

1 the Oregon acupuncturists are very, very serious about being
2 pro-active in this way.

3 FEMALE SPEAKER: Thanks very much.

4 MONA SEARLES, NP, L.Ac: You're welcome.

5 *JOYCE McCLURE, DC: Christo, you're up next.

6 CHRISTO GOWARSKI, L.Ac: You know, I've read
7 the letters before. I'm just going to kind of try to
8 address things as they sort of came up.

9 I'm sorry, what was your name?

10 DOUGLAS DICK: Doug Dick.

11 CHRISTO GOWARSKI, L.Ac: Doug, you asked
12 about, you know, what are the facts about the relationship
13 between dry needling and acupuncture. And I don't know if
14 you've all seen the Willamette Week's --

15 *DANIEL COTE, DC: Oh, yeah, we have.

16 CHRISTO GOWARSKI, L.Ac: So it was in here, I
17 don't know, paragraph, you know, 11, 12, in the middle
18 column. Acupuncture and dry needling use the same tools,
19 acupuncture needles, the same points, the same purpose,
20 treating pain, and the same needling technique. They wrote,
21 dry needling is the practice of acupuncture. Is that fact
22 enough?

23 *DANIEL COTE, DC: And who is that fact based
24 on? Is that Willamette Week? Is that the authority of the
25 journalist or --

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1 CHRISTO GOWARSKI, L.Ac: What's that?

2 *DANIEL COTE, DC: Was that from the authority
3 of the journalist that wrote the article?

4 CHRISTO GOWARSKI, L.Ac: No. This is a quote
5 by Malvin Finkelstein who is the director -- he's the
6 director of the Acupuncture Committee at the Oregon Medical
7 Board.

8 So is that enough for you?

9 *DANIEL COTE, DC: And I don't want to be
10 rude, it's -- we've -- I have been inundated with opinions
11 and I understand the point of view of the acupuncturist.
12 And I hear it.

13 CHRISTO GOWARSKI, L.Ac: This is not an
14 opinion. This is not an opinion. I just stated some facts
15 and you're talking about --

16 *DANIEL COTE, DC: From the opinion of
17 acupuncturists that acupuncture and dry needling is the
18 same. And what I'm saying here is that I've read the
19 article and you're stating what has been already stated.

20 CHRISTO GOWARSKI, L.Ac: Right.

21 *MICHAEL VISSERS, DC: (Unintelligible) three
22 minutes.

23 CHRISTO GOWARSKI, L.Ac: Sorry. Well, he
24 asked a question, what are the facts. I'm just reiterating
25 them. That's -- you know, and there is clearly a bias on

1 this board, very obvious bias on this board. And the
2 board's main purpose is to protect the public.

3 *DOUGLAS DICK: I call that a good bias.
4 That's good. We -- they can do that.

5 CHRISTO GOWARSKI, L.Ac: No, that's not the
6 bias I'm talking about. The bias is getting in dry needling
7 as quickly, as cheaply, as easily as possible. That's the
8 bias.

9 *DOUGLAS DICK: You've been at three and four
10 of these meetings.

11 CHRISTO GOWARSKI, L.Ac: Right.

12 *DOUGLAS DICK: And I think, you know, we
13 could easily say you have an extreme bias in your position.
14 The point is discussion and so don't be accusatory to us.

15 CHRISTO GOWARSKI, L.Ac: Sure.

16 MALE SPEAKER: Because I don't appreciate that
17 because I don't look at that article as fact. It's good --
18 try to make a good journalistic effort. That's not a
19 binding fact. That's an opinion of that journalist. So
20 it's not a fact.

21 CHRISTO GOWARSKI, L.Ac: It's not the jour --
22 he quoted. I just told you he quoted the director of the
23 Acupuncture Committee on the Oregon Medical Board.

24 *DOUGLAS DICK: Great. Great.

25 CHRISTO GOWARSKI, L.Ac: That's not a

1 journalist opinion.

2 *DOUGLAS DICK: But you're coming in here
3 making accusations --

4 *COOKIE PARKER-KENT: Okay. Enough. Enough.
5 Enough.

6 CHRISTO GOWARSKI, L.Ac: Is anybody interested
7 in the truth here?

8 *COOKIE PARKER-KENT: We're allowing you to
9 say the truth. Go ahead and speak your piece and we'll
10 discuss it. We're not here to argue with you. We don't
11 have time for that and you don't have time for that.

12 CHRISTO GOWARSKI, L.Ac: I brought something
13 that is fact.

14 *COOKIE PARKER-KENT: Then articulate it to us
15 and not argue.

16 CHRISTO GOWARSKI, L.Ac: And you're saying
17 it's opinion.

18 *COOKIE PARKER-KENT: I didn't say a word.
19 Just make your point and we'll discuss it. Make your point,
20 please.

21 CHRISTO GOWARSKI, L.Ac: This is a letter by
22 Troy Sammons (phonetic) who is -- who wrote this letter to
23 us and asked us to read this to the Board. And he studied
24 in China. He studied dry needling, actually, in China. The
25 subject here is dry needling versus Filaform needling

1 acupuncture. And he writes, the term dry needling is
2 greatly misunderstood and misused within the medical
3 community. Dry needling is performed using a hypodermic
4 needle and syringe absent of an injectable solution. Thus
5 the distinctive term dry needling.

6 Filaform acupuncture needles are of course
7 incapable of pushing fluids through them and therefore
8 associating them with the term dry needling is completely
9 unnecessary and inappropriate. Therefore practitioners not
10 using hypodermic needles for dry needling are
11 inappropriately applying the technique and are actually
12 doing acupuncture or Filaform needling.

13 In Travell and Simons Myofascial Pain and
14 Dysfunction Trigger Point Manual, Part I, Chapter 3, Section
15 13, the term dry needling is used to discern between two
16 injection techniques and not two different types of needles.
17 The two injection techniques described is the injection of a
18 local anesthetic or botulinum toxin and the mechanical use
19 of a hypodermic needle without infusing an injectable
20 solution. The same section references the Hong study which
21 describes his procedure for trigger point injection of dry
22 needling as using a twenty-seven gauge hypodermic needle
23 one-and-a-quarter inches long for both techniques.

24 No Filaform acupuncture needles are mentioned
25 in association with dry needling. The term dry needling is

1 reserved exclusively with the use of hypodermic needles.
2 Acupuncture needles are not used for dry needling techniques
3 nor should they be. The mechanical manipulation of dry
4 needling technique rely on the larger gauge cutting tip of a
5 hypodermic needle which acupuncture needles had neither.

6 Hypodermic needles have unique advantages over
7 Filaform needles when treating pain conditions. Their
8 larger gauge and cutting tip are more effective at locating
9 and breaking up trigger points than acupuncture needles.
10 Hypodermic needles are also much more difficult to use,
11 require more skill and knowledge and have a higher risk
12 factor for patient injury and practitioner needle stick
13 cross contamination. If practitioners perform dry needling
14 they must apply it correctly and be restricted to the use of
15 hypodermic needles with syringes that are absent of an
16 injectable fluid. Sincerely, Troy Sammons, Licensed
17 Acupuncturist, founder of Acu-Injection and Web Clinician
18 dot com.

19 Yes, question.

20 *HUMA PIERCE, DC: You're at -- no, I'm just
21 giving you your time. You have thirty seconds.

22 CHRISTO GOWARSKI, L.Ac: Okay. Once more, the
23 Fishkin twelve-hour technique. Here's a picture of twelve
24 needles inserted into the sacral area of a person. This in
25 no way is dry needling. And it's under the heading, "What

1 is dry needling?" This is fraud.

2 I have one more thing I want -- how much time
3 do I have now?

4 *HUMA PIERCE, DC: Sixteen seconds.

5 CHRISTO GOWARSKI, L.Ac: Okay. Well, I guess
6 I'll just close with this. I can't tell you how emotional I
7 get about this issue because it really -- we're not telling
8 you don't do dry needling or don't do acupuncture. All
9 we're saying is please do it with the proper training.
10 That's all we're saying.

11 *COOKIE PARKER-KENT: Thank you.

12 *JOYCE McCLURE, DC: Thank you. Appreciate
13 it.

14 We're running kind of short on time. If you
15 just have one minute.

16 ELLEN SHEFI, L.Ac: Yeah, or less. I just
17 wanted to say that last year when we were talking to
18 physical therapists and I went in to testify with Kathleen
19 Haley who was the director of OMB and one of the things that
20 we came -- and this is what you might want to check with
21 your malpractice insurance that the physical therapist's
22 malpractice would not cover dry needling technique. And I'm
23 not sure what the chiropractors who now practice where they
24 will cover dry needling.

25 And then the second point, and Dr. Gene Hong

1 just working on this. I mean, I've been doing the breast
2 thermography and I'm working on high-risk deliveries outside
3 the hospital and lots of other issues that I've been working
4 on. I put a lot of energy and effort and gone to national
5 experts.

6 I think we're at a point where we're not at
7 rehashing and I want -- even though I can't shepherd
8 everything that happens I want to incorporate this into
9 chiropractic with our understanding of neuro-musculo-
10 fascial-skeletal care and limit it at that and not step over
11 into acupuncture and keep it -- keep it tight.

12 Okay. Thank you.

13 FEMALE SPEAKER: Thank you.

14 Al?

15 AL THIEME, L.Ac: How's it going. Thanks for
16 having us here today. I'm here representing the OAAOM,
17 that's the Oregon Association of Acupuncture and Oriental
18 Medicine. And I'm also representing myself as an individual
19 licensed acupuncturist. On behalf of the OAAOM and myself
20 I'm entering into the record a letter that we have signed
21 from our board president, a letter from myself and we have a
22 stack of documents that our attorney, Thane Tienson from
23 Landye, Blumstein and Bennett will be bringing shortly.
24 Those will be entered into the record as Exhibit A. There's
25 a stack of documents that -- and we retain the right to

1 reference any of the documents entered into the public
2 record at this hearing and all the previous hearings on OAR
3 811-015-0036 should we need to for legal purposes.

4 I know you've heard a lot of testimony before
5 and I'm not going -- I'm going to try and cover points that
6 have not been covered. We do request that you all remove
7 this rule in consideration. We respect the chiropractic
8 profession and also its authority to perform spinal
9 manipulation; however, we'd like for you all to respect us
10 as well and our ability to perform acupuncture.

11 That said, first the OBCE does not have the
12 statutory authority to dramatically change its scope of
13 practice to include acupuncture or what you refer to as dry
14 needling. The OBCE even admitted this type of change should
15 occur in the legislature in its fall 2007 newsletter, the
16 BackTalk. In 2003 the OBCE prosecuted one of its own
17 members, chiropractor James Olshove, for performing dry
18 needling, specifically referring to the ORS 677.757
19 acupuncture statutes.

20 Second, dry needling is acupuncture. The FDA
21 has only regulated the use of acupuncture needles as a Class
22 II medical device. If you're using those needles then it's
23 -- you're doing acupuncture. Until that's changed the term
24 dry needling as we see it is a marketing gimmick designed to
25 subvert the existing statute.

1 Third, the University of Western States
2 falsified its testimony to the OBCE to fit within the
3 current statutory language. As recently as the summer of
4 2010 the OBCE in its newsletter stated that dry needling is
5 not a part of any approved chiropractic college in the US.
6 On May 5th, 2011, just twelve days ago, the post-graduate
7 director of the University of Western States confirmed that
8 dry needling had not been taught in the curriculum and that
9 would not be part of the curriculum moving forward. He said
10 dry needling would be eventually a post-graduate course.
11 This cannot be more clear.

12 Fourth, there's a misunderstanding of the
13 chiropractic profession in the community at large that
14 acupuncture is simply an energy medicine, does not have
15 biomedical effects such as your descriptions of neuro-
16 muscular trigger point therapy. Unfortunately this
17 interpretation is misleading and incorrect. We've entered
18 into the record over ten pages of references from peer
19 reviewed journals in the US that demonstrate the biomedical
20 effects of how acupuncture affects the human -- the
21 physiology of the human body.

22 Finally, there do not exist AMA CPT codes for
23 dry needling therapies. To use acupuncture needles and
24 trigger points the CPT codes are acupuncture. To use a
25 hypodermic needle and trigger point with or without

1 substance is a point injection code. Both are clearly not
2 in the chiropractic scope of practice and use of those codes
3 by chiropractors amounts to insurance fraud. Chiropractors
4 use their fingers or hands on trigger points, it's a manual
5 therapy code and within their scope of practice.

6 I've worked on a lot of different issues with
7 a lot different associations over the years and I've
8 actually lobbied in conjunction with Joe Brimhall in the
9 past and other natural medicine folks, so I think we all
10 have a lot of things we can bring to the healing profession.
11 I'd like to see that we could collaborate on mutually
12 beneficial projects and not have to have these issues come
13 up between us. Thanks for your time.

14 MALE SPEAKER: I have a question. Are you
15 then advocating that the rule making should stop on our
16 part? Is that --

17 AL THIEME, L.Ac: At this point that would be
18 great and then it's -- according to your statutes it's
19 supposed to be up to the legislature to make this kind of
20 change, so. Our attorney will be here shortly and he will
21 hand our documents over to you when he gets here.

22 FEMALE SPEAKER: Will? The next person on the
23 list is Dr. Will --

24 MALE SPEAKER: Oh, sorry.

25 FEMALE SPEAKER: Could you please state his

1 name, we couldn't hear it.

2 AL THIEME, L.Ac: Al Thieme.

3 FEMALE SPEAKER: Team; T-e-a-m?

4 AL THIEME, L.Ac: T-h-i-e-m-e.

5 FEMALE SPEAKER: Oh, wait a minute. I goofed.
6 There's another name that I cannot read. Denny.

7 MALE SPEAKER: Is it Denny?

8 DENNY KASUNIC, L.Ac: Yes.

9 FEMALE SPEAKER: Thank you, Denny. I'm sorry.

10 DENNY KASUNIC, L.Ac: That's okay.

11 Hello. Thanks for allowing us to come in and
12 express our viewpoints. Just a little about me. I've been
13 treated by a chiropractor for various health concerns since
14 I was a teenager. I respect the profession greatly and have
15 great confidence in your skills within your current scope of
16 practice. I continue to see a chiropractor weekly and I
17 actually work for the president of the OCA at the current
18 time. I'm well educated that a service that DCs provide to
19 the public and I can personally vouch for the results from
20 my own standpoint.

21 However, in my opinion, proposed rule that
22 we're talking about today is an attempt to dilute the
23 chiropractic profession of its integrity and will cause
24 irreparable harm for the public through mistrust and
25 potential harm to public health and well being. And I say

1 relating opinion so this is going to be mostly fact. The
2 Oregon Board of Chiropractic Examiners Administrative Rules
3 in Section 1, devices, procedures and substances under
4 acupuncture, page 3, it states, "The board has determined
5 that needle acupuncture is outside the Oregon chiropractic
6 scope of practice." ORS 684.035 chapter, "not applicable to
7 other methods of healing."

8 Trigger point injection --

9 MALE SPEAKER: Pardon me. Do you have copies
10 of that for us?

11 CHRISTO GORAWSKI, L.Ac: I do, yes. Here you
12 go.

13 MALE SPEAKER: Just one? I'll pass it around,
14 I guess.

15 CHRISTO GORAWSKI, L.Ac: Trigger point
16 injection myofascial on page 9 states that "Licensees who
17 have -- " oh, this a question. Are Oregon licensees who
18 have completed the post-graduate certification in minor
19 surgery able to perform myofascial trigger point injection?
20 And the answer was the board determined that injection of
21 myofascial trigger points is a therapy and as such is not
22 within the Oregon chiropractic scope of practice. In
23 addition the injection is more than superficial and thus is
24 not covered by the minor surgery provision. This was
25 clarified on 12-11-2002.

1 Trigger point dry needling is also a therapy
2 and thus is not within the Oregon chiropractic scope of
3 practice. Trigger point dry needling is also more than
4 superficial and thus is also not covered by the minor
5 surgery provision. In the Oregon BackTalk newsletter of the
6 Oregon Board of Chiropractic Examiners Fall 2007 issue, page
7 14, under policy and practice questions an Oregon DC asks
8 the question whether it's possible to get dry needling into
9 the scope of practice. And the answer was the board has
10 previously interpreted dry needling as acupuncture or
11 breaking the skin for a therapeutic purpose both of which
12 are outside the scope of chiropractic practice in Oregon.
13 The Acupuncture Association would likely strongly be
14 opposed. Scope of practice issues like this would have to
15 be addressed through legislation. This would have to be a
16 priority for the professional association who represents
17 chiropractic in the legislature.

18 On March 17th, 2003, the Board of Chiropractic
19 Examiners found James Olshove, DC, guilty of performing dry
20 needling on his patients and in their conclusion of law
21 stated the board finds that the above conduct is contrary to
22 recognized standards within the practice of chiropractic in
23 Oregon. This is in violation of ORS 684.010, Section 2, A
24 and B; and OAR 811-035-0105, Section 4; and OAR
25 811-015-0005, Section 1; ORS 684.035 and ORS 684.100,

1 Section 1, G and B. Signed by Dave McTeague.

2 FEMALE SPEAKER: Your time is up.

3 CHRISTO GORAWSKI, L.Ac: Okay. Signed by
4 Executive Director David McTeague.

5 So there's much, much more hard factual
6 evidence that dry needling is clearly not in the scope of
7 practice and I rest at that.

8 FEMALE SPEAKER: Thank you.

9 FEMALE SPEAKER: Carole?

10 FEMALE SPEAKER: (Unintelligible) had
11 acupuncture (unintelligible).

12 CHRISTO GORAWSKI, L.Ac: I'm sorry?

13 *JOYCE McCLURE, DC: Oh, I don't know whether
14 you know whether Dr. Olshove had any acupuncture training or
15 other training (unintelligible) dry needling because maybe
16 we should have referred him to you.

17 CHRISTO GORAWSKI, L.Ac: Well, that was not
18 the issue. The issue was that his application of dry
19 needling was not up to part of chiropractic practice.

20 FEMALE SPEAKER: Because he wasn't -- because
21 it wasn't something he was trained to do perhaps.

22 CHRISTO GORAWSKI, L.Ac: It was not in the
23 scope of practice.

24 FEMALE SPEAKER: That's what we're talking
25 about, adding the --

1 MALE SPEAKER: Yeah.

2 CAROLE CONGDON, L.Ac: -- where the other
3 channel theory, you can do something on the foot that that
4 -- and that's -- I mean, so it's really -- it's kind of a
5 complicated question to say is it really just trigger
6 points? It's -- I think chiropractors are taught that, you
7 know, bodies are, you know, it's the mind, body, spirit
8 wholeness that we're treating our patients and so I don't
9 know if I have an answer for that.

10 CHRISTO GORAWSKI, L.Ac: The National
11 Chiropractic Board of Examiners defines a hundred hours.
12 The National Chiropractic Board of defines a hundred hours
13 that you're referring to.

14 MALE SPEAKER: What's that?

15 CHRISTO GORAWSKI, L.Ac: The National
16 Chiropractic Board of Examiners, the board --

17 MALE SPEAKER: Determines a hundred hours for
18 dry needling?

19 CHRISTO GORAWSKI, L.Ac: For acupuncture.

20 MALE SPEAKER: So the hundred hours being
21 thrown out would be for a training and certification in
22 acupuncture, right?

23 CHRISTO GORAWSKI, L.Ac: Right. Which is dry
24 needling. Acupuncture is dry needling.

25 MALE SPEAKER: Well, there we're going to go

1 with semantics again, but I'm not going to go there with
2 him.

3 National Board of Chiropractic Examiners was
4 discussing acupuncture, not dry needling. So you're making
5 the distinction, not me.

6 CHRISTO GORAWSKI, L.Ac: I've called almost
7 every chiropractic college in the country and when I ask
8 them do you teach dry needling they said you can learn that
9 in the post-graduate acupuncture courses which is a hundred
10 and five hours. And I can give you -- you know, and another
11 thing is I find it kind of unfair that I was the only person
12 held to three minutes. The last person was way over three
13 minutes and I wasn't able to finish my statement which
14 addresses --

15 FEMALE SPEAKER: Because we are asking them
16 questions, so.

17 CHRISTO GORAWSKI, L.Ac: So, you know, this
18 whole point about all the other chiropractic colleges, all
19 of them told me that if I wanted to learn dry needling that
20 I should take the one hundred five hour post-graduate course
21 or go to an acupuncture school. Every single college around
22 the country that taught chiropractic.

23 FEMALE SPEAKER: Collin, you're next.

24 COLLIN STOLL, L.Ac: I'm Collin Stoll. I'm
25 the vice president of the Oregon Association of Acupuncture

1 Dakota, they were the only ones practicing acupuncture
2 there. There was no acupuncturists in North Dakota so they
3 actually blazed the trail for the acupuncturists.

4 COLLIN STOLL, L.Ac: Well, that's what I'm
5 saying.

6 MALE SPEAKER: So the public there was the
7 exact opposite -- public reaction there was exactly opposite
8 of what is being portrayed might happen here.

9 COLLIN STOLL, L.Ac: Exactly, they're
10 practicing acupuncture, there, yeah.

11 FEMALE SPEAKER: Okay.

12 COLLIN STOLL, L.Ac: All right. Thank you
13 very much. I appreciate it.

14 FEMALE SPEAKER: That's a good point.

15 Thane?

16 THANE TIENSON, ESQ.: Good afternoon, Dr.
17 Goldeen, members of the board, Director McTeague. Long
18 time, no see.

19 I'm Thane Tienson. My professional address is
20 3500 Wells Fargo Center, Portland, Oregon. I'm here on
21 behalf of the acupuncturists. I have copies of written
22 testimony as well as a couple of exhibits.

23 MALE SPEAKER: You're here to represent who?

24 THANE TIENSON, ESQ.: The acupuncturists.

25 MALE SPEAKER: Which -- the whole --

1 THANE TIENSON, ESQ.: No, no, no.

2 MALE SPEAKER: -- vocation? The board?

3 MALE SPEAKER: The AAOAM.

4 THANE TIENSON, ESQ.: Yeah. Thank you. I
5 lose the acronym.

6 FEMALE SPEAKER: You came in late?

7 THANE TIENSON, ESQ.: I did. I apologize for
8 that.

9 FEMALE SPEAKER: You have three minutes to
10 speak.

11 THANE TIENSON, ESQ.: Very good. My testimony
12 really centers, not surprisingly as a lawyer, on the legal
13 authority of this board to adopt this rule. It is my
14 position, and I think I'm right and you in fact acknowledged
15 that yourselves, that you lack the present legislative
16 authority to adopt this rule. It violates the current
17 provisions of ORS 684 which governs the practice of
18 chiropractic physicians in this state. It also violates
19 ORS 6 -- get the exact -- the practice provisions governing
20 acupuncture.

21 It's something that you've recognized in the
22 Olshove or Olshove decision yourself in 2003 that the
23 statutes that you relied upon in making that decision have
24 not changed since that time. As recently as December --
25 excuse me, September of 2009 at a public session this board

1 again stated that the -- determined, excuse me, I'm reading
2 the pertinent part. The board, referring to yourselves,
3 determined that acupuncture is not -- that dry needling is
4 not allowed within Oregon scope of chiropractic practice as
5 breaking the skin for a therapeutic purpose is not allowed
6 by ORS 684. That is still true today.

7 One of the statutory provisions this violates
8 in Chapter 684 is 684.035 which provides, quote, "Nothing in
9 this chapter," meaning the chapter governing chiropractors,
10 "shall be construed to interfere with any other method or
11 science of healing in this state," end quote. And of course
12 and not surprisingly this board determined in the Olshove
13 decision that that's precisely what was violated. So your
14 remedy, irrespective of any issues about training, even
15 expertise, whether it's a good or bad idea, the issue is one
16 that needs legislation. You have to go to the legislature.
17 You yourselves have acknowledged that on several occasions.
18 And, again, nothing has changed.

19 So that's the principal thrust of my
20 testimony. But I also want to address the procedural issue.
21 This -- in a real sense, as some of the speakers have
22 acknowledged, I believe Kathleen Haley did on behalf of the
23 Oregon Medical Board, the procedure today is really kind of
24 ceremonial. You've already determined earlier that you were
25 going to adopt a rule even though the law requires that you

1 consider the oral and written testimony that's been
2 presented. Testimony that you had not heard or received at
3 the time you, quote, determined, end quote, that dry
4 needling was in the scope of chiropractic. So to the extent
5 that you've done that this makes this process today a sham
6 and it violates those laws that govern the procedures that
7 you must follow in adopting a rule.

8 There's also no real demonstration of the
9 fiscal impact or the cost of compliance. You've
10 acknowledged that in your rule. You haven't been able to
11 quantify or come up with any real assessment of what that
12 impact is either with respect to the cost of compliance or
13 with respect to the impact on small businesses,
14 acupuncturists, for example, in this state. And for that
15 reason it, too, violates the law.

16 So that is my message and we feel like if it
17 is adopted we have no alternative but to challenge the rule.
18 I will leave my testimony -- I would like to admit it into
19 the record along with -- I've got I think fifteen copies in
20 the for-what-it's-worth department.

21 FEMALE SPEAKER: Wonderful.

22 THANE TIENSON, ESQ.: And of course if there
23 are any questions I'd be happy to address them.

24 FEMALE SPEAKER: How long have you been on
25 retainer with the AAOAM?

5/17/11

ER-29

**TESTIMONY AND STATEMENT OF THANE TIENSON IN
OPPOSITION TO ADOPTION OF PROPOSED DRY NEEDLING RULE**

My name is Thane Tienson. I am an attorney and partner in the law firm of Landye Bennett Blumstein, 1300 SW 5th Avenue, Ste. 3500, Portland, Oregon 97201.

In order to adopt any rule, a public agency, including the Oregon Board of Chiropractic Examiners, must ensure that the proposed rule is within the existing statutory authority of the agency.

The proposed rule concerning dry needling, which is the subject of this proceeding today, is not within the existing statutory authority of the agency and is therefore invalid. Moreover, this absence of statutory authority has been recognized by the Oregon Board of Chiropractic Examiners itself for many years and the Board's effort today to nonetheless attempt to proceed with the adoption of such rule is in clear violation of the law. Dry needling is acupuncture as the Oregon Medical Board states and as this Board has acknowledged several times in the past, including most recently in the September 2009 meeting, the minutes of which I have attached to my written testimony and marked as Exhibit "A."

Allowing insufficiently trained chiropractic physicians to perform acupuncture as this proposed rule will, presents a clear danger and threat to the public safety and health of Oregon's citizens. Acupuncture/dry needling is not "taught in approved chiropractic colleges" as the law requires and is not part of the core curriculum of approved chiropractic colleges. What little course offerings and training sessions are or will be made available in acupuncture/dry needling for chiropractic physicians are extremely limited, not clinically based and wholly inadequate to allow them to engage in such practices.

ORS Chapter 684 contains the statutory provisions governing chiropractors and provides, in pertinent part, that "chiropractic" is "the employment of all rational therapeutic measures as taught in approved chiropractic colleges." ORS 684.010(2)(b). In addition, 684.025(2) expressly provides that "Neither this section nor ORS 684.010" (the "definitions" section of the law governing chiropractors) "authorizes the administration of any substance by the penetration of the skin or mucous membrane of the human body for a therapeutic purpose."

ORS 684.035 provides that "Nothing in this chapter (ORS Chapter 684) shall be construed to interfere with any other method or science of healing in this state."

Finally, ORS 677.759(1), governing the practice of acupuncture, provides that "no person shall practice acupuncture without first obtaining a license to practice medicine and surgery or a license to practice acupuncture from the Oregon Medical Board except as provided in subsection (2) of this section" (which allows for the issuance of license to practice acupuncture to individuals who are licensed to practice in another state or territory of the United States).

The proposed adoption of this rule governing dry needling violates all four of the above statutory provisions.

First, as this Board has recognized itself, dry needling or acupuncture is not taught in approved chiropractic colleges. The phrase "taught in approved chiropractic colleges" means what it says and what this Board interpreted it to mean. That any therapeutic measure performed by chiropractic physician, to be lawful, must be taught in—not through but in "approved chiropractic colleges" which the Board, correctly, has previously understood to mean that it is part of the core curriculum of those approved chiropractic colleges. There is no evidence that dry needling or acupuncture is presently taught in approved chiropractic colleges nor is it part of core curriculum at those colleges, because it is not.

Instead, a single approved chiropractic college, the University of Western States (formerly Western States Chiropractic College) here in Portland either has or intends to add a short twelve hour dry needling continuing education online course taught in Maryland with no clinical practice requirement. If this rule is adopted, the proposed rule simply provides that in order to practice dry needling chiropractic physicians simply must complete a "minimum of twelve hours of education with practicum specific to dry needling within the curriculum of an accredited chiropractic college, or through postgraduate continuing education on dry needling approved by the Oregon Board of Chiropractic Examiners." This provision of the proposed rule exceeds the statutory authority of the Board which very expressly requires that remedial practices utilized by chiropractors must be taught in approved chiropractic colleges, not simply be part of a twelve hour postgraduate continuing education course "approved" by the Board "within the curriculum of an approved chiropractic college" without regard to the statutory requirement that it be taught in an approved colleges which this Board has always historically interpreted to mean part of the core curriculum for chiropractic physicians.

Secondly, as this Board itself has recognized in disciplining chiropractic physicians in this state, the performance of the technique referred to as "dry needling" on patients in a chiropractic clinic by inserting a dry needle directly into the skin of patients located in parts of the body such as the neck, shoulder and scapula in trigger point areas is contrary to the statutory provisions governing both the practice of chiropractic physicians in the State of Oregon and of acupuncture and constitutes a violation of ORS 684.010(2)(a),(b), ORS 684.035 and ORS 684.100(1)(g) and (B), as set forth in the matter of James Olshove, D.C., License No. 2764, Case No. 2003-1002, a copy of which is attached to my written testimony as Exhibit "B." In that 2003 decision this Board expressly determined that a chiropractic physician performing dry needling

on a patient constituted a violation of the definition of "chiropractic" as defined in ORS 684.010(2)(a) and (b), and interference with another method or science of healing in this state contrary to ORS 684.035. There have been no changes to those statutory provisions since the date of that decision that would allow for a different result today.

The only difference between then and today or between September 2009 and today is the makeup of the chiropractic board itself and a seeming determination on the part of the Board to significantly expand the scope of chiropractic treatment in this state beyond that allowed by the law, with little regard for public health or safety and in complete disregard of existing statutory provisions, prohibiting interference with other methods of healing and prohibiting the practice of acupuncture by those unlicensed and uncertified to do so by the Oregon Board of Medicine, a board which also is on record as opposed to this rule because it exceeds the existing statutory authority of the Board of Chiropractic Examiners.

If chiropractic physicians in the State of Oregon wish to practice dry needling, which this Board has previously acknowledged is essentially identical to the practice of acupuncture, they may do so, but they may do so only by first obtaining a license to practice medicine and surgery or a license to practice acupuncture from the Oregon Medical Board, undergoing the same substantial and rigorous training, including clinical training, required to practice acupuncture in this state in order to ensure that public health and safety is protected.

The Board's proposed action today is a clear violation of the law and should be rejected. If adopted, it will be challenged.

CORRESPONDENCE

1. Albert Noble DC, re: Lam Probe 4000

This issue is carried forward from the July board meeting. This is an electro-magnetic, high frequency radio wave that does something to the tissue when you press down with the probe. It probably has some therapeutic effects, but that is not the intent; the intent is to reduce wrinkles (cosmetic). Dave reminded the board that they previously determined that the use of lasers for cosmetic purposes was not within the scope of practice. This is not a laser, but it is for cosmetic purposes. Dr. Goldeen recommended that he get an esthetician's license. (Lori asked if the estheticians are licensed to use the machines.)

We did ask Dr. Noble if this is taught at any chiropractic college, and he replied no. The response on the laser device was based on whether it was taught at the Chiropractic colleges. Lori Lindley said that he can hire an esthetician to come in to his clinic to do it. Doug Dick asked if the device even has the standard approvals. Dr. Koc moved that the Board deny the use of this device as presented. Doug Dick seconded the motion. All in favor. Doug Dick, aye; Cookie Parker-Kent, aye; Ann Goldeen, aye; Steve Koc, aye; and Michael Vissers, aye.

2. William Hartje, DC re: Dry Needling - is it within the scope of DC certified in minor surgery?

With his request, Dr. Hartje provided an article wherein Maryland announced that dry needling is now within their chiropractic scope of practice. Dr. Hartje argues that it is both diagnostic and therapeutic. The Board determined that this NOT allowed within Oregon's scope of chiropractic practice as breaking the skin for a therapeutic purpose is not allowed by ORS 684. Also this would be construed as the practice of acupuncture; previously, the Board sanctioned a licensee for practicing this technique.

3. Emory Giles PhD re: National College of Chiropractic's Doctor of Chiropractic Medicine degree.

Dr. Giles is asking if National's Doctor of Chiropractic Medicine (DCM) degree will be accepted in Oregon. He states that this degree is exactly the same as the doctor of chiropractic (DC) degree. Given the response to Western States Chiropractic College's own DCM degree a number of years ago, Dave was hesitant to answer this inquiry without the Board's input. Our statute says we do accept graduates from CCE accredited colleges. As long as applicants to practice chiropractic in Oregon graduate with a chiropractic college degree from a CCE approved college, they will be accepted for examination and licensure. The Board felt this would be confusing to the public and notes there is no mention of this term in our statutes, rules or the Doctor's Title Act.

10:30 AM ADJOURN to EXEC SESSION

12:30 PM WORKING LUNCH

1:00 PM RECONVENE to PUBLIC SESSION

IN THE MATTERS of

Case # 2009-5011 Jonah Buttler, Chiropractic Assistant

The Board proposed to impose conditions on his license for notifications and random UA's for three years. Cookie Parker Kent moved to accept the Board's determination; Doug Dick seconded the motion. All in favor. Steve Koc, aye; Michael Vissers, aye; Doug Dick, aye; Ann Goldeen, aye; and Cookie Parker-Kent, aye.

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Ex. A to testimony
of Dr. Buttler

Case #'s 2009-1000 and 2009-1001

The Board determined insufficient evidence to find a violation with a letter of concern to be sent to the licensees. Cookie Parker-Kent moved to accept the determination; Ann Goldeen seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Ann Goldeen, aye.

Case # 2009-5000 Jonathan Hansel, DC

The Board authorized the Executive Director to offer Dr. Hansel a new Consent Order Agreement for a five year probation and he must continue with group meetings two times a week, and counseling once a week, and he must enroll in abstinent and there will be random UA's with no less than 24 UA's during the first year and no less than 12 for each of the two years after that, and six per year for the remaining two years of his probation. He must appear before the Board once every six months for two years, and once a year for three years after that. Steve Koc moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Doug Dick, aye; Steve Koc, aye; Cookie Parker-Kent, aye and Ann Goldeen, aye.

Case # 2009-1021

The Board determined insufficient evidence to find a violation. Michael Vissers moved to accept the Board's determination; Ann Goldeen seconded the motion. All in favor. Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; Ann Goldeen, aye; and Michael Vissers, aye.

Case # 2009-1022

The Board determined no statutory violation with a letter of concern to the licensee regarding charts Ann Goldeen moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Michael Vissers, aye; Steve Koc, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Ann Goldeen, aye.

Case # 2009-1024

The Board proposed no statutory violation. Cookie Parker-Kent moved to accept the Board's determination; Steve Koc seconded the motion. All in favor. Steve Koc, aye; Michael Vissers, aye; Doug Dick, aye; Ann Goldeen, aye; and Cookie Parker-Kent, aye.

Case # 2009-5007 Gregory Moll, DC

The Board proposed a Notice to Revoke for violations of ORS 684.100(1)(g)(A) and OAR 811-015-0035(1). Michael Vissers moved to accept the Board's determination. Cookie Parker-Kent seconded the motion. Steve Koc recused. Doug Dick aye; Ann Goldeen, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye.

Case # 2009-3018 Ryan Lambert, DC

The Board proposed a \$5000 civil penalty, an additional eight hours continuing education on ethics, and completion of the NBCE Boundaries and Ethics examination. Steve Koc moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. Ann Goldeen, aye; Doug Dick, aye; Steve Koc, aye; and Cookie Parker-Kent, aye. Michael Vissers recused.

Case # 2009-3017 Chris McCutcheon (unlicensed practice)

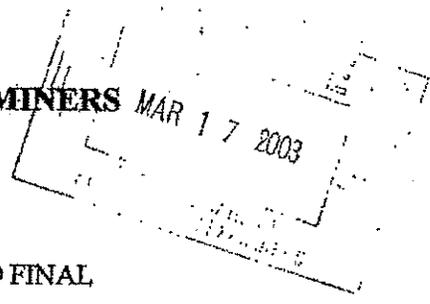
For unlicensed practice, the Board proposed to issue a \$10,000 civil penalty. Doug Dick moved to accept the Board's determination; Cookie Parker-Kent seconded the motion. All in favor. Ann Goldeen, aye; Doug Dick, aye; Steve Koc, aye; Michael Vissers, aye; and Cookie Parker-Kent, aye.

Case # 2009-1023 Tory Naugle, DC

The Board proposed to issue a Notice for a 30-day suspension, \$5000 civil penalty, completion of the PROBE program; an additional 12 hours ethics and boundaries CE for sexual misconduct violations. Cookie Parker-Kent moved to accept the determination; Doug Dick seconded the motion. Ann Goldeen, aye; Doug Dick, aye; Cookie Parker-Kent, aye; and Michael Vissers, aye. Steve Koc opposed.

1:10 PM ADJOURN for the day

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON



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In the Matter of)
James Olshove, D.C. License #2764) STIPULATED FINAL
) ORDER
)
)
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)
 Licensee.) Case # 2003-1002

The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. James Olshove, D.C. (Licensee), is licensed by the Board to practice as a chiropractic physician in the State of Oregon. The Board proposes to resolve this matter with Licensee pursuant to ORS 684.100(9) based on the following.

FINDINGS OF FACT

1.

The Oregon Board of Chiropractic Examiners received information and performed an investigation that Licensee was performing a technique he referred to as "dry needling" on patients in his chiropractic clinic. This involved inserting a dry needle directly into the skin of patients. Licensee is not a licensed acupuncturist in the State of Oregon and has no formal training in acupuncture.

2.

Between January 2002 and September 2002, Licensee performed the "dry needling" on patients, LM, RL, RY and KB. Their treatment was witnessed by staff in the clinic. The treatment consisted of inserting dry needles into areas of the skin located on parts of the body such as the neck, shoulder and scapula.

3.

During the investigation, Licensee admitted that he performed this technique called "dry needling" as an experimental treatment on four of his "friends." He stated he felt the risk to his friends was "very low" and he did not charge or chart the occurrence in the patient records. In addition, during the course of the investigation, the Board received a decision from the Employment Appeals Board dated January 7, 2003, with testimony from the Licensee stating that he was not a licensed acupuncturist nor did he have any appropriate training in that field. Licensee further stated "it was experimental, it was not part of their chiropractic treatment." Licensee stated that he was performing "dry needling" in trigger point areas. Licensee further stated that the dry needling, in his belief, was arguably permissible in the setting of being

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EX B JD
Handwritten signature/initials

1 experimental and performed on his "friends." That testimony at hearing indicates in the
 2 Licensee's own words that he was performing "dry needling" on his friends. Licensee also
 3 admitted in his response to the board that he did not chart the "dry needling" nor did he charge
 4 them for the service.
 5

4.

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 7 The definition of acupuncture is to promote and treat neurological, organic or functional
 8 disorders by the stimulation of specific points on the surface of the body by the insertion of
 9 needles, (ORS 677.757, emphasis added) The definition of Chiropractic Treatment is: a system
 10 of adjusting with the hands the articulations of the bony framework of the human body, and the
 11 employment and practice of physiotherapy, electrotherapy, hydrotherapy and minor surgery
 12 (ORS 684.010) while ORS 684.035 states "nothing in this chapter shall be construed to interfere
 13 with any other method of science of healing in this state."
 14

CONCLUSIONS OF LAW

5.

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 16
 17 The Board finds that the above conduct is contrary to recognized standards within the practice of
 18 Chiropractic in Oregon. This is in violation of ORS 684.010 (2)(a)(b) and OAR 811-035-
 19 0015(4), OAR 811-015-0005(1), ORS 684.035 and ORS 684.100(1)(g)(B). In not providing the
 20 treatment information in the recorded charts of the patients, Licensee violated OAR 811-015-
 21 0005(1).
 22

6.

Stipulations

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 26 NOW THEREFORE, the Board and the Licensee stipulate and agree that this disciplinary
 27 action may be concluded by entry of this Stipulated Final Order upon the following terms:
 28

- 29 1. Pursuant to ORS 183.415(5) the Board and Licensee agree to informally dispose of and settle
 30 this matter.
 31 2. Licensee stipulates that he has been advised of his right to request a hearing in this matter
 32 pursuant to ORS 183.415(2)(a), and to be represented at hearing pursuant to ORS 183.415(3).
 33 3. Licensee waives his right to a hearing in this matter.
 34 4. Licensee admits to his inappropriate treatment in the "dry needling" of patients and that it is a
 35 violation of the OBCE statutes and rules.
 36 5. Licensee agrees to be on probation for a two year period after the signature of this final order.
 37 6. Licensee will pay a civil penalty in the sum of \$250.
 38 7. The Stipulated Final Order memorializes the entire agreement between Licensee and the
 39 Board and supercedes all prior offers, negotiations or settlement discussions.
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43 I have read and I fully understand all of the above facts and agree to the above terms:

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IT IS SO ORDERED this 12th of March 2003.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

By:

Original signature on file
at the OBCE office.

Dave McTeague
Executive Director

By:

Original signature on file
at the OBCE office.

James Olshove D.C.
Licensee

Testimony re: OAR 811-015-0036 – Oregon Board of Chiropractic Examiners proposed rule on Dry Needling.
May 17, 2011

The Oregon Medical Board (“OMB”) has serious concerns with the Oregon Board of Chiropractic Examiners (“OBCE”) proposed rule on “dry needling” (OAR 811-015-0036), which interprets the chiropractic scope of practice to include “dry needling.” The OMB is responsible for the scope of practice and licensing of acupuncturists (LAc). The OMB has consistently opposed the practice of “dry needling” by chiropractors and takes the position that “dry needling” is “acupuncture” and therefore requires an acupuncture license, which can only be granted by the OMB.

The use of acupuncture needles in performing “dry needling” inevitably connotes the practice of acupuncture. The Food and Drug Administration approves the use of acupuncture needles for the practice of acupuncture only, defining “acupuncture needle” as “a device intended to pierce the skin in the practice of acupuncture.” (21 CFR 880.5580). If acupuncture needles are used to perform “dry needling,” then this is actually the practice of acupuncture, and requires an acupuncture license granted by the OMB. “Dry needling” must utilize a needle other than an acupuncture needle.

The mission of both the OMB and the OBCE is to protect the health, safety, and well-being of Oregonians by regulating the practice of medicine in a matter that promotes quality of care. If the OBCE interprets the chiropractic scope of practice as including “dry needling,” the OMB wishes to ensure that those practicing “dry needling” are not actually practicing “acupuncture” without an acupuncture license from the OMB, and that the proposed rule on “dry needling” provides sufficient public health and safety protections.

In order to ensure that chiropractors perform “dry needling” and not acupuncture, which is outside the chiropractic scope of practice, and to ensure that chiropractors receive sufficient education and training, making quality of care and public safety the top priorities, the rule should include:

- “Dry needling” curriculum requirements for both current students and post-graduates, to ensure consistency in chiropractic “dry needling” education in Oregon;
- A list of required classes such as pediatric dry needling and contra-indications to adequately prepare the chiropractic students and post-graduates to safely practice “dry needling;”
- At least 100 hours of “dry needling” education and practical, hands-on experience under supervision, to ensure the practitioner receives adequate education and training in the insertion of needles in the practice of “dry needling;”

- The definition and enumeration of the specific trigger points used in “dry needling,” and the limitations on what is considered a trigger point in the practice of “dry needling;”
- The definition and description of the specific needle used during “dry needling,” including the standards for needle safety, and a clarification that the use of acupuncture needles is the practice of acupuncture, so acupuncture needles shall not be used to perform “dry needling;”
- The clarification that “dry needling” involves the insertion and extraction of one needle, and not the placement and retention of several needles;
- Informed consent requirements stating that dry needling is “not acupuncture;”
- A prohibition from representing “dry needling” as the same or equivalent to acupuncture, in order to ensure that patients are aware that “dry needling” is not acupuncture, and that they are aware of the limitations of the practice of “dry needling;”
- A prohibition from advertising in a way that implies “dry needling” is the same or equivalent to acupuncture, in order to protect the patient from misunderstanding the practice of “dry needling;” and
- The registration and fee requirements for “dry needling” certification.

The OMB strongly believes that the 12-hours of “dry needling” education required under the proposed rule is far from sufficient to provide the practitioner with enough knowledge and training to ensure the safety of the patients. While the OMB believes “dry needling” is in fact the practice of acupuncture, if the OBCE interprets “dry needling” into the chiropractors’ scope of practice, it must consider these additions to the rule to ensure that those practicing “dry needling” are adequately educated and trained, and that the patients are properly informed and protected.

We ask that the Oregon Board of Chiropractic Examiners seriously reconsider OAR 811-015-0036 in the interest of protecting public health and safety.

Kathleen Haley, JD
Executive Director

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Rec'd 5/17/11
FR #1
A. Goraws

Evidence In The Case That "Dry Needling" Is not in the Oregon Chiropractic Scope Of Practice

May 17, 2011

Oregon Board Of Chiropractic Examiners Administrative Rules:

In SECTION I, Devices, Procedures, and Substances, under

ACUPUNCTURE page 3: it states:

"The Board has determined that needle acupuncture is outside the Oregon chiropractic scope of practice. (ORS 684.035, Chapter not applicable to other methods of healing) "

TRIGGER POINT INJECTIONS (MYOFASCIAL) page 9:

"Are Oregon licensees who have completed the postgraduate certification in **minor surgery** able to perform myofascial trigger point injections?"

"The Board determined that injection of myofascial trigger points is a **therapy**, and as such is **not within the Oregon chiropractic scope of practice**. In addition, the injection is more than "superficial" and thus is not covered by the **minor surgery provisions**. (12/11/02)" *old*

Trigger Point Dry Needling is also a "therapy" and thus, is not within the Oregon chiropractic scope of practice.

Trigger Point Dry Needling is also more than "superficial" and thus is also not covered by the minor surgery provisions. *old*

In the "Oregon Backtalk" Newsletter of the Oregon Board of Chiropractic Examiners Fall 2007 issue, page 14, under "Policy & Practice Questions" an Oregon DC asks: "As a massage therapist, I was involved with a clinic that did both chiropractic and biomedical acupuncture. The pain relief and functional benefits were very impressive. Since this is dry needling based on a biomedical model and not TCM, is there a possibility of getting this in our scope if practice in Oregon? Oregon DC."

"Answer: The Board has previously interpreted "dry needling" as "acupuncture" or breaking the skin for a therapeutic purpose, both of which are outside the scope of chiropractic practice in Oregon. The acupuncture association would likely be strongly opposed. Scope of practice issues like this would have to be addressed through legislation. This would have to be a priority for the professional association who represent chiropractic in the Legislature."

[In fact, on March 17th, 2003, the Board of Chiropractic Examiners found James Olshove, DC, guilty of performing dry needling on his patients. In their "CONCLUSIONS OF LAW" stated: *old*

"The Board finds that the above conduct is contrary to recognized standards within the practice of Chiropractic in Oregon. This is in violation of ORS 684.010 (2)(a)(b) and OAR 811-035-0015(4), OAR811-015-0005(1), ORS 684.035 and ORS 684.100(1)(g)(B)..." Signed by Dave McTeague, Executive Director. (See "Olshove" full document attached)

Also In SECTION I, Under VENIPUNCTURE page 9 it states:

"Chiropractors are allowed to draw blood (venipuncture) for diagnostic testing purposes. (10/24/96)

This diagnostic testing procedure is taught in approved chiropractic colleges all over the United States.

ORS 684.010(2)(b) defines "Chiropractic" as "The chiropractic diagnosis, treatment and prevention of body dysfunction; correction, maintenance of the structural and functional integrity of the neuromusculoskeletal system and the effects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic diagnostic procedures and the employment of all rational therapeutic measures as taught in approved chiropractic colleges."

ORS 684.025(2) states: "Nothing in this section or ORS 684.010 shall be interpreted as authorizing the administration

(deals w/ injecting substances) Item # 15
Page # 105 *incomplete??*

Further legal advice from the Oregon Attorney General confirms that "Chiropractic physicians are accordingly authorized by law to withdraw blood or other fluid samples for diagnostic purposes in connection with the practice of chiropractic." (9/9/70)"

Nothing about "dry needling" is "diagnostic". Everything about dry needling is "therapeutic".

As recently as last Summer, 2010, In "Oregon Backtalk", Newsletter of the Oregon Board of Chiropractic Examiners, page 6, under "ETSDP Device and Procedure Update" it states under:

"Dry needling. The OBCE has received pro and con testimony as to whether dry needling could be used by chiropractic physicians as a physio-therapy modality. Advocates say this is distinct from acupuncture since the needle application is to trigger points and not to traditional acupuncture points. At their March meeting, the OBCE heard from representatives of the Medical Board's Acupuncture Committee and the Acupuncture state association in strong opposition saying this is all acupuncture. The Oregon Physical Therapy Board has said dry needling is an advanced physical therapy technique, but would require additional training and certification. Currently no U.S. chiropractic college teaches dry needling as part of their core curriculum, though one or two sponsor a CE course. The OBCE's current position is this should be taught in chiropractic college core curriculum prior to being accepted in the Oregon scope of practice." (My emphasis)

I concur after contacting the following chiropractic schools in the US that none of them offer "dry needling" in their DC programs. I was told to either contact an acupuncture school or or take the 105 hour post-graduate DC acupuncture program offered in addition to the core-curriculum. Western States was the only school that indicated it had a post-graduate CE class on "Dry Needling" that would start this July of 2011, once the Oregon Board passed its inclusion at this final ruling meeting. Presently, WSU is crediting a weekend 12 hour CE Dry Needling course taught in Rockville, Maryland.

Cleveland Chiropractic College
 Life Chiropractic College (2 Campuses)
 Logan College of Chiropractic
 National University of Health Sciences Chiropractic
 New York Chiropractic College
 Northwestern Health Sciences University Chiropractic
 Palmer College of Chiropractic (3 Campuses)
 Parker College of Chiropractic
 Southern California University of Health Sciences Chiropractic
 Texas Chiropractic College
 University Of Bridgeport Chiropractic

And once more from Summer 2010 Backtalk: "The OBCE's current position is this should be taught in chiropractic college core curriculum prior to being accepted in the Oregon scope of practice."

"Dry needling" by the OBCE's own numerous interpretations, is **not** in the Oregon scope of practice. Furthermore, the Oregon Chiropractic Association has been absent from the last three OBCE meetings on "Dry Needling" and, as has been evidenced, the Oregon Board of Chiropractic Examiners in violation of its statutory duties and Mission Statement which reads:

"The mission of the Oregon Board of Chiropractic Examiners is to serve the public, regulate the practice of chiropractic, promote quality, and ensure competent, ethical health care. (Rev. 09/07)"

is also acting as advocate in collaboration with Western States University to move this scope of practice change duplicitously, through the rulemaking process to circumvent the appropriate legislative process to "promote quality, and ensure competent, ethical health care" with a 12 hour weekend class on acupuncture "dry needling".



E. Christo Gorawski L.Ac.

Phone inquiries to the following schools about "dry needling" failed to show that any had a dry needling course in their DC program. University of Western States (UWS) was the only school planning to start a CE "Dry Needling" class this coming July. The person contacted at University of Western States (UWS) was the Post-Graduate Director, Pat Brown, on May 5th, 2011.

A person at the Council on Chiropractic Education recommended that I go to each of the 15 chiropractic college websites and do a search for dry needling. The results of this search indicated that none of the 15 chiropractic colleges teaching dry needling as part of their core curriculum. However, University of Western States did list a 12-hour dry needling continuing education course offered by the Dry Needling Institute.

When calling the University of Western States, the director of post-graduate studies (Pat Brown) indicated that there is presently no "dry needling" course taught at the college but will begin a post-graduate CE course in July, 2011 after the Oregon Board of Chiropractic Examiners passes its Final Ruling on May 17th, 2011. Asked if it will be part of the DC "core curriculum", the UWS administrator said, "No".

Pat Brown (PB): If everything goes well there, we will offer it in mid summer.

Researcher (R): Which board are you talking about?

PB: The chiropractic board.

R: The chiropractic board of Oregon?

PB: Right.

R: What does that have to do with the dry needling?

PB: It's the scope of practice issue. And they have decided it is, but they're having one more public hearing just to make sure they have attended all of the constituents.

R: I see. So, what you are telling me is that you need the board to allow you to teach it?

PB: No. We can only teach what is in the scope of practice for the state in which we are accredited or we are authorized. In the scope of practice will include dry needling as soon as the board finalizes their process for incorporating dry needling as part of the chiropractic scope. So at the conclusion of this meeting it's expected that that will pass and that that will be part of the scope and then we will begin teaching it to our post graduate education component of the institution starting probably in July. I don't know how that helped you, or gets you any idea of where we stand. Is it going to be part of the DC curriculum? No, it will be available in the post graduate component.

R: I see. So it will be part of the CEU course I guess that they're still doing. They're doing a CEU course now, right?

PB: No!

R: It's not a CEU course?

PB: Not yet. Because its not authorized in Oregon as of now.

R: Its not authorized in Oregon?

PB: No.

Each of the following chiropractic schools contacted recommended I attend an acupuncture college in order to learn dry needling:

Southern California University of Health Sciences Chiropractic
Palmer College of Chiropractic (3 Campuses)
Parker College of Chiropractic
New York Chiropractic College
Texas Chiropractic College
Life Chiropractic College (2 Campuses)
National University of Health Sciences Chiropractic

Each of the following chiropractic schools contacted recommended I attend a 105 hour, DC post-graduate acupuncture program to practice dry needling:

Logan College of Chiropractic
Cleveland Chiropractic College
Northwestern Health Sciences University Chiropractic
University Of Bridgeport Chiropractic



UNIVERSITY OF WESTERN STATES

Integrating Health and Science
Office of the President

January 19, 2010 (2011)

Mr. Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners
3218 Pringle Road SE, Suite 150
Salem, OR 97302-6311

Re: Dry needling

Dear Mr. McTeague:

Please accept the following information in response to your inquiry dated December 30, 2009, regarding "dry needling".

1) *Is "Dry Needling" taught in your curriculum for the D.C. degree?*

As is the case with many specific named procedures, "dry needling" by name is not in the curriculum for the D.C. degree. However, essential elements of the therapy, such as sterile technique, skin preparation, and point location, are taught in the curriculum.

2) *Is acupuncture included in your curriculum for the D.C. degree?*

Acupuncture as defined by Oregon Administrative Rule 847-070-0005 (1) as "an Oriental health care practice" is not taught in the D.C. curriculum at Western States Chiropractic College.

3) *Does your institution have a position or opinion as to whether "dry needling" is considered a form of acupuncture OR a physical therapy modality?*

It is our understanding that "dry needling" is a Western technique for the treatment of myofascial pain and dysfunction, specifically for the stimulation of myofascial trigger points, as originally described by Drs. Travell and Simons. Therefore, this technique is not part of Traditional or Classical acupuncture and is not based on an Oriental health care

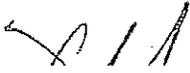
David McTeague
January 19, 2010
Page 2

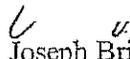
practice, theory or philosophy. Accordingly, it seems that those practicing "dry needling" would not be entitled to claim that such therapy constitutes the practice of acupuncture.

In the generic sense, this technique would be considered a "physical therapy" modality. However, we have no opinion as to whether "dry needling" lies within the legal scope or training of a licensed Physical Therapist.

Thank you for the opportunity to provide input.

Sincerely,




Joseph Brimhall, D.C.

✓

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2012, I filed the foregoing **PETITIONERS' OPENING BRIEF** with the State Court Administrator via electronic filing.

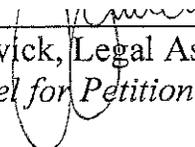
I further certify that on March 14, 2012, I served the foregoing **PETITIONERS' OPENING BRIEF** on the following-named counsel via electronic filing:

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