

**Board of Physical Therapy
Minutes of Rulemaking Hearing**

DATE: January 11, 2016

TIME: 9:00 a.m. C.D.T

LOCATION: 665 Mainstream Drive
Iris Conference Room, 1st Floor
Nashville, TN 37243

MEMBERS PRESENT: David Harris, PTA
David Finch, PT
Bethany Buttrey, PT
Minty Ballard, Board Secretary (Interim Chair)

MEMBER(S) ABSENT: LeAnn Childress, PT,

STAFF PRESENT: Michael Sobowale, Unit Director
Lakita Taylor, Unit Manager
Tomica Walker, Board Administrator
Thomas Auman, Assistant General Counsel
Ashley Fine, Paralegal

GUESTS PRESENT: Dr. Scott Newton, DPT, Tennessee Physical Therapy Association
Dr. Alan Meade, DPT, Board Consultant/TPTA
Craig O'Neil, PT, Results Physiotherapy

1. Call To Order

With a quorum of members present, Minty Ballard, Board Secretary, called the meeting to order at 10:00 a.m.

2. Rulemaking Hearing

A roll call was taken prior to the start of the rulemaking hearing, with the following Board Members present: Mr. David Harris, Mr. David Finch, Ms. Bethany Buttrey and Minty Ballard. Absent was Ms. LeAnn Childress.

Thomas Aumann, Assistant General Counsel, called the rulemaking hearing to order. The purpose of the rule making hearing is to solicit comments on the rules proposed by the Board to amend Rule 1150-01-.08 on examinations and to create a new rule in Rule 1150-01-.22. Pursuant to TENN. CODE ANN. § 4-5-204, Mr. Aumann presented a summary of the factual information which formed the basis of the rules contained in the Notice of Rulemaking Hearing:

The amendment to Rule 1150-01-08 (9) will clear up the confusion on how many times a candidate may fail a license examination before having to complete additional continuing education hours required to be submitted prior to board approval for a re-examination.

Rule 1150-01-.22 is a new rule regarding the practice of dry-needling that was created to comply with 2015 Public Chapter 124, codified in Tennessee Code Annotated, T.C.A. §63-13-304 and 63-13-305.

A rule is defined as an agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of the agency. A proposed rule is filed with the Secretary of State, notice is given to the public for comment and a rulemaking hearing is held. Upon conclusion of the hearing, the proposed rules are forwarded to the Attorney General's Office for review of legality. If approved, they are filed with the Secretary of State, which is responsible for publication, and the Government Operations Committee of the General Assembly. The Rules must stay in the Secretary of State's Office for ninety (90) days at the end of which time will be the effective date. The Notice of Rulemaking Hearing included the entire text of the proposed rule and was published on the Secretary of State's website on November 18, 2015 and the State's Administrative Register website.

Mr. Aumann stated a written comment was received from a member of the public pertaining to the dry needling rule which would be read to the board members later on in the hearing and any additional members wishing to speak should indicate by placing their names on the provided sign-up sheet. Tomica Walker, Board Administrator stated that additional notice was given to affected individuals and groups by electronic notification to the association and board members. Mr. Sobowale, Board Director stated that further notice was provided to licensees through email and by publication on the board's website. Mr. Aumann then presented the rule amendments and the new rules created as follows:

Rule 1150-01-.08 Examination is amended by deleting paragraph (9) in its entirety and substituting instead the following language, so that as amended, the new paragraph (9) shall read:

- (9) Effective July 1, 2015, the board will no longer approve individualized structure remediation Plans. However, those remediation plans already in effect prior to July 1, 2015 must be completed by the applicant. An applicant who fails the examination two (2) or more times after July 1, 2015 must submit proof of ten (10) hours of additional clinical training and ten (10) hours of additional coursework to the Board administrator before the Board will approve a reapplication for subsequent testing beyond two attempts. These ten (10) hours of additional clinical training and ten (10) hours of additional coursework are required after each subsequent failure beyond two (2) times before an applicant can be approved for reapplication for subsequent testing.

New Rule: 1150-01-.22 Dry Needling

- (1) In order to perform dry needling, a physical therapist must obtain all of the educational instruction describe in paragraphs (2)(a) and (2)(b) herein. All such educational instruction must be obtained in person and may not be obtained online or through video conferencing.
- (2) Mandatory Training- Before performing dry needling, a practitioner must complete educational requirements in each of the following areas:
 - (a) Fifty (50) hours of instruction, to include in each of the four areas listed herein, which are generally satisfied during the normal course of study in physical therapy school:
 1. Musculoskeletal and Neuromuscular systems;
 2. Anatomical basis of pain mechanisms, chronic pain, and referred pain;
 3. Trigger Points;
 4. Universal Precautions; and
 - (b) Twenty-four (24) hours of dry needling specific instruction.
 1. The twenty –four (24) hours must include instruction in each of the following six (6) areas:
 - (i) Dry needling technique;
 - (ii) Dry needling indications and contraindications;
 - (iii) Documentation of dry needling;
 - (iv) Management of adverse effects;
 - (v) Practical psychomotor competency; and
 - (vi) Occupational Safety and Health Administration’s Bloodborne Pathogen Protocol.
 2. Each instructional course shall specify what anatomical regions are included in the instruction and describe whether the course offers introductory or advanced instruction in dry needling.
- (3) A newly-licensed physical therapist shall not practice dry needling for at least one (1) year from the date of initial licensure, unless the practitioner can demonstrate compliance with paragraph (2) through his or her pre-licensure educational coursework.
- (4) Any physical therapist who obtained the requisite twenty-four (24) hours of instruction as described in paragraph (2)(b), in another state or country must provide the same documentation to the Board, as described in paragraph (2)(b), that is required of a course provider. The Board or its consultant must approve the practitioner’s dry needling coursework before the therapist can practice dry needling in this state.
- (5) Dry needling may only be performed by a licensed physical therapist and may not be delegated to a physical therapist assistant or support personnel.

- (6) A physical therapist practicing dry needling must supply written documentation, upon request by the Board, that substantiates training as required by this rule.
- (7) All physical therapy patients receiving dry needling for the first time shall be provided written documentation from the patient's physical therapist that includes a definition and description of the practice of dry needling, a description of the education and training taken by the physical therapist which qualifies the therapist to practice dry needling, and a description of any potential side effects of dry needling and the patient must give written informed consent after acknowledging the risk before dry needling may begin.

Comment on Rules:

1. Rule 1150-01-.08 - Examination

There were no comments on the amendment proposed to paragraph 9 of the examination rule.

2. Rule 1150-01-.22 – Dry Needling Rule Commenters:

J. Randy Walker, PT, Associate Dean, UT Chattanooga
Scott Newton, DPT, TPTA President
Craig O'Neil, PT, Results Physiotherapy
Alan Meade, DPT., Board Consultant/TPTA

J. Randy Walker, PT - Mr. Aumann read the written comment submitted by Mr. Walker into the record. Mr. Walker wrote that he has two areas of concern in the proposed dry needling rules. First, the way the rule is written in paragraph 2 (b) 2. in the proposed dry needling rule indicates that a therapist can practice dry needling with only twenty four (24) hours of education in certain specified areas. He would like the board to include a statement in the rules specifying or limiting the practice of dry needling to those areas of the body for which the practitioner has received instructions in. He wrote that he would like to see the board advocate for competence in the profession in a clearer manner. Secondly, he would like the board to re-consider a provision in paragraph 7 of the proposed rule requiring a separate, written consent from the patient receiving dry needling. He opined that a verbal consent should be sufficient to deal with the issue of informed consent .

In response, Mr. Harris expressed that he had already discussed these concerns with Mr. Walker and clarified the board's reasoning with regards to the first area of concern with him. With regards to his second area of concern, he expressed that he agreed with Mr. Walker that the board was perhaps being intrusive in requiring a written informed consent and would like to suggest that this provision be struck from the proposed rules. In their comments, both Mr. Finch and Ms. Buttery agreed. Ms. Buttery suggested that, instead, a sentence should be added to the end of this paragraph to state, "the risks, benefits and potential side effects of dry needling" should be discussed with a patient prior to rendering this practice technique.

After discussion, a motion was made by Mr. Finch, and seconded by Ms. Buttrey, to amend paragraph 7 of the proposed dry needling rule as follows: All physical therapy patients receiving dry needling shall be provided information from the patient's physical therapy that includes a definition and description of the practice of dry needling and a description of any risks, benefits and potential side effects of dry needling. Upon a board vote, the motion passed.

The board decided to leave current rule language in paragraph 2 (b) 2. of the proposed rule as it is.

Scott Newton, TPTA – Mr. Newton addressed the board with regards to the proposed rule. He stated that he agrees with the concern expressed by Mr. Finch that the board does not need to be approving every dry needling course nor does the board consultant have to do so. He also sought clarification on what may or may not be changed in the rule during the rulemaking hearing without having to start the rulemaking process all over again. In response, Mr. Aumann referred to statutory provision in T.C.A. §4-5-203 (2) b. and stated that nothing precludes a rulemaking agency from making changes so long as the changes proposed are within the scope of the rules already published with the Secretary of State's Office.

Craig O'Neil, PT, Results Physiotherapy – Mr. O'Neil stated that from his experience as someone who was already utilizing this practice technique prior to the new rules being put in place, he would like to suggest that it would not be advisable for the board to require pre-approval of dry needling courses and that it would pose a significant burden on practitioners.

Alan Meade, PhD., Board Consultant/TPTA – Dr. Meade suggested paragraph 2 (b) should be amended to include language in a new sub-paragraph which shall state that for a new course to be approved, the provider must provide to the board administrator, the name of the course provider, a synopsis and description of the course and a copy or description of any course materials used, to be approved by recognized health related organizations and include the example of such recognized organizations as specified in current rules. After discussion, Mr. Aumann suggested language for this new provision to state as follows: Each course must be pre-approved or approved by the board or its consultant, or the board may delegate the approval process to recognized health related organizations or accredited physical therapy educational institutions and include example of such recognized institutions as given in the rules pending in the Attorney General's Office.

Thereafter, a motion was made by Ms. Buttrey, and seconded by Mr. Harris, to adopt suggested changes to paragraph 2(b) to include the language suggested by Mr. Aumann. Upon a board vote, the motion passed.

Mr. Aumann requested that the board vote on the Regulatory Flexibility Analysis attached to the Notice of Rulemaking Hearing as presented. Upon a motion made by Mr. Finch and seconded by Mr. Harris, the motion passed. Then , Mr. Aumann asked that the Statement of Economic Impact to Small Business attached to the Notice of Rulemaking Hearing be voted upon. Mr. Harris moved a motion, seconded by Ms. Buttery, to adopt this Statement as presented. The motion passed.

A motion was made by Mr. Finch, and seconded by Mr. Harris, to adopt the changes made to Chapter 1150-01, the new dry needling rule, Rule 1150-01-.22, as discussed. By a roll call vote, and with all board members voting yes, the motion passed. A motion was made by Mr. Finch, and seconded by Ms. Buttrey, to accept amendments proposed in the examination rule, Rule 1150-01-.08, paragraph 9, as presented. By a roll call vote, and with all board members voting yes, the motion passed.

The rulemaking hearing concluded at 12:14 PM.

These minutes were ratified by the Board at the March 10, 2016 meeting.