

OPINION REGARDING THE PERFORMANCE OF DRY NEEDLING AND THE PRACTICE OF PHYSICAL THERAPY

I. Procedural Introduction

Pursuant to NAC 640.480 and NAC 640.490, the Nevada State Board of Physical Therapy Examiners (hereinafter, the “Board”) is empowered to create an Advisory Committee on Continuing Education (hereinafter, “ACCE”) to review all proposed continuing education courses being offered to Board licensees. This review is to determine whether credits should be awarded for attendance at a particular session and the amount of said credits. See, NAC 640.490.

In this review, the central inquiry as to whether credits may be awarded for a given session is whether the subject matter of the session is considered to be part of the “practice of physical therapy” in the State of Nevada. Thus, courses which have this designation are considered “approved” and attendees may claim continuing education credit for their attendance. Conversely, courses which are *not* “approved” cannot and will not provide attendees with continuing education credit. See, NAC 640.490 and NAC 640.500.

On October 2, 2008, the Board was asked to address a recent decision made by the ACCE wherein the ACCE had decided to deny approval for a continuing education course on the topic of Dry Needling (hereinafter, “DN”.) After exploring the issue, the Board ultimately upheld the decision of the ACCE and concluded that the denial of credit would stand since DN was not considered by the Board to be within the scope of physical therapy practice in the State of Nevada.

In February 2012, the Board received a petition for a declaratory order from one of its licensees pursuant to NAC 640.310, asking that the Board reconsider and reverse its decision of October 2, 2008 to conclude that DN was, in fact, within the scope of physical therapy practice in the State of Nevada. On March 20, 2012, the Board considered the petition in question and ultimately granted it. ***Thus, the Board will now deem DN to be within the scope of practice of physical therapy in the State of Nevada.***

The present discussion is intended to provide the factual and legal foundation for this declaratory order, as required under NAC 640.310(2). To be clear, it is not the intention of this document to address or pass upon the practice of acupuncture, or the scope of practice of oriental medicine, as it is defined within NRS and NAC Chapter(s) 634A (See, NRS 634A.020) and regulated by the Nevada State Board of Oriental Medicine. Nor is it the intention of this document to address or pass upon the scope of practice of homeopathic medicine as regulated by the Nevada State Board of Homeopathic Medical Examiners, pursuant to NRS and NAC Chapter(s) 630A.

It is the intention of this document to address the practice of DN and the reasoning for the recent declaratory statement from the Board which deems DN to be within the scope of physical therapy practice in the State of Nevada.

II. Factual Introduction

“Dry Needling”, also referred to as “intramuscular stimulation”, (hereinafter, “DN”) is a therapy for the treatment of muscle pain wherein solid filament needles are inserted through the skin and into the muscle at myofascial “trigger points” (i.e., areas of contraction knots in muscle which are responsible for creating and prolonging sensations of pain) without the use of injection. It is theorized that this practice activates the healing process, thereby leading to relief of pain and restoration of healthy neuromuscular physiology.

In approaching this area, it is important to distinguish DN from the ancient practice of acupuncture within traditional Chinese medicine. At a basic level, both procedures involve the insertion of needles to alleviate pain, yet there are also some important differences which distinguish each procedure. Acupuncture arises from and is grounded in ancient rules and theories, while DN is solely based upon modern scientific neurophysiology, anatomy and newer understandings within the discipline of pain science. Additionally, the overall purpose of DN is strictly to provide pain control in the musculoskeletal system while acupuncture is used to address a range of illnesses, other than just pain relief. Furthermore, acupuncture involves the insertion of needles into specific named acupuncture points, which may or may not overlie muscles and ‘trigger points’. Thus, acupuncture will always remain a viable treatment option for a range of disorders and pain issues. To be clear, however, the present declaratory order is limited strictly to DN and not acupuncture.

III. Statutes Applicable to Discussion

NRS 640.022 “Physical Therapy” defined.

“Physical Therapy” means the specialty in the field of health which is concerned with prevention of disability and physical rehabilitation of persons having congenital or acquired disabilities.

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NRS 640.024

“Practice of Physical Therapy” defined.

“Practice of physical therapy”:

1. Includes:
 - (a) The performing and interpreting of tests and measurements as an aid to evaluation or treatment;
 - (b) The planning of initial and subsequent programs of treatment on the basis of the results of tests; and
 - (c) The administering of treatment through the use of therapeutic exercise and massage, the mobilization of joints by the use of therapeutic exercise without chiropractic adjustment, mechanical devices, and therapeutic agents which employ the properties of air, water, electricity, sound and radiant energy.
2. Does not include:
 - (a) The diagnosis of physical disabilities;
 - (b) The use of roentgenic rays or radium;
 - (c) The use of electricity for cauterization or surgery; or
 - (d) The occupation of a masseur who massages only the superficial soft tissues of the body.

NAC 640.310

Petition for declaratory order or advisory opinion: Receipt by Board; decision; form.

1. If a petition for a declaratory order or an advisory opinion is received at least 10 days before the next regularly scheduled meeting of the Board, the Board will place the matter on the agenda for that meeting. If the petition is not received before that date, the petition will be placed on the agenda for the following meeting.
2. If the Board grants the petition, it will issue its declaratory order or advisory opinion within 120 days. The Board may schedule a hearing on the petition before issuing its decision.
3. A petition for a declaratory order or an advisory opinion must be in writing.

NAC 640.320 Copy of declaratory order or advisory opinion sent to petitioner.

A copy of the declaratory order or advisory opinion rendered by the Board will be sent to the petitioner.

IV. Analysis

The Board is specifically empowered by statute to accept petitions from members of the public for declaratory orders. See, NAC 640.310. In this instance, the Board has been asked for a declaratory order on the issue of whether the Board will interpret DN as constituting part of the practice of physical therapy in the State of Nevada.

The issue of DN and whether DN constitutes a part of physical therapy practice is one which State regulatory board and agencies are dealing with throughout the United States. According to the American Physical Therapy Association (hereinafter, "APTA"), as of December 2011, eighteen (18) States and the District of Columbia have issued opinions affirming the technique of DN as constituting part of their physical therapists' scope of practice. As of that same date, another six (6) States, including Nevada, have issued opinions to the contrary. Another approach that States have taken is to permit DN as part of physical therapy practice, provided that a physical therapist can demonstrate a relevant educational background or an ability to comply with certain established competency standards. Thus, while the various States have not reached unanimity as to whether DN should be read into each of their respective practice acts, it is clear that the national trend is clearly moving toward acknowledgment of the practice with varying degrees of acceptance.

As the Board looks to evaluate whether DN can be construed as part of the practice of physical therapy in Nevada, it is appropriate to first examine statutory sources. A review of the provisions of Nevada's Act reveals no specific reference to "dry needling", "intramuscular stimulation" or similar terms. However, the Act does make reference to "...the performing and interpreting of tests and measurements as an aid to evaluation or treatment..." and does authorize "...the administering of treatment through the use of...mechanical devices..." See, NRS 640.024(1)(a), (c).

NRS 640.024 then sets forth a series of treatment modalities which are specifically excluded from the practice of physical therapy. These include: "diagnosis of physical disabilities," "use of roentgenic rays or radium," "use of electricity for cauterization or surgery," and "occupation of a masseur who massages only the superficial soft tissues of the body..." See, NRS 640.024(2)(a), (b), (c) and (d).

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From this specific recitation of those items which fall outside the practice of physical therapy, it is reasonable to infer that other items were not prohibited from falling within it. On this point, in the case of *Galloway v. Trusedell*, 83 Nev. 13 (1967), the Nevada Supreme Court stated, as follows:

The maxim '*expressio unius est exclusio alterius*,' the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State [citations omitted]... ***The affirmation of a distinct policy upon any specific point in a state [statute] implies the negation of any power in the legislature to establish a different policy.***

Id., 83 Nev. at 27 (emphasis added.)

Simply put, because the Nevada Legislature has seen fit to set forth those treatment modalities which are expressly excluded from the practice of physical therapy in Nevada, the *Galloway* decision teaches that it is fair to conclude that other modalities not specified in the statute are ***not*** prohibited from use. Because none of the stated exceptions apply to the DN scenario, there is nothing within NRS 640.024 to suggest that DN is specifically excluded from the scope of physical therapy practice in Nevada. This fact, coupled with the relatively broad phrases used to describe acceptable techniques (i.e., “tests and measurements as an aid to evaluation or treatment” and “mechanical devices” (NRS 640.024(1)(a) and (c), respectively) provide great definitional flexibility as to those items which ***are*** part of the scope of Nevada physical therapy practice. For these reasons, the Board will now deem the practice of DN, as described herein, to constitute the practice of physical therapy.

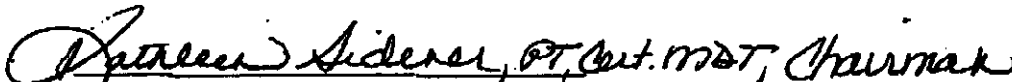
One important implication of this opinion is as follows: If you are a licensed physical therapist in the State of Nevada and use DN as part of your practice, the Board now considers itself to have jurisdiction over that action since DN now constitutes the practice of physical therapy in this State. However, this opinion has no impact upon the requirements or actions of other Nevada licensing boards.

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V. Conclusion

For the reasons set forth herein, this Board will now consider the practice of DN (as defined above) to fall within the scope of practice of physical therapy in the State of Nevada.

Nevada State Board of Physical Therapy Examiners


Kathleen Sidener, PT, Certified MDT, Chairman

6-25-12
Date