



Dry Needling

This article is based on a presentation at the 2014 FSBPT annual meeting by Leslie Adrian, PT, DPT, FSBPT Director of Professional Standards.

The legal authority for physical therapists to perform Dry Needling (DN) is of concern in many states and the status changes almost daily. The authority is granted a number of ways: states have dry needling in legislation, rules, regulations and policies. In some of the states, it is very clear if the legal authority does or doesn't exist; in others, PTs must proceed with caution. There are states where dry needling is not prohibited however that is different from specifically "allowed;" there are states where it is absolutely prohibited; and some states that have been able to remain silent on the issue.

One useful perspective is that the dry needling procedure is acupuncture when done by an acupuncturist; when done by a PT, it is physical therapy; and is chiropractic when done by a chiropractor. Each health profession comes from a different scope of practice, philosophy and education.

Practice acts were never written to have a laundry list of what can and cannot be provided by a PT. If legislation continues to draw up such lists, it will become more difficult to interpret what a PT can provide if it is not on such a list.

National Center for Acupuncture Safety (NCAS is a group of acupuncturists)

NCAS sent letters to FSBPT, APTA, FDA, online retailers of acupuncture equipment and boards of PT, Chiropractic, and Naturopathy (11/13/13). It questioned the legality of PTs use of acupuncture needles. It also challenged board rulings allowing PTs to use needles for DN.

NCAS argued that state boards' determination that TPDN (Trigger Point Dry Needling) is within the PT scope of practice are inconsistent with the requirements for acupuncture needles under the FDC Act, 21 U.S.C. §301 et seq., and U.S. FDA implementing regulations.

A legal analysis performed by FSBPT found that the allegation in the NCAS letter was without merit. APTA's independent legal analysis also said it was without merit. States, not FDA,

determine who is a qualified practitioner to use acupuncture needles.

Other developments

Kentucky Attorney General (AG) Opinion 9/3/2013

An opinion requested by Kentucky Board of Medical Licensure stated that DN is within the scope of practice of physical therapy with proper training.

State of Washington

The Washington Eastern Medicine Association sent a cease and desist letter to Kinetacore (a company in the Seattle area) to stop a DN continuing education (CE) course. South Sound Acupuncture Association filed a lawsuit against a CE instructor and PTs who attended the CE course arguing that participants who are not licensed to practice acupuncture or medicine pose a significant threat to public health. The lawsuit alleged that the CE company was illegally practicing acupuncture in Washington.

The Superior Court for King County issued a ruling on October 10, 2014 in which they determined PTs were not legally allowed to perform dry needling in the State of Washington.

The PT Board has no declared position on PTs and dry needling.

Wisconsin District Court Ruling 2/2014

In 2013, the Acupuncture Center, Inc. (Midwest College of Oriental Medicine) vs WI Physical Therapy Examining Board lawsuit demanded that the PT board publish a rule to prohibit dry needling by PTs. The case was found to have no validity and was dismissed. Although they threatened to do so, the representatives in this matter do not have the authority to request an AG opinion in Wisconsin.

Louisiana

The Louisiana State Board of Medical Examiners requested an AG opinion 3/6/2014. The PT Board opposed this request on 5/15/2014 saying:

- Use of mechanical devices in PT Rx is lawful.
- The PT practice act encompasses invasive treatments.
- Dry needling done by PT is not an unlawful practice of medicine.
- Healthcare professions share tools and treatment.
- The dry needling rule was promulgated within the confines of the PT practice act in a transparent process.

There is no ruling yet from the AG.

Illinois

In an informal opinion, the Illinois Department of Financial and Professional Regulation on 4/25/2014 said that dry needling was NOT in the PT scope of practice. The rationale was because all procedures listed in the physical therapy practice act are non-invasive.

Unlike the physical therapy practice act, the acupuncture practice act clearly defines the standards of practice to perform needle procedures.

There was a concern expressed that no standards of practice are in place for PTs to perform dry needling.

Another opinion stated that the AG is the only office that “may render official opinions regarding statutory interpretation.” It was reported that the person making the informal opinion had no experience in healthcare or licensure and didn’t seek any consultation with anyone who had experience in this area. There is an ongoing debate on this topic.

Tennessee

The Tennessee AG opinion on 6/9/2014 was that dry needling is not in physical therapy’s scope of practice. The opinion stated that “nothing in subdivision...clearly indicates legislative intent to include within the practice of physical therapy the invasive use of needles for therapeutic purposes.” Further, “dry needling’s obvious similarity to acupuncture cannot be ignored, and physical therapists may not perform acupuncture, which is a branch of medicine.”

The Tennessee Physical Therapy Association plans to introduce legislation in January 2015 to allow PTs to perform dry needling.

Maryland

Legislators have received many letters from patients and constituents who had been helped by dry needling and want to continue with their own PT practitioners. Acupuncturists are still objecting to the PT use of dry needling.

Arizona

SB 1154 was signed by the governor on 4/24/14 to include a dry needling definition and a ground for disciplinary action, which is failing to adhere to the professional standards established by the board with regard to dry needling.

The board must write rules to explain educational requirements and the professional standards by 7/1/2015.

Additionally, a physical therapist who was performing dry needling as a therapeutic modality before January 1, 2014, may continue to perform DN until the board adopts standards of care and training and education qualifications. The PT is then is required to meet the standards and

qualifications adopted by the board.

Delaware

Delaware updated many of its physical therapy provisions by passing HB 359. It specifically added dry needling to the physical therapy practice act with definitions. Also included in HB359 was the emergency administration of asthma medications, anaphylaxes medications, and glucagon; it may require advanced training as determined by the physical therapy board.

In addition, the board structure and responsibilities were updated and modernized. The board can issue advisory opinions, and there are now additional options for sanctions such as letter or reprimand, suspension, monetary penalties, etc. The following language added to the Delaware practice act in this bill will greatly increase the Board's authority to make determinations on future practice of physical therapists without requiring additional statutory or regulatory authority.

“Nothing in this chapter shall be construed to limit the practice of physical therapy by PTs as is currently being practiced or determined by the Board so long as such practice does not include surgery and the medical diagnosis of disease. Advanced services may require advanced training, as determined by the Board's rules and regulations, to assure the licensee meets the accepted standard of care.”

This powerful language will aid Delaware in avoiding the creation of a laundry list of procedures in the practice act. This language gives some flexibility to the Board to consider issues regarding future skills and procedures we cannot foresee.

Finally, HB 359 added licensure exemptions per the *FSBPT Model Practice Act for Physical Therapy (MPA)*.

Utah

Utah added dry needling specifically into its practice act on 4/1/2014 even though a 2013 AG opinion said dry needling was NOT in the PT scope of practice. However, PTs must meet additional education and training requirements and must be licensed two years or more before they can do dry needling.



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