

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 14-224)**

Overview and Legal and Fiscal Impact

The regulations establish guidelines for the provision of dry needling as an intervention performed by physical therapists.

The regulations do not present a legal issue of concern.

The regulations have no material fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Board of Physical Therapy Examiners: Dry Needling: COMAR 10.38.12.01-.04

Legal Analysis

Background

In 1989, the Board of Physical Therapy Examiners opined that dry needling was within the scope of practice of physical therapy and physical therapists began performing the procedure in Maryland. On August 17, 2010, the State Attorney General responded to a request from the State Board of Acupuncture for an opinion concerning whether (1) the insertion of acupuncture needles into a patient falls within the definition of practice of physical therapy and (2) it is appropriate for the Board of Physical Therapy Examiners to include it within the scope of practice of physical therapy without legislation on the subject. The opinion concluded that (1) the use of acupuncture needles for therapeutic purposes is not reserved exclusively to licensed acupuncturists and (2) the Board of Physical Therapy Examiners could determine that the use of acupuncture needles as a mechanical device for purposes of dry needling is within the scope of practice of physical therapy by adopting regulations in accordance with the State Administrative Procedure Act.

The Board of Physical Therapy Examiners established a Dry Needling Task Force to discuss a framework for the regulations and formed a committee of the board to meet with stakeholders. In 2012, the board drafted regulations based on the work of the Task Force and committee and issued a call for public comment through which over 950 comments were received. The board addressed many issues raised in the comments and submitted the proposed regulations. The proposed regulations reflect changes made at the request of the Secretary of Health and Mental Hygiene concerning adequacy of training, a transition plan, and oversight.

Summary of Regulations

The regulations establish guidelines for the provision of dry needling as an intervention performed by physical therapists by defining dry needling, establishing minimum education and training necessary to perform dry needling, and establishing standards of practice in performing dry needling.

Definition of Dry Needling

The regulations define dry needling as a physical therapy intervention, also known as intramuscular manual therapy, that:

- involves the insertion of one or more solid needles, a type of mechanical device, into or through the skin to effect change in muscles and tissues for the purpose of alleviating identified impairments;
- requires ongoing evaluation, assessment, and re-evaluation of the impairments;
- is only utilized in parts of the body with neuromuscular or musculoskeletal links to the impairments; and
- is not performed for the purposes of detoxification, smoking cessation, stress relief, or any condition outside the scope of physical therapy.

Education and Training

The regulations require 80 total hours of education and training specific to dry needling that includes an assessment of competency. Forty hours of education are required in course work that includes theory and application, technique, indications and contraindications, infection control in accordance with Occupational Safety and Health Administration's Bloodborne Pathogen Protocol, safe handling of needles, and documentation. The course work may be gained through face-to-face instruction or through electronic means that allow for simultaneous interaction between the instructor and the participants. The courses must be sponsored by the American Physical Therapy Association (APTA), the APTA of Maryland, or the Federation of State Boards of Physical Therapy. Alternatively, if a course was taken before the regulations become effective, the course will qualify if the same course or a substantively similar course is later sponsored by the APTA, the APTA of Maryland, or the Federation of State Boards of Physical Therapy.

An additional 40 hours of education and training are also required in practical, hands-on instruction in the application and technique of dry needling. The hands-on instruction must be conducted under the supervision of a licensed healthcare professional who is competent in dry needling procedures and has practiced dry needling for at least five years. The hands-on instruction may not be fulfilled with online or distance learning.

Additionally, the regulations require that a physical therapist practice physical therapy for at least two years before performing dry needling and provide documentation that substantiates the required education and training on request. The education and training requirements go into effect one year after the effective date of the standards of practice regulations in order to allow

physical therapists who currently practice dry needling to receive the required education and training to ensure that they have a sufficient knowledge base for the practice. A physical therapist who performs dry needling without the required education and training will be subject to discipline.

Standards of Practice

The regulations establish standards of practice in performing dry needling and provide that a physical therapist who performs dry needling in a manner inconsistent with the standards of practice will be subject to discipline. The standards of practice include requiring a physical therapist to:

- fully explain dry needling to the patient and obtain written consent for the procedure before performing the procedure;
- perform dry needling in accordance with standards set forth in the Maryland Occupational Safety and Health Act; and
- document dry needling in accordance with specified regulations.

The regulations also specify that dry needling is not within the scope of practice of limited physical therapy.

Legal Issue

The regulations do not present a legal issue of concern.

Statutory Authority and Legislative Intent

The Board of Physical Therapy Examiners cites §§ 13-101 and 13-206 of the Health Occupations Article as legal authority for the regulations. Section 13-101 establishes the scope of practice for physical therapy in the definition of “practice physical therapy” as follows:

- “(i) (1) “Practice physical therapy” means to design, implement, and modify therapeutic interventions for the purpose of:
- (i) The prevention of disability in patients or clients; and
 - (ii) The physical rehabilitation of patients or clients with a congenital or acquired disability.
- (2) “Practice physical therapy” includes:
- (i) Performing an evaluation of the physical therapy needs of patients or clients;
 - (ii) Performing and interpreting tests and measurements of neuromuscular and musculoskeletal functions to aid treatment;

(iii) Planning treatment programs that are based on test findings; and

(iv) Except as provided in paragraph (3) of this subsection, administering therapeutic interventions that include therapeutic exercise, therapeutic massage, mechanical devices, or therapeutic agents that use the physical, chemical, or other properties of air, water, electricity, sound, or radiant energy.

(3) “Practice physical therapy” does not include:

(i) Taking X rays;

(ii) Using radioactive substances; or

(iii) Using electricity for cauterization or surgery.”

Section 13-206 authorizes the board to adopt regulations to carry out the provisions of Title 13 of the Health Occupations Article and adopt standards of practice for the practice of physical therapy.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

The regulations have no material fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations establish practice guidelines and educational requirements for the practice of dry needling by licensed physical therapists in the State. The department advises that the regulations have minimal or no fiscal impact on State or local governments because relatively few licensed physical therapists practice dry needling and the department can oversee the regulation of the practice with existing budgeted resources. Further, the department notes that physical therapists have had the authority to practice dry needling in the State since 1989. Over the past 25 years, the board has received only two complaints related to the provision of dry needling by physical therapists. Thus, the department anticipates that enforcement can be handled with existing resources. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have no impact on small businesses. The Department of Legislative Services disagrees to the extent that small businesses may bear the cost of additional educational requirements for their employees. The department advises that many physical therapy offices are small businesses. Thus, the Department of Legislative

Services estimates that the regulations may have a minimal fiscal impact on small businesses to the extent that these small businesses bear additional costs related to increased educational requirements for those licensed physical therapists who wish to practice dry needling.

Contact Information

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