STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

June 19, 2014

Opinion No. 14-62

Trigger-Point Dry Needling and the Practice of Physical Therapy

QUESTION

Is Intramuscular Manual Therapy ("IMT"), also known as Trigger-Point Dry Needling, within the scope of the practice of physical therapy under the Occupational and Physical Therapy Practice Act, Tenn. Code Ann. §§ 63-13-101 to -318?

OPINION

No.

ANALYSIS

Under the Occupational and Physical Therapy Practice Act, "practice of physical therapy" means:

> (A) Examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations and disability or other health and movement-related conditions in order to determine a physical therapy treatment diagnosis, prognosis, a plan of therapeutic intervention and to assess the ongoing effect of intervention;
>
> (B) Alleviating impairments and functional limitations by designing, implementing, and modifying therapeutic interventions that include, but are not limited to, therapeutic exercise, functional training, manual therapy, therapeutic massage, assistive and adaptive orthotic, prosthetic, protective and supportive equipment, airway clearance techniques, debridement and wound care, physical agents or modalities, mechanical and electrotherapeutic modalities and patient-related instruction;
>
> (C) Reducing the risk of injury, impairments, functional limitation and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations; and

(D) Engaging in administration, consultation, education and research[.]

Tenn. Code Ann. § 63-13-103(15). IMT, or "dry needling," involves the application of a fine, filiform needle to the neuromusculoskeletal system to restore movement, reduce pain, and address other musculoskeletal disorders.[1] Dry needling must therefore be regarded as a therapeutic intervention, but it is not listed among the therapeutic interventions identified in § 63-13-103(15)(B). Although that list is not exclusive, and includes "manual therapy," "physical agents and modalities," and "mechanical and electrotherapeutic modalities," nothing in subdivision -103(15)(B) clearly indicates a legislative intent to include within the practice of physical therapy the invasive use of needles for therapeutic purposes. *See Tidwell v. Collins*, 522 S.W.2d 674, 676 (Tenn. 1975) ("The premier rule of statutory construction is to ascertain and give effect to the legislative intent."). Furthermore, while there are no doubt distinctions to be drawn between the two, dry needling's obvious similarity to acupuncture cannot be ignored, and physical therapists may not perform acupuncture, which is a branch of medicine. *See* Tenn. Code Ann. § 63-6-1002(a), (b).

Under Tenn. Code Ann. § 63-6-1001(7), "'practice of acupuncture' means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based on oriental medical diagnosis as a primary mode of therapy." In 2005, this Office opined, precisely because acupuncture is regarded as a branch of medicine, that chiropractors may not practice a treatment modality that uses the insertion of needles to bring about the same result. *See* Tenn. Att'y Gen. Op. 05-20 (Mar. 8, 2005). That "same result" is "the promotion, maintenance and restoration of health and the prevention of disease." Tenn. Code Ann. § 63-6-1001(2). In 2006, the legislature amended the acupuncture certification statutes to expressly except chiropractors who have satisfied certain requirements. *See* 2006 Tenn. Pub. Acts, ch. 775, § 2 (amending Tenn. Code Ann. § 63-6-1002(a)); *see also* Tenn. Code Ann. § 63-4-101(a) ("Nothing in this chapter shall be construed to authorize the chiropractic physician to practice any branch of medicine osteopathy, . . . or surgery, *acupuncture being the exception.*") (emphasis added).

Similar legislation would be necessary in order to bring dry needling within the scope of the practice of physical therapy. *See, e.g.*, 2014 Utah Laws ch. 354 (amending physical-therapy-practice statute to include trigger-point dry needling among therapeutic interventions).[2] Like acupuncture, dry needling uses the

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[1] "Dry needling (DN) is a skilled intervention used by physical therapists (where allowed by state law) that uses a thin filiform needle to penetrate the skin and stimulate underlying myofascial trigger points, muscular, and connective tissues for the management of neuromusculoskeletal pain and movement impairments." *Physical Therapists & the Performance of Dry Needling* 2 (Jan. 2012), *available at* http://www.apta.org/StateIssues/DryNeedling/

[2] This legislative change in Utah came in the wake of an opinion from the Utah Department of Commerce's Division of Occupational and Professional Licensing that trigger-point dry needling fell outside the scope of the practice of physical therapy because the "Division's research regarding the

insertion of needles for therapeutic purposes—to restore movement, reduce pain, and address other musculoskeletal disorders. Although current rules of the Tennessee Board of Physical Therapy allow physical therapists to perform kinesiologic electromyography (invasive needle study of the muscles to determine the degree and character of a muscle during certain movements) and diagnostic electromyography (invasive needle study of multiple muscles for diagnosis of muscle and nerve disease), the purposes of these procedures are solely academic or diagnostic, and they may be performed only in a university setting or upon referral from an allopathic or osteopathic physician, a dentist, or a podiatrist. *See* Tenn. Comp. R. & Regs. 1150-01-.02(1)(b)(2)(i), (iii); *id.* 1150-01-.04(4).

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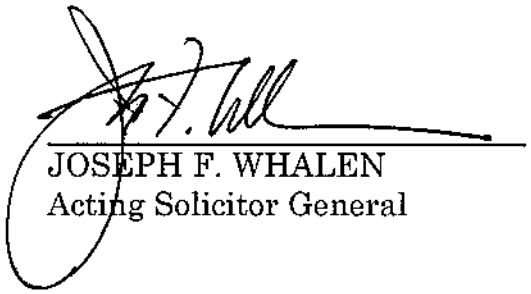

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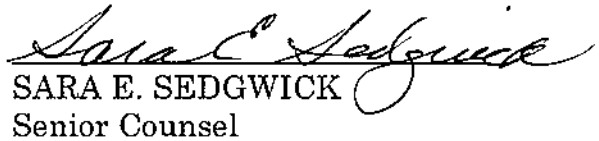

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practice of trigger point dry needling confirms that it is the practice of acupuncture." October 22, 2013 letter from Debra F. Hobbins, Bureau Manager, Division of Occupational and Professional Licensing, *available at* http://www.acupuncturesafety.org/Resources/Documents/Utah%20DOPL.pdf.