

Response to Board of Physical Therapy Dry Needling Rules

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The sole purpose of a regulatory board is to protect the health, safety and welfare of the citizens of Montana. It is through the legislature that statute is established with the intent of protecting the public.

The proposed NEW RULE I DRY NEEDLING is a clear expansion of the scope of practice of Physical Therapists and therefore exceeds the Board of Physical Therapist's (BOPTe) rulemaking authority. In order to protect the safety of the public, this change in the scope of practice should be determined by the legislature, not by rulemaking within the BOPTe.

Trigger Point dry needling was brought to the attention of the BOME in 2009 when the Board of Physical Therapy requested an opinion from the BOME about whether Trigger Point Dry Needling was within the scope of practice of Physical Therapy. The Board of Medical Examiners had the following discussions and actions:

- A) There was a discussion about Trigger Point Dry Needling by the Board of Medical Examiners and as a result of that discussion, a letter was sent on November 16, 2009 to the BOPTe with this statement:

"The Board members had a good discussion on this subject and, after their review of current laws and rules, agreed that dry needling was the practice of acupuncture. It is the opinion of the Board that physical therapists cannot perform dry needling as part of their practice of physical therapy.

Physical therapists interested in performing dry needling are encouraged to review the laws and regulations that set forth the requirements to become licensed as an acupuncturist". (Bold added for emphasis)

- B) At a later meeting of the Board of Medical Examiners on July 30, 2010 the BOME issued a Cease and Desist Order as follows:

"The Board of Medical Examiners recently reviewed materials sent to it regarding your engaging in the unlicensed practice of medicine in Montana at the Ritz Salon in Billings, Montana by providing laser procedures and skin needling. You are not licensed as a physician in Montana and, thus, cannot advertise procedures that fall within the definition of surgery. ARM 24.156.501(11).

The Administrative Rules of Montana (ARM) 24.156.501(11) define surgery to mean "any procedure in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation." The board may enjoin an individual for practicing without a license and refer the matter for criminal prosecution. 37-1-317, MCA" (Bold added for emphasis)

Sections of the NEW Rules Notice are given below, and comments are stated after each section.

NEW RULE DRY NEEDLING I

NEW RULE I DRY NEEDLING (1) Dry needling is a manual therapy technique that uses a filiform needle as a mechanical device to treat conditions within the scope of physical therapy practice.

Response:

Manual therapy is defined as follows: According to the American Academy of Orthopaedic Manual Physical Therapists (AAOMPT) Description of Advanced Specialty Practice (DASP), orthopaedic manual physical therapy (OMPT) is defined as:

"OMPT is any "hands-on" treatment provided by the physical therapist. Treatment may include moving joints in specific directions and at different speeds to regain movement (joint mobilization and manipulation), muscle stretching, passive movements of the affected body part, or having the patient move the body part against the therapist's resistance to improve muscle activation and timing. Selected specific soft tissue techniques may also be used to improve the mobility and function of tissue and muscles."

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Billing code 97140: Manual therapy techniques (e.g., mobilization/ manipulation, manual lymphatic drainage, manual traction) 1 or more regions each 15 minutes

The definition needs to accurately describe "dry needling" as an invasive procedure. Calling "dry needling" a "manual therapy" is inaccurate and deceptive. It is irresponsible and without merit to authorize physical therapists to perform invasive procedures of any kind, including the penetration of skin by the insertion of needles into skin, tissue and muscle. "Manual therapy is NOT insertion of needles! This is an expansion of scope that belongs in the legislature.

Note: What Physical Therapists call a filiform needle is an acupuncture needle that has been renamed. They are supplied by the same companies and have the same mechanical dimensions and materials as acupuncture needles.

Section (1)(b) Dry needling does not include the stimulation of auricular or distal acupuncture point or acupuncture meridians.

Response:

Clarification of the term 'distal acupuncture points' is required. How can physical therapists avoid stimulation of auricular or distal acupuncture points when they are untrained in acupuncture?

In acupuncture, all points on the limbs are considered distal, and all points not at site of injury or pain are also considered distal points.

A German study by Peter T. Dorsher, MD and Johannes Fleckenstein, MD states that 93% to 96% of common trigger points are anatomically corresponding to classical acupoints.

Also, "ashi" points are defined as points of pain in acupuncture. Therefore, all trigger points are actually acupuncture points which means dry needling is the practice of acupuncture.

Section (2) Licensed physical therapists performing dry needling must be able to demonstrate they have received training in dry needling that meets the standards of continuing education as set forth by the board's continuing education rules.

(a) Dry needling courses must include, but not be limited to, training in indications, contraindications, potential risks, proper hygiene, proper use and disposal of needles, and appropriate selection of clients.

Response:

There are no established standards for a class on dry needling. How is the board going to establish minimum standards and hours required? There are no established criteria for instructor training. How is the board going to assure competent instruction? This section does not state who the testing entities are for written and practical examinations.

(b) Initial training in dry needling must include hands-on training, written examination, and practical examination.

Response:

There are no established criteria nor is there a standard independent minimum competency exam established. How is the board going to assure credible instruction and competency? After a weekend

course, physical therapists return to independent practice and perform dry needling without any supervision. This is a potentially dangerous precedent.

Section (3) A licensed physical therapist must perform dry needling in a manner consistent with generally acceptable standards of practice, including clean needling techniques, relevant standards of the Centers for Disease Control and Prevention, and Occupational Safety and Health Administration blood borne pathogen standards as per 29 CFR 1910.1030, et.seq.

Response:

Who determines the standard of practice for Trigger Point Dry Needling, and what authority oversees this determination? Section (3) should be amended to include an additional requirement that physical therapists pass the CCAOM Clean Needle Exam prior to engaging in the practice of dry needling.

Section (4) Dry needling may only be performed by a licensed physical therapist and may not be delegated to a physical therapist assistant.

Response:

This section should be amended to change the word “may” for “shall”. Dry needling *shall* only be performed by a licensed physical therapist and *shall* not be delegated to a physical therapist assistant. What will the consequences be if this should occur?

The Board of Physical Therapy gives the following reasons for proposing this rule change:

Reason: The board is proposing to adopt this new rule to provide guidance on the practice of dry needling within the scope of physical therapy. The scope of practice of physical therapists is broad and includes the use of mechanical devices, such as filiform needles, to treat physical disability, bodily malfunction, pain, and injury.....

Response:

The insertion of needles is limited to physicians who have an unrestricted license and to acupuncturists within their scope of practice as determined by the legislature. This is an expansion of scope that requires a legislative process.

The Administrative Rules of Montana (ARM) 24.156.501(11) define surgery to mean “any procedure in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation.” The board may enjoin an individual for practicing without a license and refer the matter for criminal prosecution. 37-1-317, MCA”. (Bold added for emphasis)

Reason: The Board (BOPTe) formed a joint committee with the Board of Medical Examiners (BME) to investigate the safety, efficacy, educational standards, and uses of dry needling in physical therapy and the overlap with the practice of acupuncture, which is under the jurisdiction of BME. Acupuncturists and the Montana Association of Acupuncture and Oriental Medicine oppose dry needling within the scope of physical therapy practice. The BME determined they have no authority over physical therapists or their scope of practice.

Response:

Maggie Connor, the Bureau Chief of the Department of Labor and Industry, made the statement that the Board of Medical Examiners did not have authority over the scope of practice of the Physical Therapy Board. She was not an official member of the joint sub-committee when this statement was made. The

concerns of acupuncturists at the joint meetings were never allowed to be fully discussed. All recordings of these meetings no longer exist and the published meeting minutes are not complete.

Reason: As medical technology evolves, scopes of practice and training for many health professionals, including physicians, **physical therapists**, and acupuncturists **who all use needles**, naturally shift and sometimes overlap. The training for and application of dry needling in physical therapy, not the use of a needle, distinguishes dry needling from acupuncture. Acupuncture meridians and auricular or distal acupuncture points are not part of dry needling. (Bold added for emphasis)

Response:

Physical therapists have not been specifically licensed to use needles or use any other invasive procedure within their scope. Manual therapy does not include the insertion of needles. (see ARM 24.156.501(11) above) This requires an expansion of scope through a legislative process.

There is no distinction between acupuncture meridians or distal acupuncture points and trigger point dry needling. The insertion of an acupuncture needle is the practice of acupuncture regardless of what it is called.

If an acupuncture needle is used to stimulate acupuncture points the Physical Therapist is doing acupuncture no matter what name they want to call it. As stated earlier, when a cosmetologist did "skin needling", the Board of Medical Examiners ruled that she was doing surgery. What is different about a Physical Therapist inserting needles in the skin?

Reason: The board (BOPTE) is proposing this new rule now because physical therapists in **Montana are incorporating** dry needling into their practices. Public safety is the foremost concern of the board. This new rule establishes criteria for the inclusion of dry needling within the scope of physical therapy, ensures that physical therapists practicing dry needling meet demonstrable educational, training, and safety standards, and sets consequences for failing to meet those standards. (Bold added for emphasis)

Response:

This paragraph states that physical therapists are already practicing AND advertising dry needling. This is a dangerous and illegal precedence as there have been no established rules, minimum educational standards, or credentialing process for instructors or examination to prove competency.

Other Concerns:

- 1) The Board of Physical Therapy has used this rule change to by-pass the legislative process to expand the scope of practice of their profession. They have just changed the names of the acupuncture modalities by calling the insertion of a needle "manual therapy."
- 2) If an acupuncture needle is a 'mechanical device' then what would define EMG or a hypodermic needle.
- 3) The body's response to the insertion of a needle can have multiple effects. By disregarding the known responses through thousands of years of study and practice, there are many unknown consequences (to the physical therapists and patients) that can occur. If there were to be a negative response, or an adverse health incident neither the physical therapists nor the patients will connect this to trigger point dry needling. They don't know what they don't know.

4) Physical Therapy has been changing their terminology to misrepresent the modalities that they are using to try and differentiate them from other regulated practices.

a. They have changed from “Trigger Point Dry Needling” to just “Dry Needling.” Dropping the term “trigger point” expands the scope beyond the statement: needling beyond trigger points is the practice of acupuncture as stated in the CCAOM Position on Dry Needling as well as Ms. O’Leary’s interpretation of such statement.

i. **Summary Position of the CCAOM on Dry Needling:**

It is the position of the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) that dry needling is an acupuncture technique. It is the position of the CCAOM that any intervention utilizing dry needling beyond trigger point dry needling is the practice of acupuncture, regardless of the language utilized in describing the technique.

ii. **In a letter dated Oct. 14, 2010, Ms. Valerie Hobbs states the following based on the concept of trigger point dry needling:**

*“Ms. O’Leary (the Board of Medical Examiners legal counsel), responded that the Board of Medical Examiners, which oversees the practice of acupuncture, has determined that **dry needling, as long as it is restricted to trigger point**, is not the practice of acupuncture based on the Council of Colleges of Acupuncture and Oriental Medicine’s position paper.” (Bold added for emphasis)*

b. What other medical procedures could be incorporated into practice by any health care licensee by simply changing the name of the procedure? In that case, what will be the purpose of regulatory boards and licensing?

5) If this board can change their scope of practice without oversight from the legislature, what will stop other boards from also expanding their practice by a rulemaking process. This is a very dangerous precedent.

Examples:

"Athletic training" means the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries. The term includes the following:

(a) the use of heat, light, sound, cold, electricity, exercise, reconditioning, **or mechanical devices** related to the care and conditioning of athletes; (Bold added for emphasis)

"Esthetics" means skin care of the body, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or **mechanical or electrical apparatus** or appliances on another person. (Bold added for emphasis)

Barbers: (d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or **mechanical appliance**; (Bold added for emphasis)