

Final Order No. DOH-17-1605-*DS*-MQA
FILED DATE - *8-30-2017*
Department of Health
By: *Bridget Coates*

STATE OF FLORIDA
BOARD OF PHYSICAL THERAPY PRACTICE

IN RE: THE PETITION FOR DECLARATORY STATEMENT OF:
ROBERT STANBOROUGH

FINAL ORDER

THIS MATTER came before the Board of Physical Therapy Practice ("Board") pursuant to Section 120.565, Florida Statutes, at a duly-noticed public meeting held on August 4, 2017, in Tampa, Florida. The Petitioner, Robert Stanborough, requests a declaration as to whether he may practice dry-needling under his Florida physical therapy license. Petitioner was present at the meeting and was represented by counsel. The Board was represented by Marlene Stern, Assistant Attorney General. Having considered the Petition and relevant statutes and rules, the Board issues the following:

QUESTION PRESENTED

Whether the Petitioner may practice dry-needling in the State of Florida under his physical therapy license without violating the Physical Therapy Practice Act, chapter 486, Florida Statutes.

FACTUAL FINDINGS

1. The Petition was duly filed and noticed in the Florida Administrative Register in Volume 43, Number 113, on June 12, 2017. No comments or requests for intervention were received.
2. The Petition is attached hereto and incorporated herein by reference.
3. The Petition seeks the Board's interpretation of Section 486.021(11), Florida Statutes.

4. Petitioner is a Florida-licensed physical therapist, holding license number PT18156 who would like to use dry-needling as a modality to treat his patients in Florida.

5. Dry-needling is a skilled intervention using a solid filiform needle to penetrate the skin and stimulate underlying myofascial trigger points, muscular, and connective tissues for the management of neuromusculoskeletal pain and movement impairments. It is a technique used to treat dysfunctions in skeletal muscle, fascia, and connective tissue, as well as nervous system, diminishing persistent peripheral nociceptive input, central sensitization, reduce impairments, and restore and/or improve patient activity and function.

6. Dry-needling, as performed by physical therapists, stems from the medical model of Janet Travel, MD, and does not rely on traditional acupuncture theories or terminology.

7. Physical therapists use dry-needling based on western neuroanatomy, modern scientific study of the musculoskeletal and nervous system, including knowledge of pain science and skilled palpation.

8. The underlying philosophy of dry-needling in the physical therapy context is completely different from that of acupuncture. Dry-needling is not acupuncture even if needles are used that break the skin because the purpose of dry-needling, as used in physical therapy practice, is to manipulate soft tissue to correct dysfunctional muscles and the nervous system.

9. Petitioner is uniquely qualified to provide dry-needling services to his patients. He has studied the procedure for years and taught the procedure in other states. He has received over 140 hours of supervised dry-needling training and is certified in dry-needling through Myopain Seminars. He has been a senior instructor for Myopain Seminars since 2011 where he provided dry-needling instruction to physical therapists, medical doctors, advanced registered

nurse practitioners, chiropractors, dentists, and acupuncturists from the United States. Since 2005, he has been an instructor of continuing education in Myofascial Manipulation through the University of St. Augustine, in which capacity he gives lectures and labs on trigger points and pain science. In addition to providing instruction on dry-needling in the United States, he has provided such instruction in Chile, Japan, Canada and India. He published *Myofascial Manipulation: Theory and Application*, 3rd Ed. 2012, which includes subjects such as soft tissue examination, palpation, manipulation, pain science, and trigger point dry-needling.

CONCLUSIONS OF LAW

6. The Board has jurisdiction over this matter pursuant to section 120.565, Florida Statutes, and Chapter 486, Florida Statutes.

7. Section 120.565(1), Florida Statutes, states:

Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

8. The Board has the authority to issue declaratory statements regarding provisions of Chapter 486, Florida Statutes, and Rule Chapters 64B17-1 through 9, Florida Administrative Code.

9. Given the Petitioner's unique qualifications, he may practice dry-needling in Florida under his physical therapy license without violating Chapter 486, Florida Statutes, the physical therapy practice act.

THEREFORE, for the aforementioned grounds, the Board grants the Petition for Declaratory Statement.

This Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED, this 30 day of August, 2017.

BOARD OF PHYSICAL THERAPY PRACTICE

Allen Hall

Allen Hall, Executive Director

NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE FLORIDA APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF THE FILING DATE OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by: **U.S. Mail to Thomas W. Caufman, Esq., and Sheila K. Nicholson, Esq.,** 1410 N. Westshore Blvd., Suite 200, Tampa, FL 33607; and, **electronic mail to Lynette Norr, Assistant Attorney General, Office of the Attorney General, Lynette.Norr@myfloridalegal.com, Marlene Stern, Assistant Attorney General, Office of the Attorney General, Marlene.Stern@myfloridalegal.com, and Maria LaRue, Paralegal Specialist, Office of the Attorney General, Maria.LaRue@myfloridalegal.com, on 30, August, 2017.**

Bridget Coates

Deputy Agency Clerk

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STATE OF FLORIDA
FLORIDA DEPARTMENT OF HEALTH

IN RE: The Petition for Declaratory
Relief of ROBERT STANBOROUGH,

Petitioner

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PETITION FOR DECLARATORY RELIEF

PETITIONER, ROBERT STANBOROUGH, by and through his undersigned attorneys,
petitions the Florida Department of Health, Board of Physical Therapy Practice for declaratory
relief and states as follows:

Petitioner, ROBERT STANBOROUGH, is a licensed Physical Therapist holding License
No: PT18156 that has been in good standing in the State of Florida since April 6, 1999.

1. Petitioner practices as First Coast Rehabilitation located in St. Augustine, Florida
32086 where he serves as President.

2. Many of the Petitioner's patients would benefit from a technique known as dry-
needling, which is a skilled intervention using a solid a filiform needle to penetrate the skin and
stimulate underlying myofascial trigger points, muscular, and connective tissues for the
management of neuromusculoskeletal pain and movement impairments. It is a technique used to
treat dysfunctions in skeletal muscle, fascia, and connective tissue, as well as nervous system,
diminishing persistent peripheral nociceptive input, central sensitization, reduce impairments,
and restore and/or improve patient activity and function. See American Physical Therapy
Association *Description of Dry-needling and Clinical Practice: An Educational Resource Paper*.
The performance of dry-needling by physical therapists has been approved in many countries
and 35 states, although no clear authority for the practice exists in Florida. Dry-needling, as

performed by physical therapists stems from the medical model of Janet Travel, MD, which did/does not use rely on traditional acupuncture theories or acupuncture terminology. Rather, physical therapists use dry-needling based on western neuroanatomy, modern scientific study of the musculoskeletal and nervous system, including knowledge of pain science and skilled palpation.

3. The Petitioner would like to use dry-needling as one additional modality with which to treat appropriate patients. However, the Petitioner is uncertain as to his right to perform dry-needling because the definition of physical therapy contained in the Physical Therapy Practice Act at Section 486.021(11) allows for "the performance of acupuncture or upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs...". Petitioner is not aware of any such criteria and maintains that dry-needling is not acupuncture even if needles are used that break the skin because the purpose of dry needling, when used in the physical therapy practice, the underlying philosophy is to manipulate soft tissue for the purpose of correcting a dysfunctional muscle(s) and nervous system. The underlying philosophy of dry needling in the physical therapy context is completely different than acupuncture.

4. As a licensed physical therapist in good standing with the Board of Physical Therapy since 1999, testified before the Board in 2014 regarding dry needling and was told the Board believed dry needling was not acupuncture and within the scope of physical therapy yet the Petitioner does not wish to begin the practice of dry-needling only to later receive sanctions from the Board of Physical Therapy. This scenario, where a practitioner is in doubt about some statutory right is precisely the scenario that the declaratory statement process was designed to cure. See *Rosenkrantz v. Feit*, 81 So.3d 526 (Fla. 3rd DCA 2012). The Petitioner files this

Petition for proper purposes and is not merely curious about the subject or seeking legal advice.

5. Section 120.565, Florida Statutes provides that:

“(1) any substantially affected person may seek a declaratory statement regarding an Agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the Agency, as it applies to the Petitioner’s particular set of circumstances.

(2) the Petition seeking a declaratory statement shall state with particularity the Petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the Petitioner believes may apply to the set of circumstances.

6. Rule 28-105.001, Florida Administrative Code, which implements Section 120.565, Florida Statutes provides:

“a declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the Agency has authority. A Petition for Declaratory Statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to Petitioner’s particular circumstances....”

The purpose of a declaratory statement is to resolve a controversy or answer questions concerning the applicability of statutes which an administrative agency enforces. Citizens of the State ex rel. Office of Pub. Counsel v. Fla. Pub. Serv. Commission, 164 So.3d 58, 59 (Fla. 1st DCA 2015).

7. Petitioner is uniquely qualified to provide dry-needling services to his patients. He has studied this procedure for years and has taught the procedure in other states. He has far exceeded the most stringent requirements set forth by states where dry needling is approved. He has received over 140 hours of supervised dry needling training; certified in dry needling through Myopain Seminars; been a senior instructor for Myopain Seminars since 2011 providing dry needling instruction to PT’s, MD’s, ARNP’s, chiropractors, dentists, and acupuncturists from the U.S.; instructor of Myofascial Manipulation continued education through the University of St.

Augustine since 2005, which includes lectures and labs on trigger points, and pain science; entry level instructor and course coordinator for three (3) campuses and six (6) co-horts of Myofascial Manipulation since 2006, which includes lectures and labs on trigger points, pain sciences and an introduction to dry needling; published "Myofascial Manipulation: Theory and Application" 3rd Ed 2012, which includes soft tissue examination, palpation, manipulation, pain science and trigger point dry needling; and has instructed both nationally and internationally on the same subjects, including Chile, Japan, Canada, and India.

8. Petitioner desires a determination of his rights, duties and a declaration as to whether he may practice dry-needling as a licensed physical therapist in the State of Florida.

WHEREFORE, Petitioner requests a declaration that he may practice dry-needling in the State of Florida under his physical therapy license without violating the Physical Therapy Practice Act.

RESPECTFULLY SUBMITTED on this 7th day of June, 2017.

QUINTAIROS, PRIETO, WOOD & BOYER, P.A.



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