

Response to the "Opinion Regarding the Performance of Dry Needling and the Practice of Physical Therapy", written by PT Board Chairman Kathleen Sidener, dated 06/25/12

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## Section II. "Factual Introduction"

Although this section is titled "factual", the very definition of the terms involved are contentious and in no way agreed upon among medical professionals. Thus, the expository title is misleading, as there are arguments to be made in response to her "factual introduction".

Ms. Sidener's primary objective is to differentiate dry needling from acupuncture, claiming them to be two completely different procedures. We would argue the opposite: that dry needling is indeed acupuncture called by another name, and that simply renaming a medical technique that has clear statutory requirements for its licensed practice does not fulfill those requirements. I cannot, as a medical professional, rename brain surgery "cranial drilling" and then deem myself competent to do it. Yet that is essentially what physical therapists do to the practice of acupuncture by renaming it "dry needling". The entire purpose of statutory and regulatory standards of practice for an established health care profession is to protect public safety and ensure minimum entry level requirements for the safe administration of the medicine. When statutes and regulations have been established for a medical profession and its component parts, it defeats the spirit of the law to create loopholes in the standards by simply changing the terminology of the practice in question.

Here I would like to lay out the argument as to why dry needling is, in fact, the practice of acupuncture, merely called by another name. I do so, point by point, in response to Ms. Sidener's position paper that says that dry needling and acupuncture are fundamentally different techniques.:

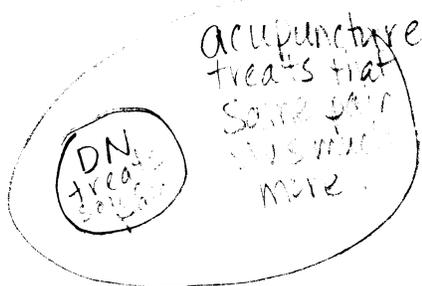
Ms. Sidener admits in section II of her paper, "at a basic level, both procedures involve the insertion of needles to alleviate pain." In fact, physical therapists are primarily using *acupuncture* needles (which, as a Class II medical device subject to strict regulation under FDCA and FDA laws, can only be sold to professionals licensed to do *acupuncture*. Required



FDA labeling on needles states: "Caution: Federal law restricts this device to sale by or on the order of qualified practitioners of acupuncture as determined by the States.") So, the tools used for dry needling and acupuncture are the same. Ms. Sidener goes on to say that "acupuncture involves the insertion of needles into specific named acupuncture points, which may or may not overlie muscles and 'trigger points' " ('trigger points' being the terminology she uses for points chosen for dry needling). The Merriam-Webster dictionary defines a "trigger point" as "a localized usually tender or painful area of the body and especially of a muscle that when stimulated gives rise to pain elsewhere in the body". The Medical Dictionary defines it as "a specific point on the body at which touch or pressure will elicit pain". Then, while not every acupuncture point is a trigger point (as not every codified acupuncture point will be tender to palpation) every "trigger point" is, in fact, an acupuncture point. How is this so? Because in every treatise and tome of acupuncture, there is discussion of a class of points known as "ah-shi" points. Roughly translated from the Chinese, this means "tender point not heretofore noted". In other words, in every college of acupuncture training, students learn the 365 channel points, many many dozens of "extra" points, and the methods of locating and needling "ah-shi" points, or tender points, which are the very definition of "trigger points". Therefore, we have thus established that physical therapists doing dry needling use acupuncture needles to stimulate acupuncture points.

Ms. Sidener's primary explanation for the purported difference between dry needling and acupuncture is the history and language of each: "Acupuncture arises from and is grounded in ancient rules and theories, while DN is solely based upon modern scientific neurophysiology, anatomy and newer understandings". This is an odd argument, as of course, as acupuncture's roots stretch back thousands of years and from another culture, the "groundings" of it do come from "ancient rules and theories". These roots, however, do not preclude the ability of modern day scientists and acupuncturists to study the science of acupuncture through the lens of modern theories and language. As this medicine has had a continuous course of developing, colleges of acupuncture, students and scientists worldwide have sponsored scientific investigations into the efficacy of acupuncture, its uses and its methods of action, all utilizing modern scientific methods and terminology. Medical journals publish studies of acupuncture, and the techniques, methods and findings are all

described in Western terminology. All acupuncture colleges teach Western Medical principles, anatomy, physiology, pathology, terminology and scientific inquiry on their own and as they relate to the practice of acupuncture. To differentiate dry needling by saying it is "based upon modern scientific neurophysiology, anatomy and newer understandings" is to grossly misunderstand the scope of acupuncture education and discovery today; Acupuncture is just as grounded in modern medicine as they claim dry needling is. Lastly, Ms. Sidener states in this same section, in the continued attempt to differentiate dry needling from acupuncture, that "the overall purpose of DN is strictly to provide pain control in the musculoskeletal system while acupuncture is used to address a range of illnesses, other than just pain relief." Once again, this is a fallacious argument, the meaninglessness of which can be seen by the use of a Venn diagram:



Dry needling, she asserts, is only used for musculoskeletal pain control, while acupuncture is used for that plus so much more. By definition, then, dry needling's purpose is a subset within the purpose of acupuncture; it is not a purpose outside the larger uses of acupuncture. Once again, to use the brain surgery analogy, one would not argue that doing surgery ONLY on the cerebellum is **not** brain surgery, simply because the cerebellum does not represent the totality of the brain itself. The cerebellum is a component part of the brain, but surgery on it certainly still falls within the category of brain surgery. Similarly, needling into tender points of the musculoskeletal system is a key and integral part of acupuncture. Yes, it is not the totality of acupuncture's abilities, but in no way does that make it a completely different technique—it makes it a subset within acupuncture.

In the above paragraphs, I intended to make the case that dry needling is, in fact, the practice of acupuncture. To review, I substantiated my assertion by noting that

1. acupuncture and dry needling use the same tools

2. acupuncture and dry needling use the same points, and the same methods
3. acupuncture and dry needling are explained using the same language in modern-day assessments of both techniques (while acupuncture is ALSO explained using the language of its origins)
4. acupuncture and dry needling have the same purpose, which is to restore function and healing and decrease pain to musculoskeletal structures. Acupuncture, in addition, may have other healing purposes beyond that.

It is for these reasons that I maintain that dry needling IS the practice of acupuncture, simply renamed for the express purpose to undermine state statute regarding minimum standards for entry level practice.

As defined by NRS 634A.020:

6. "Oriental medicine"...The term includes the practice of acupuncture....

According to NRS 634A.230:

1. Any person who represents himself or herself as a practitioner of Oriental medicine, or any branch thereof, or who engages in the practice of Oriental medicine, or any branch thereof, in this State without holding a valid license issued by the Board is guilty of a gross misdemeanor, unless a greater penalty is provided pursuant to NRS200.830 or 200.840.

It is for this reason that we believe that dry needling, by being acupuncture, is controlled and regulated solely by the Board of Oriental Medicine for its licensed practice.

The statutes on Oriental Medicine clearly define that only those licensed pursuant to chapter 634A may practice acupuncture, defined as "the insertion of needles into the human body by piercing the skin of the body to control and regulate the flow and balance of energy in the body and to cure, relieve or palliate: (a) Any ailment or disease of the mind or body; or (b) Any wound, bodily injury or deformity.

Ms. Sidener, in investigating NRS 640.024 "Practice of Physical Therapy" defined, determines that because the practice of physical therapy specifically includes "the administering of treatment through the use of therapeutic exercise and massage, the mobilization of joints by the use of therapeutic exercise without chiropractic adjustment,

mechanical devices, and therapeutic agents which employ the properties of air, water, electricity, sound and radiant energy" and because it does not specifically say physical therapists cannot do dry needling, physical therapists can do dry needling. Her argument is that if it is not expressly prohibited from their scope, physical therapists may determine "that other modalities not specified in the statute are not prohibited from use" (emphasis hers).

I would argue, that although the same statute does not say that physical therapists cannot use a scalpel to perform brain surgery, it is obvious, even though it is not expressly stated, that a physical therapist cannot utilize a scalpel to perform brain surgery (despite the argument that a scalpel is a "mechanical device"). Omission of modalities from NRS640.024 section 2 ("Practice of physical therapy does not include"), does not ipso facto put those modalities into the scope of physical therapy practice.

In fact, in determining what is realistically a part of a physical therapist's scope of practice, I would maintain that no other procedure currently within their scope is invasive, i.e. breaks the skin barrier. All other explanations of physical therapy scope suggest external applications and exercise. In fact, the closest thing to needling (breaking the skin barrier) mentioned in the physical therapy scope of practice statute (NRS 640.024) is where it plainly says that the "Practice of physical therapy 2. Does not include (c) The use of electricity for cauterization or surgery". Why must it specify that they may not use electricity for surgery (breaking the skin barrier)? Because the use of electricity is very specifically mentioned as a therapeutic agent which they may employ, and the statute means to clarify that its use may not be extended to breaking the skin. Why then, would it be that a phrase as vague as "mechanical devices" may be interpreted to include needles specifically meant to break the skin? It appears clear that the original intent of the statute is to prohibit physical therapists from utilizing the tools of their trade in an invasive (i.e. penetrating the skin) manner.

In conclusion, I would like to draw the reader's attention to the minutes of the Board of Physical Therapy meetings dated October 2, 2008 and March 20, 2012, in which Dry Needling was first unanimously determined to be outside a physical therapist's scope, and then unanimously determined to be within the scope. In 2008, it was noted that there is

contradictory evidence/opinion as to whether dry needling is indeed acupuncture. It was further noted that there is very scant education for physical therapists in this treatment technique. It was for those primary reasons that it was unanimously determined that dry needling was not in the physical therapy scope of practice.

In 2012, however, a new group of Board members revisited the issue. It should be noted that "Board member Puentedura stated that he teaches trigger point dry needling at UNLV to entry level DPT students. Board member Baum stated that she has taken the level one dry needling course." At this point, it is clear that Dry Needling was being taught in this state to physical therapists by physical therapists while it was still expressly determined to be clearly outside the scope of physical therapy practice. The 2012 minutes go on to state "Board member Puentedura stated that all students should be exposed to and know about it. He stated that the students are not competent when they graduate, but they can get further education on it if they want to practice dry needling." These passages are concerning, first of all because, as an instructor in the technique (despite its position outside the scope of practice at the time), member Puentedura might have had a remunerative interest in expanding dry needling education to all physical therapists, and therefore perhaps should have recused himself from the vote. Secondly, within these passages it is quite clear that absolutely no standards for the safe and competent use of the technique are formalized or even thoroughly discussed. Quite the contrary, the minutes clearly state that "Board member Puentedura stated that (for) the UNLV graduates...dry needling is not taught to the level of practice.....He stated that schools are trying to introduce it, not trying to train them to be competent, just to expose them to it at an entry level." Nevertheless, the Board saw fit to approve dry needling in the physical therapy scope of practice, with no educational requirements, no competency certification, no oversight.

The licensed practice of acupuncture in the state of Nevada, on the other hand, requires a four year graduate degree consisting of no less than 3000 hours of instruction, in-depth licensing examinations and yearly continuing education requirements once licensed. That is this state's statutory standard for the safe practice of therapeutic needling, whether it be called acupuncture or dry needling, and we impress upon the Attorney General's office to uphold the standards of this respected health care profession.