M. McCulloch & Luther C. Kloth, *Wound Healing: Evidence Based Management* (4th ed., F. A. Davis 2010); Attachment 4, Email from Joseph McCulloch, Dean, Louisiana State University Health and Science Center – Shreveport, <JMcCul@lsuhsc.edu>, to Courtney P. Newton, Attorney for the Louisiana Physical Therapy Board (May 8, 2014) (Dean McCulloch is one of the leaders of wound debridement in Louisiana, if not the United States. He has practiced in this area for more than thirty years and has co-authored one of the longest-running text books on wound debridement. In his email Dean McCulloch discusses the history of wound debridement and provides several pictures taken of Louisiana physical therapists performing wound debridement in a field hospital in Haiti after the 2010 earthquake. Please note that these pictures are very graphic.)

⁴⁶ It should be further noted that there is nothing in the PT Practice Act or PT Board Rules that prohibits use of invasive treatments.

⁴⁷ *Meml. Hermann Hosp. v. Sebelius*, 728 F.3d 400, 405 (5th Cir. 2013) (quoting *Bd. of Miss. Levee Com'rs v. United States EPA*, 674 F.3d 409, 417 (5th Cir.2012); See *Dow Chem. Co. Louisiana Operations Complex Cellulose and Light Hydrocarbons Plants, Part 70 Air Permit Major Modifications and Emission v. Reduction Credits*, 885 So. 2d 5, 9 (La. App. 1st Cir. 2004) writ denied sub nom. *Dow Chem. Co. v. Reduction Credits*, 896 So. 2d 34 (La. 2005);

agency's interpretation must be given "controlling weight unless it is plainly erroneous or inconsistent with the regulation."⁴⁸ The PT Board's interpretation of its Practice Act is based upon vast knowledge and expertise of the practice of physical therapy. The principles of interpretation of law and the language of the law support the conclusion that dry needling fits within the parameters of the PT Practice Act.

IV. Dry Needling Performed by a Physical Therapist is Not the Unlawful Practice of Medicine

The Medical Board in its Request for Advisory Opinion cites and examines many provisions of the Louisiana State Board of Medical Examiners' Practice Act ("LSBME Practice Act") in an effort to establish that a physical therapist is practicing medicine, and guilty of a misdemeanor, when utilizing dry needling as a treatment. The Medical Board begins its legal analysis discussing La. Rev. Stat. §37:1261, the first provision of the LSBME Practice Act, which establishes that the practice of medicine is a privilege. The definition of the "practice of medicine" under La. Rev. Stat. §37:1262(3) is then examined. It is argued that dry needling is a part of the "practice of medicine" as the "practice of medicine" is broadly defined. Finally, the Medical Board addresses La. Rev. Stat. §37:1271A. Under La. Rev. Stat. §37:1271A unauthorized practice of medicine is a misdemeanor. The Medical Board correctly cites these laws. The Medical Board, however, fails to introduce and discuss La. Rev. Stat. §37:1291(3) in violation of the LSBME Practice Act.

La. Rev. Stat. §37:1291(3) lists the exemptions to the LSBME Practice Act. La. Rev. Stat. §37:1291(3) provides that none of the provisions of the LSBME Practice Act shall apply to "[p]ractitioners of the allied health fields, duly licensed, certified, or registered under the laws of this state."⁴⁹ Physical therapy is an allied health profession.⁵⁰ As discussed in detail above, physical therapists utilizing dry needling are lawfully practicing physical therapy. Accordingly, physical therapists treating patients with dry needling fall within the exemption found within La. Rev. Stat. §37:1291(3), are not subject to the laws of the LSBME Practice Act, and are not guilty of practicing medicine.

A. Overlap: Health Care Professions Share Tools and Treatment

While the broad definition of the "practice of medicine" may be interpreted to include dry needling, the medical profession does not have the exclusive right to the utilization of dry needling. A single health care profession does not own a tool or treatment. Overlap exists.⁵¹ Ultrasound is both a diagnostic tool as well as a therapeutic treatment. It is used by physicians, sonographers, veterinarians, athletic trainers, physical

Roberts v. City of Baton Rouge, 108 So. 2d 111, 124 (La. 1958)

⁴⁸ *Meml. Hermann Hosp.s*, 728 F.3d at 405 (quoting *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512, 114 S.Ct. 2381, 129 L.Ed.2d 405 (1994); *Udall v. Tallman*, 380 U.S. 1, 16-17, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965)); See *Dow Chem. Co. Louisiana Operations Complex Cellulose and Light Hydrocarbons Plants, Part 70 Air Permit Major Modifications and Emission*, 885 So.2d at 9; *Roberts*, 108 So.2d at 124.

⁴⁹ La. Rev. Stat. §37:1291(3) (2010) (emphasis added).

⁵⁰ See Association of Schools of Allied Health Professions, *What is Allied Health?* <<http://www.asahp.org/about-us/what-is-allied-health/>> (accessed May 9, 2014).

⁵¹ See generally MD Atty. Gen. Op. 95 OAG 138, 144 (Aug. 17, 2010).

therapists, etc. Each of these professions receives different types and levels of training; and each utilize ultrasound in a different way. Yet, these professions all utilize ultrasound. It is shared. This can also be seen with the use of syringes, stethoscopes, otoscopes, immunizations, blood pressure cuffs, tongue depressors, needles, scalpels, etc. Overlap can be found in all health care professions.

This same principle applies to dry needling. Both the medical profession, including acupuncturists, and the physical therapy profession are legally permitted to use dry needling when treating patients within their respective Practice Acts. Neither owns the treatment; both can utilize it when appropriate. The argument that one profession is granted the exclusive right to a treatment because it is included in its Practice Act has no merit as inclusion of dry needling in one Practice Act does not automatically exclude it from another.

V. Rule 311 was Lawfully Promulgated within the Confines of the PT Practice Act

Dry needling was utilized by physical therapists in Louisiana prior to the promulgation of an amendment to Rule 123 and Rule 311.⁵² Due to the success and increased usage of dry needling, the Physical Therapy Board desired to further regulate physical therapy through rule. On August 6, 2010, the Louisiana Physical Therapy Board began the rulemaking process.⁵³ Part of this process was to promulgate Rule 123, defining "dry needling", and Rule 311, "Treatment with Dry Needling". In compliance with the Administrative Procedure Act, a Notice of Intent was published in the Louisiana Register on December 20, 2010.⁵⁴ Three public hearings were held, and the proposed rules went before the Oversight Committee. Rule 311 was formally adopted on October 20, 2011.⁵⁵ During the entirety of the rulemaking process, a period in excess of one year, the PT Board did not receive a single complaint or concern on the issue of dry needling as within the scope of the practice of physical therapy.⁵⁶ Neither the Medical Board nor any other association or entity questioned the propriety of physical therapists performing dry needling. Dry needling is within the scope of the "practice of physical therapy" under La. Rev. Stat. 37:2401(5) and all rules were lawfully promulgated under the Louisiana Administrative Procedure Act. Promulgation of Rules 123 and 311 were not an impermissible expansion of the practice of physical therapy, but the lawful regulation of the practice by the Board.

Conclusion

Dry needling is well established in the practice of physical therapy through practice, law, and rule. It is a successful treatment option that is recognized by physicians and

⁵² Attachment 5, Affidavits of Adam Brewer, PT; Amanda Brewer, PT; Richard Lane, PT; and Gus Gutierrez, PT. Attachment 6, Physical Therapy Progress Notes from Brewer Physical Therapy showing that physician knowledge and approval of dry needling in 2009 and 2010.

⁵³ Attachment 7, A Motion of the Louisiana State Board of Physical Therapy initiating the rulemaking process, July 23, 2009.

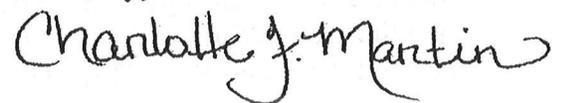
⁵⁴ La. Register 2975 (Dec. 2010).

⁵⁵ La. Register 3031 (Oct. 2011).

⁵⁶ Supra n. 9.

physical therapists alike.⁵⁷ It would be folly to deny the public of the pain-relieving treatment afforded patients of physical therapists based upon the false premises put forth by the medical board. Furthermore, it would be a great injustice to physical therapists to deny them the practice of this skill. Since the creation of the rule in 2011, over 80 individuals have satisfied the requirements listed within Rule 311. These physical therapists have spent thousands of dollars and a great amount of time on education and training to meet the requirements of Rule 311. In addition, physical therapists have built practices around dry needling. Physical therapy clinic owners have invested in the training of staff physical therapists and in marketing plans to grow their practice.⁵⁸ Over three years following the promulgation of PT Rules on dry needling, is unwarranted and highly suspect.⁵⁹ The Medical Board's actions with regard to dry needling are negatively impacting both physical therapists and physical therapist clinics that utilize dry needling. The Medical Board's activities are also impacting the wellbeing of the citizens of Louisiana who would be benefiting from the treatment and receiving pain relief. The PT Board respectfully requests that the Attorney General put forth an opinion that acknowledges dry needling as part of the practice of physical therapy and ends the turf warfare based solely on economics initiated by the Medical Board.⁶⁰

Sincerely,



Charlotte F. Martin, M.P.A.
Executive Director
Louisiana Physical Therapy Board

⁵⁷ Supra n. 52.

⁵⁸ See generally Baton Rouge Physical Therapy Lake, *Trigger Point Dry Needling* <<http://www.brptlake.com/trigger-point-dry-needling>> (accessed May 14, 2014); Brewer Physical Therapy, *Trigger Point Dry Needling* <<http://www.brewerpt.com/tTherapy/tabid/16636/Default.aspx>>; Dynamic Physical Therapy, *Our Care: Dry Needling* <<http://getwellatdynamic.com/our-care/>> (accessed May 14, 2014); Kleinpeter Physical Therapy, *Trigger Point Dry Needling (TPDN)* <<http://kleinpeterpt.com/muscular-treatment.html>> (accessed May 14, 2014); Peak Performance Physical Therapy, *Services: Trigger Point Dry Needling* <<http://www.peakphysicaltherapy.com/Services/Trigger-Point-Dry-Needling/a~4140--c~349626/article.html>> (accessed May 14, 2014).

⁵⁹ Attachment 5, Affidavits of Adam Brewer, PT; Amanda Brewer, PT; Richard Lane, PT; and Gus Gutierrez, PT, testifying to the fact that they utilized dry needling in Louisiana prior to the Promulgation of the Rule 123 amendment and Rule 311.

⁶⁰ In 2013, the PT Board was contacted by the Medical Board on the issue of dry needling.⁶⁰ The Board participated in informal discussions with the Medical Board to discuss the Medical Board's issues and concerns. Despite the lawful promulgation of Rule 311, the PT Board was willing to work with the Medical Board to create policy and legislation that would satisfy both parties. The PT Board believed that cooperation between the two Boards on this issue was best for the healthcare professions involved and would avoid legal fees and lengthy court battles. On February 3, 2014, the Board received a letter from the Medical Board. Therein the Medical Board stated that in their view "dry needling constitutes the practice of medicine, is beyond the lawful scope of PT practice as authorized by current law, and should only be performed by a physician or an acupuncturist's assistant." The Medical Board clearly stated that they were not interested in working with the PT Board to remedy their concerns regarding dry needling and that they would separately address this issue.⁶⁰ (See Attachment 8). On March 13, 2014, the Medical Board's Request for Advisory Opinion was received by the Attorney General.