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KY BOARD OF
PHYSICAL THERAPY



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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OAG 13-010

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September 3, 2013

Subject: Whether the practice of "dry needling" is within the scope of the practice of physical therapy

Requested by: Preston P. Nunnelley, M. D., President
Kentucky Board of Medical Licensure

Written by: James M. Herrick
Assistant Attorney General

Syllabus: "Dry needling" is within the scope of the practice of physical therapy as defined by KRS 327.010(1).

Statutes construed: KRS 327.010(1), KRS 311.672(5), KRS 311.677(1)

OAG's cited: OAG 10-005, OAG 01-8

Opinion of the Attorney General

On March 18, 2010, the Kentucky Board of Physical Therapy issued an Opinion and Declaratory Ruling on the practice of "dry needling," also known by names such as intramuscular manual therapy ("IMT"), trigger point dry needling, and intramuscular needling. This procedure involves the insertion of a solid filament needle through the skin for therapeutic purposes, as opposed to using a hollow needle to deliver medication. The Board of Physical Therapy opined that dry needling was within the scope of the practice of physical therapy as defined by KRS 327.010(1), concluding that "[t]here is nothing in KRS Chapter 327 to prohibit a licensed physical therapist from performing dry needling so long as the physical therapist is competent in performing this intervention."



The Kentucky Board of Medical Licensure, through its president, Preston P. Nunnelley, M. D., has requested that this office review the issue. He reports that the Acupuncture Advisory Committee, established pursuant to KRS 311.673(2), "has taken the position that 'dry needling' is a practice uniquely limited to the practice of acupuncture." Dr. Nunnelley therefore poses the question as follows: *"Under current statutory authority, is the practice of 'dry needling' specifically limited to the practice of acupuncture or may that procedure also be legally performed by licensed physical therapists?"*

The Board of Medical Licensure has asked the Board of Physical Therapy to withdraw its opinion, but the latter Board has declined to do so. In correspondence addressed to Dr. Nunnelley on December 14, 2011, Janice Kuperstein, PT, Ph.D., then the chair of the Board of Physical Therapy, explained her board's position as follows:

Although dry needling is not currently considered an entry-level skill for physical therapists, it is an advanced skill that can be obtained post-graduation based on the strong foundational core of physical therapist education. This education includes anatomy, histology, physiology, biomechanics, kinesiology, neuroscience, pharmacology, pathology, clinical sciences, clinical applications, screening, and other clinical interventions. Dry needling competency is built upon that knowledge, just as new techniques in any field would be built upon existing knowledge. Furthermore, dry needling has been part of the physical therapist scope in many other countries for some time and has been recognized as an emerging intervention for physical therapists in the U.S. since the 1990s.

....

The goal of dry needling by physical therapists is to treat impairments including, but not limited to: scarring, myofascial pain, motor recruitment and muscle firing problems, with goals including to relieve pain, increase extensibility of scar tissue, or improve neuromuscular firing patterns. The use of a needle is not restricted to any particular profession. The Board agrees that under KRS 311.676, a physical therapist may not refer to dry needling as "acupuncture." Similarly, a treatment performed by an acupuncturist may not be referred to as "physical therapy" under KRS 327.020.

We necessarily begin with the respective statutes defining the practices of physical therapy and acupuncture.

Since the central question pertains to the scope of the definition of physical therapy, we quote in full the rather lengthy definition from KRS 327.010(1):

“Physical therapy” means the use of selected knowledge and skills in planning, organizing, and directing programs for the care of individuals whose ability to function is impaired or threatened by disease or injury, encompassing preventive measures, screening, tests in aid of diagnosis by a licensed doctor of medicine, osteopathy, dentistry, chiropractic, or podiatry and evaluation and invasive or noninvasive procedures with emphasis on the skeletal system, neuromuscular and cardiopulmonary function, as it relates to physical therapy. Physical therapy includes screening or evaluations performed to determine the degree of impairment of relevant aspects, such as but not limited to nerve and muscle function including subcutaneous bioelectrical potentials, motor development, functional capacity, and respiratory or circulatory efficiency. Physical therapy also includes physical therapy treatment performed upon referral by a licensed doctor of medicine, osteopathy, dentistry, chiropractic, or podiatry, including but not limited to exercises for increasing or restoring strength, endurance, coordination and range of motion, stimuli to facilitate motor activity and learning, instruction in activities of daily living, and the use of assistive devices and the application of physical agents to relieve pain or alter physiological status. The use of roentgen rays and radium for diagnostic or therapeutic purposes, the use of electricity for surgical purposes, including cauterization and colonic irrigations are not authorized under the term “physical therapy” as used in this chapter.

The corresponding definition of the “practice of acupuncture,” found in KRS 311.672(5), reads as follows:

“Practice of acupuncture” means the insertion of acupuncture needles, with or without accompanying electrical or thermal stimula-

tion, at certain acupuncture points or meridians on the surface of the human body for purposes of changing the flow of energy in the body and may include acupressure, cupping, moxibustion, or dermal friction. The practice of acupuncture shall not include laser acupuncture, osteopathic manipulative treatment, chiropractic adjustments, *physical therapy*, or surgery.

(Emphasis added.) Thus, physical therapy performed by a licensed physical therapist is not the practice of acupuncture.

KRS 311.676(2) requires a practitioner of acupuncture to display a certification issued by the Board of Medical Licensure. An applicant for certification must have completed coursework approved by, and passed an examination issued by, the Accreditation Commission for Acupuncture and Oriental Medicine. KRS 311.674(1). Furthermore, under KRS 311.676(3), "A person who is not certified under KRS 311.671 to 311.686 shall not use any terms, words, abbreviations, letters, or insignia that indicate or imply that he or she is engaged in the practice of acupuncture."¹ KRS 311.677(1), however, clarifies that:

The provisions of KRS 311.671 to 311.686 shall not apply to [p]ersons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes and does [sic] not prohibit them from rendering services consistent with the laws regulating their professional practices and the ethics of their professions[.]

From KRS 311.677(1) and 311.672(5), taken together, it is clear that a physical therapist practicing "dry needling" would only be engaging in the improper practice of acupuncture if the procedure did not fall within the scope of the practice of physical therapy.

In such technical matters, we must give some recognition to an opinion based on the Board of Physical Therapy's expertise in the field. "Great deference is always given to an administrative agency in the interpretation of a statute which is within its specific province." OAG 10-005 (quoting *Com. ex rel. Beshear*

¹ We are not confronted with a question related to KRS 311.676(3), since it is not suggested that physical therapists use any terminology or insignia to indicate or imply that they are practicing acupuncture when they perform "dry needling."

v. Kentucky Utilities Co., 648 S.W.2d 535, 537 (Ky. App. 1982)). This principle is known as "the doctrine of operative construction. Deference to an agency's interpretation is particularly appropriate when the agency is one of special competence and experience, and the agency's interpretation is longstanding." OAG 01-8. Although we have no indication that the Board has made an interpretation on the issue of "dry needling" prior to 2010, we do recognize the "special competence and experience" of the Board in this area.

In its 2010 opinion, the Board of Physical Therapy observed that "[d]ry needling is a treatment used to improve neuromuscular function," which is a goal authorized by KRS 327.010(1) and distinguishable from "purposes of changing the flow of energy in the body" through the use of "acupuncture points or meridians" as stated in the definition of acupuncture in KRS 311.672(5). The Board cautioned, however, that "a physical therapist must practice only those procedures that the physical therapist is competent to perform. The Board can discipline a physical therapist for 'engaging or permitting the performance of substandard patient care by himself or by persons working under their supervision due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established.' KRS 327.070(2)."

In comments sent to this office, the present Board Chair, Troy L. Grubb, PT, DPT, OCS, ATC, states:

Dry needling may be a tool or technique also used by acupuncturists, but its purpose and context is very different. For example, PTs do not use dry needling for smoking cessation, infertility treatment, allergies, depression, or weight control.

We are further advised that the American Academy of Orthopedic Manual Physical Therapists issued a position statement in 2009 to the effect that "dry needling is within the scope of physical therapist practice." The Academy stated as follows:

Dry needling is a neurophysiological evidence-based treatment technique that requires effective manual assessment of the neuromuscular system. Physical therapists are well trained to utilize dry needling in conjunction with manual physical therapy interven-

tions. Research supports that dry needling improves pain control, reduces muscle tension, normalizes biochemical and electrical dysfunction of motor endplates, and facilitates an accelerated return to active rehabilitation.²

Even if dry needling by physical therapists could not be distinguished from acupuncture, however, Chapter 311 would not prohibit its practice by physical therapists as long as it is within the scope of the practice for which they are licensed.

The Federation of State Boards of Physical Therapy reported in a resource paper issued March 8, 2010, that fifteen (15) state licensing boards, including Kentucky's, had interpreted their own statutes to allow dry needling therapy by physical therapists, while five state boards had found the opposite. The Federation stated that "[s]ome of the reasons for finding against including intramuscular manual therapy in the scope and practice of a PT include the procedure being invasive, the technique is within the scope of acupuncture, and the lack of inclusion in the US educational curricula." Rulings from other jurisdictions, naturally, are based upon the language of each state's statutes, which can vary considerably. One additional state, Hawaii, had a statute expressly prohibiting physical therapists from "penetration of the skin."³ A supplement to this report, containing information as recent as February 2012, indicates that "26 jurisdictions ... have definitively ruled dry needling is allowed by PTs" while "7 ... have ruled definitively that it is not."

We are aware that ours is not the first opinion of an Attorney General on this subject. In 2012, Mississippi's Attorney General concluded that a physical therapist performing the "dry needling" procedure "in accordance with the Physical Therapy Board's rules, regulations or interpretation of its enabling statutes relating to performing" the procedure did not violate Mississippi law governing the unlicensed practice of acupuncture. A key factor in Mississippi's analysis was the fact that the statutory definition of "physical therapy" included "[a]dministering treatment by ... mechanical devices," which could reasonably

² <http://aaompt.org/about/statements.cfm>

³ *Intramuscular Manual Therapy (Dry Needling) Resource Paper*, Federation of State Boards of Physical Therapy, March 8, 2010, p. 4.

be construed as including a needle. Furthermore, the Mississippi statute defining "acupuncture" included "the insertion and manipulation of needles to the body, and the use of Oriental medicine and other modalities and procedures at specific locations on the body, for the prevention or correction of any disease, illness, injury, pain or other condition." The Attorney General reasoned:

Although this definition could certainly include "dry needling" as that term is used in the practice of acupuncture, it is our opinion that this definition does not reserve to acupuncturists the exclusive right to use needles for therapeutic treatment.

State of Mississippi, Office of the Attorney General, Opinion No. 2012-00428, 2012 WL 6065221 (September 12, 2012).

Maryland's Attorney General has also addressed the question and similarly found that "dry needling" could be lawfully understood as within the scope of the use of "mechanical devices" by physical therapists under that state's statute. The Attorney General likewise found that the Maryland definition of "perform acupuncture," "to stimulate a certain point or point on or near the surface of the human body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of ailments or conditions of the body," did not reserve the use of such needles exclusively to acupuncturists:

State law recognizes that the scope of practice of health care professions may overlap and confers extensive discretion on licensing boards to define the scope of a profession within statutory limits.

Therefore, the Attorney General concluded, the Maryland Physical Therapy Board could lawfully define the practice of physical therapy as including the use of acupuncture needles.⁴ 95 Md. Op. Atty. Gen. 138, 2010 WL 3547902 (August 17, 2010).

⁴ Because Maryland's statutes imposed stringent standards for the use of acupuncture needles by physicians, the Attorney General also concluded that to include dry needling within the scope of its profession the Physical Therapy Board must promulgate administrative regulations imposing standards of practice at least equal to those governing physicians performing acupuncture.

Our information received from the Kentucky Board of Physical Therapy indicates that the use of dry needles by physical therapists has "goals including to relieve pain, increase extensibility of scar tissue, or improve neuromuscular firing patterns." In determining whether dry needling may lawfully be used to accomplish these goals, we note that the definition of "physical therapy" in KRS 327.010(1), quoted above, includes "invasive or noninvasive procedures." Physical therapists may perform evaluations to determine "impairment of ... nerve and muscle function including subcutaneous bioelectrical potentials," and may use "stimuli to facilitate motor activity" as well as "assistive devices and the application of physical agents to relieve pain or alter physiological status." We find that "assistive devices" and "physical agents" (like "mechanical devices" in Mississippi and Maryland) are categories which may include needles. This is particularly evident in light of the fact that physical therapists in Kentucky are permitted to use "invasive" procedures.

Given these specific and non-exclusive categories of treatments which physical therapists are authorized to perform, we agree with the Board of Physical Therapy that the definition in KRS 327.010(1) is broad enough to include "dry needling" by a physical therapist with adequate training and skill to perform the procedure competently. As in Mississippi and Maryland, the definition of the "practice of acupuncture" in KRS 311.672(5) does not reserve the use of solid filament needles to that profession alone. Therefore, the mere use of "dry needling" by a licensed physical therapist would not constitute the practice of acupuncture.

The Acupuncture Advisory Board and the Kentucky State Acupuncture Association, in comments addressed to this office, have expressed concern that physical therapists performing the procedure will not be adequately trained or skilled in comparison to acupuncturists. We trust, however, that the public health will be adequately protected by the Board of Physical Therapy's position that a physical therapist performing "dry needling" must have sufficient training and competence in this procedure. Nevertheless, as the Board indicated, this procedure is "not currently considered an entry-level skill for physical therapists, [but] an advanced skill that can be obtained post-graduation." In the interest of further public protection, we would therefore encourage the Board to use its regulatory authority under KRS 327.040 to establish fixed education and safety standards for the practice of "dry needling" by physical therapists in Kentucky.

Jack Conway
Attorney General

A handwritten signature in black ink, appearing to read "James M. Herrick". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James M. Herrick
Assistant Attorney General