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March 8, 2013

MEMORANDUM

TO: Committee on Legal Services

FROM: Chuck Brackney, Office of Legislative Legal Services

RE: Rules of the State Physical Therapy Board, Department of Regulatory Agencies, concerning physical therapists, 4 CCR 732-1 (LLS Docket No. 120310; SOS Tracking No. 2012-00318).

Summary of Problem Identified and Recommendations

The practice of dry needling authorized by Rule 211 of the State Physical Therapy Board is within the scope of practice of physical therapists as set forth in the "Physical Therapy Practice Act." Section 12-41-103 (6), C.R.S., authorizes the use of physical agents and devices for preventive and therapeutic purposes. **We therefore recommend that the committee take no action regarding Rule 211.**¹

Analysis

In October 2007, the Colorado Physical Therapy Rules and Regulations

¹ Under section 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under section 24-4-103 (8) (c) (I), C.R.S., the rules discussed in this memo will expire on May 15, 2013, unless the General Assembly acts by bill to postpone such expiration.

were amended to add Rule 11. At that time, authority to adopt this rule rested with the Director of the Division of Registrations ("Director") in the Department of Regulatory Agencies.

Rule 11 established practice guidelines for physical therapists to include use of a treatment intervention known as intramuscular stimulation, commonly referred to as "dry needling" or "trigger point dry needling." This is a treatment procedure in which solid filoform needles, as used in acupuncture, are inserted into the skin and muscle at certain trigger points in order to relieve pain by stimulating these points. The rule established minimum standards regarding education, training, and patient consent to govern the practice of dry needling by Colorado physical therapists.

In 2011, the General Assembly enacted S.B. 11-169, which transferred rule-making authority regarding the practice of physical therapy from the Director to a newly-created State Board of Physical Therapy ("Board"). The Board adopted the previous version of the dry needling rule as Rule 211, with minor changes. The current version of Rule 211 is attached as **Addendum A**.

The Board is given broad rulemaking power in section 12-41-103.6, C.R.S., which reads as follows:

12-41-103.6. Powers and duties of board - reports - publications - rules - repeal. (2) In addition to any other powers and duties given the board by this article, the board has the following powers and duties:

(b) To adopt **all reasonable and necessary rules for the administration and enforcement of this article**, including rules regarding:

(I) The supervision of unlicensed persons by physical therapists, taking into account the education and training of the unlicensed individuals; and

(II) Physical therapy of animals, including, without limitation, educational and clinical requirements for the performance of physical therapy of animals and the procedure for handling complaints to the department of regulatory agencies regarding physical therapy of animals. In adopting such rules, the board shall consult with the state board of veterinary medicine established by section 12-64-105. **(emphasis added)**

The Board is granted authority to adopt "all reasonable and necessary rules" regarding the administration of the "Physical Therapy Practice Act" ("Act").

Statutory authority for a rule that allows physical therapists to engage in dry needling can be found in the Act in section 12-41-103 (6), C.R.S., which

establishes the definition of "physical therapy" for purposes of the Act:

12-41-103. Definitions. As used in this article, unless the context otherwise requires:

(6) (a) (I) "Physical therapy" means the examination, treatment, or instruction of patients and clients to detect, assess, prevent, correct, alleviate, or limit physical disability, movement dysfunction, bodily malfunction, or pain from injury, disease, and other bodily conditions.

(II) For purposes of this article "physical therapy" includes:

(C) The use of physical agents, measures, activities, and devices for preventive and therapeutic purposes, subject to the requirements of section 12-41-113; **(emphasis added)**

The statutory definition of the term "physical therapy" includes the use of physical agents, measures, and devices for therapeutic purposes. The Act goes on to define "physical agents" and "physical measures, activities, and devices" at section 12-41-103 (6) (b), C.R.S.:

12-41-103. Definitions. As used in this article, unless the context otherwise requires:

(6)(b) For the purposes of subparagraph (II) of paragraph (a) of this subsection (6):

(I) **"Physical agents" includes, but is not limited to,** heat, cold, water, air, sound, light, compression, electricity, and electromagnetic energy.

(II) (A) **"Physical measures, activities, and devices" includes, but is not limited to,** resistive, active, and passive exercise, with or without devices; joint mobilization; **mechanical stimulation;** biofeedback; postural drainage; traction; positioning; massage; splinting; training in locomotion; other functional activities, with or without assistive devices; and correction of posture, body mechanics, and gait. **(emphasis added)**

The definition of "physical measures, activities, and devices" includes mechanical stimulation, which can include the kind of stimulation of muscles that the technique of dry needling employs. The use of needles to palpate trigger points can be reasonably seen as the use of a "device" to accomplish "mechanical stimulation".

The definition of "physical therapy" in section 12-41-103 (6), C.R.S., is broad, expansive and non-specific, and includes a wide range of treatment options. Besides the use of "physical agents, measures, activities, and devices", physical therapists may also engage in planning and evaluating treatment and test results, the administration of topical medicines, and general wound care, which includes the "management of skin lesions, surgical incisions, open wounds...".

Further evidence of this can be seen in the definition of "physical agents" which includes the use of electricity and electromagnetic energy. In the practice of physical therapy, this energy is commonly delivered through the use of needles placed at certain points under the skin in the muscle, a practice similar in many respects to dry needling.

Finally, although dry needling is not specifically mentioned in this list, the statute expressly maintains that the list is not inclusive. The use of the phrase "includes, but is not limited to" allows for the use of other techniques by physical therapists to accomplish goals usually associated with physical therapy, such as pain relief. It is reasonable to conclude that the practice of dry needling to stimulate muscles to relieve pain can be viewed as the use of a physical measure, activity, or device contemplated by section 12-41-103 (6)(b), C.R.S. The complete text of section 12-41-103 (6), C.R.S., is attached as **Addendum B**.

There is some question as to whether dry needling should be considered acupuncture under Colorado law. If it were to be considered strictly as acupuncture, then the director would not have the authority to adopt Rule 211. The law dealing with the licensing and practice of acupuncturists in section 12-29.5-102 (1), C.R.S., defines the "acupuncture" as follows:

12-29.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Acupuncture" means a system of health care based upon traditional oriental medical concepts that employs **oriental methods of diagnosis, treatment, and adjunctive therapies** for the promotion, maintenance, and restoration of health and the prevention of disease.

(3.5) "Practice of acupuncture" means the insertion and removal of acupuncture needles, the application of heat therapies to specific areas of the human body, and traditional oriental adjunctive therapies. Traditional oriental adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, the recommendation of oriental therapeutic exercises, and, subject to federal law, the recommendation of herbs and dietary guidelines. The **"practice of acupuncture" shall be defined by traditional oriental medical concepts and shall not include the utilization of western medical diagnostic tests and procedures**, such as magnetic resonance imaging, radiographs (X-rays), computerized tomography scans, and ultrasound. "Practice of acupuncture" does not mean:

- (a) Osteopathic medicine and osteopathic manipulative treatment;
- (b) "Chiropractic" or "chiropractic adjustment" as defined in section 12-33-102 or therapies allowed as part of the practice of chiropractic or chiropractic adjustment;
- (c) **Physical therapy as defined in section 12-41-103 or**

**therapies allowed as part of the practice of physical therapy.
(emphasis added)**

Section 12-29.5-102 (1), C.R.S., establishes that "acupuncture" means a system of health care based on "traditional oriental medical concepts that employs oriental methods of diagnosis, treatment, and adjunctive therapies" for the promotion and restoration of health. By contrast, Rule 211 A. specifies that dry needling "is based on Western medical concepts; requires an examination and diagnosis; and treats specific anatomic entities selected according to physical signs".

The use of dry needling is an extension of recognized physical therapy practice by licensed medical professionals. It is yet another method that can be used to target and relieve specific tight nodules in a patient's muscles. Compare this with the practice of acupuncture, which focuses using needles to correct imbalances in the flow of *qi* through channels in the body known as meridians. Also, the use of dry needling is limited to pain relief, while traditional acupuncture can be used to treat a wide range of illnesses and conditions, and can include treatments for weight loss, lowering of blood pressure, anxiety, insomnia, allergies, asthma, skin disorders, and smoking cessation in addition to those to help pain.

Finally, section 12-29.5-102 (3.5)(c), C.R.S., specifically says that practices that are included in the definition of physical therapy do not constitute the "practice of acupuncture." If dry needling is authorized under the terms of the "Physical Therapy Practice Act," then it is, by definition, not the practice of acupuncture for purposes of Colorado law as defined in section 12-29.5-102, C.R.S.

The scope of practice for physical therapy in Colorado is broadly defined in the Act in section 12-41-103 (6), C.R.S. Modern physical therapy practice includes the use of an expanding variety of physical agents, activities, and devices for preventive and therapeutic purposes. The definition of physical therapy in the Act contemplates the use of these agents and devices and the techniques that employ them. This includes the practice of dry needling by physical therapists.

By adopting Rule 211, the Board has acted within its authority to regulate this activity for the purpose of establishing minimum requirements for training, competency, and patient consent where no such standards existed before.

Because the Board has the authority to adopt rules regarding the practice of dry needling by physical therapists based on the definition of "physical agents" and "physical measures, activities, and devices" found in section 12-41-103 (6), C.R.S., Rule 211 of the rules of the Director concerning physical therapists should be extended.

Addendum A

700 Regulatory Agencies

732 Division of Professions and Occupations - State Physical Therapy Board

4 CCR 732-1 PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

211. Requirements for Physical Therapists to Perform Dry Needling

- A. Dry needling (also known as Trigger Point Dry Needling) is a physical intervention that uses a filiform needle to stimulate trigger points, diagnose and treat neuromuscular pain and functional movement deficits; is based upon Western medical concepts; requires an examination and diagnosis, and treats specific anatomic entities selected according to physical signs. Dry needling does not include the stimulation of auricular or distal points.
- B. Dry needling as defined pursuant to this rule is within the scope of practice of physical therapy.
- C. A Physical Therapist must have the knowledge, skill, ability, and documented competency to perform an act that is within the Physical Therapist's scope of practice. Except as part of a course of study on dry needling pursuant to paragraph D.2 of this Rule, a Physical Therapist shall not perform dry needling unless competent to do so.
- D. To be deemed competent to perform dry needling, a Physical Therapist must:
 - 1. have practiced for at least two years as a licensed Physical Therapist; and
 - 2. have successfully completed a dry needling course of study that consists of a minimum of 46 hours of in-person (i.e. not online) dry needling training.
- E. A provider of a dry needling course of study must meet the educational and clinical prerequisites as defined in this rule, paragraph D above and demonstrate a minimum of two years of dry needling practice techniques. The provider is not required to be a Physical Therapist.
- F. Physical Therapists performing dry needling in their practice must have written informed consent for each patient where this technique is used. The patient must sign and receive a copy of the informed consent form. The consent form must, at a minimum, clearly state the following information:
 - 1. Risks and benefits of dry needling; and
 - 2. Physical Therapist's level of education and training in dry needling; and
 - 3. The Physical Therapist will not stimulate any distal or auricular points during dry needling.
- G. When dry needling is performed, it must be clearly documented in the procedure notes and must indicate how the patient tolerated the technique, as well as the outcome after the procedure.
- H. Dry needling shall not be delegated and must be directly performed by a qualified, licensed Physical Therapist.

- I. Dry needling must be performed in a manner consistent with generally accepted standards of practice, including clean needle techniques, and the guidelines and recommendations of the Centers for Disease Control and Prevention ("CDC").
- J. The Physical Therapist shall supply written documentation, upon request by the Board, which substantiates appropriate training as required by this Rule. Failure to provide written documentation, upon request, is a violation of this Rule, and is prima facie evidence that the Physical Therapist is not competent and not permitted to perform dry needling

Addendum B

12-41-103. Definitions. As used in this article, unless the context otherwise requires:

(6) (a) (I) "Physical therapy" means the examination, treatment, or instruction of patients and clients to detect, assess, prevent, correct, alleviate, or limit physical disability, movement dysfunction, bodily malfunction, or pain from injury, disease, and other bodily conditions.

(II) For purposes of this article "physical therapy" includes:

(A) The administration, evaluation, and interpretation of tests and measurements of bodily functions and structures;

(B) The planning, administration, evaluation, and modification of treatment and instruction;

(C) The use of physical agents, measures, activities, and devices for preventive and therapeutic purposes, subject to the requirements of section 12-41-113;

(D) The administration of topical and aerosol medications consistent with the scope of physical therapy practice subject to the requirements of section 12-41-113;

(E) The provision of consultative, educational, and other advisory services for the purpose of reducing the incidence and severity of physical disability, movement dysfunction, bodily malfunction, and pain; and

(F) General wound care, including the assessment and management of skin lesions, surgical incisions, open wounds, and areas of potential skin breakdown in order to maintain or restore the integumentary system.

(b) For the purposes of subparagraph (II) of paragraph (a) of this subsection (6):

(I) "Physical agents" includes, but is not limited to, heat, cold, water, air, sound, light, compression, electricity, and electromagnetic energy.

(II) (A) "Physical measures, activities, and devices" includes, but is not limited to, resistive, active, and passive exercise, with or without devices; joint mobilization; mechanical stimulation; biofeedback; postural drainage; traction; positioning; massage; splinting; training in locomotion; other functional activities, with or without assistive devices; and correction of posture, body mechanics, and gait.

(B) "Biofeedback", as used in this subparagraph (II), means the use of monitoring instruments by a physical therapist to detect and amplify internal physiological processes for the purpose of neuromuscular rehabilitation.

(III) "Tests and measurements" includes, but is not limited to, tests of muscle strength, force, endurance, and tone; reflexes and automatic reactions; movement skill and accuracy; joint motion, mobility, and stability; sensation and perception; peripheral nerve integrity; locomotor skill, stability, and

endurance; activities of daily living; cardiac, pulmonary, and vascular functions; fit, function, and comfort of prosthetic, orthotic, and other assistive devices; posture and body mechanics; limb length, circumference, and volume; thoracic excursion and breathing patterns; vital signs; nature and locus of pain and conditions under which pain varies; photosensitivity; and physical home and work environments.