



State of North Carolina

Department of Justice

P.O. BOX 629

RALEIGH, NC 27602-0629

ROY COOPER
ATTORNEY GENERAL

REPLY TO:
Mabel Y. Bullock
Special Deputy Attorney General
Health & Public Assistance
Tel: (919) 716-6864
Fax: (919) 716-6758
mbullock@ncdoj.gov

December 1, 2011

E. Ann Christian, Counsel
North Carolina Acupuncture Licensing Board
Post Office Box 10686
Raleigh, North Carolina 27605

RE: Advisory Opinion: Dry Needling

Dear Ms. Christian:

On behalf of the North Carolina Acupuncture Licensing Board, you have asked for an opinion concerning a Position Statement recently issued by the North Carolina Board of Physical Therapy Examiners (hereinafter "NCBPTE") in which it reversed its earlier position that dry needling, otherwise known as "intramuscular manual therapy," is not within the scope of practice of a physical therapist. Dry needling refers to the therapeutic effect of applying needle stimulation directly to trigger points without the use of injection. Dry needling utilizes a solid needle, such as an acupuncture needle. The Acupuncture Board's position is that this procedure is acupuncture because it utilizes the same medical tools, techniques, locations, and has the same purposes as acupuncture. You stated that the Acupuncture Board believes that the authority to insert needles is reserved, under Article 30 of Chapter 90 of the General Statutes, the North Carolina Acupuncture Practice Act, to licensed acupuncturists and certain health care professionals specifically exempted from its licensing requirements.

The authority to use acupuncture needles for therapeutic purposes is not necessarily reserved exclusively to licensed acupuncturists or those specifically exempted from the licensing requirement for 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. In our opinion, the Board of Physical Therapy Examiners may determine that dry needling is within the scope of practice of physical therapy if it conducts rule-making under the Administrative Procedure Act and adopts rules that relate dry needling to the statutory definition of practice of physical therapy. Any such process should consider

standards for education and training that presumably would be at least as strict as those set by the Legislature for physicians who use acupuncture needles for similar therapeutic purposes.

N.C. Gen. Stat. 90-451(1) defines acupuncture as "[a] form of health care developed from traditional and modern Chinese medical concepts that employ acupuncture diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease." The practice of acupuncture is defined in N.C. Gen. Stat.. 90-451(3) as "[t]he insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon acupuncture diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include massage, mechanical, thermal, electrical, and electromagnetic treatment and the recommendation of herbs, dietary guidelines, and therapeutic exercise."

Dry needling can utilize the same needles as acupuncture, but the technique is not based upon Chinese medical concepts. The approach of dry needling is based on Western anatomical and neurophysiological principles. Dry needling is, therefore, distinct from acupuncture. The question then becomes whether it is within the scope of practice of physical therapists to puncture the human body with a needle. N.C. Gen. Stat. 90-270.24(4) defines physical therapy as:

the evaluation or treatment of any person by the use of physical, chemical, or other properties of heat, light, water, electricity, sound, massage, or therapeutic exercise, or other rehabilitative procedures, with or without assistive devices, for the purposes of preventing, correcting, or alleviating a physical or mental disability. Physical therapy includes the performance of specialized tests of neuromuscular function, administration of specialized therapeutic procedures, interpretation and implementation of referrals from licensed medical doctors or dentists, and establishment and modification of physical therapy programs for patients. Evaluation and treatment of patients may involve physical measures, methods, or procedures as are found commensurate with physical therapy education and training and generally or specifically authorized by regulations of the Board. Physical therapy education and training shall include study of the skeletal manifestations of systemic disease. Physical therapy does not include the application of roentgen rays or radioactive materials, surgery, manipulation of the spine unless prescribed by a physician licensed to practice medicine in North Carolina, or medical diagnosis of disease.

The definition neither specifically allows nor prohibits the puncturing of the body. The NCBPTE notes, however, that the insertion of needles by physical therapists has long been accepted practice since physical therapists, with the concurrence of the NC Medical Board, insert needles in patients while conducting EMG studies. In 1995, The Board of Medical Examiners of

the State of North Carolina (now North Carolina Medical Board) issued a letter in which the Medical Board stated that "In response to your request of August 30, 1994, the Board after extensive legal and medical inquiry has determined that physical therapists can perform EMG and nerve conduction studies and may make physical therapy interpretations but not medical diagnosis based on the results. It is within the scope of the licensure of physical therapists."

Thus, insertion of needles by physical therapists does not appear to be prohibited in all circumstances. In its Position Statement of September 23, 2010, the NCBPTE stated: "In 2002, the Board was asked whether dry needling was within the scope of practice for physical therapists. At that time there was very little research published about the use of dry needling or evidence that supported the practice of dry needling by physical therapists. However, since the definition of physical therapy in the North Carolina Physical Therapy Practice Act and the Board's rules contemplate modifications to the scope of practice of physical therapy as practitioners become proficient in new patient treatment techniques, it is appropriate for the Board to periodically revisit its Position Statements to determine if scope of practice developments warrant revisions to the Positions Statements." Additionally, the Board found that "there have been significant developments in the use of intramuscular manual therapy in physical therapy practice. According to the 'Intramuscular Manual Therapy (Dry Needling) Resource Paper' published by the Federation of State Boards of Physical Therapy (FSBPT) on March 8, 2010, 'There are numerous scientific studies to support the use of dry needling for a variety of conditions' and many of the studies have been conducted by physical therapists. Additionally, in 2002, there were very few states that allowed dry needling; however, as the scope of practice of physical therapy has evolved, at least 15 other states (including neighboring jurisdictions of Virginia, South Carolina, Georgia, Maryland, Kentucky, and Washington, DC) have issued opinions that intramuscular manual therapy is within the scope of practice of physical therapists."

Disputes over the scope of practice of licensed occupations have always existed. The scopes of practice of regulated health care professions are set forth in the various sections of the North Carolina Statutes. Many of these licensing statutes presume there will be some overlap among the various professions and include a variation of the phrase "[n]othing in this Article shall be construed to prohibit any act in the lawful practice of a profession by a person duly licensed in this State." See, e.g., N.C. Gen. Stat. § 90-270.34.

In our opinion, it is within the power of the NCBPTE to determine whether dry needling is within the scope of practice of physical therapists. We note, however, that N.C. Gen. Stat. 90-270.28 empowers and requires the NCBPTE to make rules for the purpose of enabling the Board to safeguard the public health, safety and welfare against unqualified or incompetent practitioners. Since dry needling does not appear to be within the curriculum of most schools of physical therapy at this time, we believe that the NCBPTE must adopt administrative rules and standards so that dry needling is conducted only by those physical therapists who have demonstrated a specific standard of knowledge, skill, ability and competence. A "position

statement" does not have the force of law. It does not provide for adequate input by the public or by other licensed practitioners and it does not provide for adequate protection of the public.

Sincerely,

Gayl M. Manthei
Special Deputy Attorney General

Mabel Y. Bullock
Special Deputy Attorney General

This is an Advisory Letter, it has not been reviewed or approved pursuant to the policy for issuing an Attorney General Opinion.