

DRY NEEDLING OVERVIEW

Prepared by the North Carolina Physical Therapy Association

Background

- Dry needling is a technique in which a small needle is inserted into tight bands of muscle to relieve pain and restore functionality. It is extremely effective, and it is as safe as over-the-counter pain medication like motrin or aspirin.
- Here in North Carolina, the Physical Therapy Board regulates dry needling by physical therapists. The Acupuncture Licensing Board, meanwhile, regulates acupuncturists. It is made up almost entirely of private acupuncturists who compete with PTs.
- As a response to competition from PTs, acupuncturists began pressuring the members of the Acupuncture Board to use their government power to expel PTs from the market. The Acupuncture Board ultimately succumbed to that pressure: It agreed to go after PTs who offer dry needling even though the PT Board already regulates them.

The Lawsuits

North Carolina's courts have repeatedly sided with physical therapists and their dry-needling patients in a series of lawsuits involving the Acupuncture Board:

- In 2015, the Acupuncture Board sued several PTs and the PT Board, claiming that dry needling is the unauthorized practice of acupuncture—a Class 1 misdemeanor. That lawsuit was frivolous, and it was dismissed right off the bat. Days after its lawsuit was dismissed, however, the Acupuncture Board started more legal proceedings to prevent patients from receiving dry needling. The PT Board issued a thorough declaratory ruling that dry needling is physical therapy, and the Acupuncture Board appealed that ruling to the Business Court.
- In August 2017, Judge Louis Bledsoe of the Business Court rejected the Acupuncture Board's appeal, ruling that physical therapists in North Carolina may perform dry needling. The Court's decision affirms a declaratory ruling by the PT Board concluding that "the scope of physical therapy under North Carolina law includes dry needling," that "dry needling is distinct from acupuncture," and that "North Carolina public policy favors patient choice in health care." The Acupuncture Board has appealed that decision to the North Carolina Supreme Court. Briefing is underway.
- In late 2015, the NC Physical Therapy Association brought a federal antitrust lawsuit against the Acupuncture Board on behalf of PTs and their patients. The purpose of that lawsuit is to protect dry needling patients' access to care. That lawsuit quotes public records showing that Acupuncture Board members used their government positions to stamp out competition by blocking patients from receiving dry needling. Notably, an e-mail between Acupuncture Board members describing these efforts stated that **"Republican legislators should be appalled that they are being led to support the very thing that they are supposedly against"**—the **"overreach of government."** (6/17/13 e-mail between Acupuncture Board members).
- In January 2017, the federal court ruled that the NC Physical Therapy Association's lawsuit sufficiently alleged the Acupuncture Board violated—and continues to violate—the antitrust laws by trying to make dry needling unavailable to patients who benefit from it. In April 2017, the federal court denied the Acupuncture Board's request to reconsider that ruling.

Conclusion

The Acupuncture Board is going after PTs who offer dry needling even though the PT Board already regulates them. The last thing North Carolina needs is unnecessary, duplicative regulation—especially when it is driven by purely anticompetitive motives and blocks patients' access to care. Strong public policy and our free-market economy demand that patients—not the government—choose the type of health care they receive.