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March 19, 2015
OPINION 14-0216

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CHIROPRACTORS
PHYSICIANS AND SURGEONS

La. R.S. 37:1262
La. R.S. 37:1270
La. R.S. 37:1291
La. R.S. 37:1356

La. R.S. 37:2405
La. R.S. 37:2407
La. R.S. 37:2801
La. R.S. 37:2803

Charlotte Martin
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Dry needling, as defined by Rule 123 is within the scope of practice of physical therapy as set forth in La. R.S. 37:2407. Dry needling, as defined and interpreted by the Louisiana Board of Chiropractic Examiners, is within the scope of chiropractic and may be used to treat the conditions set forth in La. R.S. 37:2801.

Dear Ms. Oliver and Ms. Martin:

Our office received an opinion request from the Louisiana Board of Chiropractic Examiners on issues related to dry needling. Shortly thereafter, we received an additional request from the Louisiana Physical Therapy Board relating to the same issues. Considering the relatedness of the two requests and in the interest of efficiency, we have combined your requests into one opinion.

On October 20, 2011, the Louisiana Physical Therapy Board promulgated Rule 311, which establishes standards of practice for dry needling by physical therapists.¹ The Physical Therapy Board also adopted the following definition for dry needling:

a physical intervention which utilizes filiform needles to stimulate trigger points in a patient's body for the treatment of neuromuscular pain and functional movement deficits. Dry Needling is based upon Western medical concepts and does not rely upon the meridians utilized in acupuncture and other Eastern practices. A physical therapy evaluation will indicate the location, intensity and persistence of neuromuscular pain or functional deficiencies in a physical therapy patient and the propriety for utilization of dry needling as a treatment intervention. Dry needling does not include the stimulation of auricular points.²

On April 20, 2014, the Board of Chiropractic Examiners promulgated Rule 321 which interprets the "practice of chiropractic," to include treatment by dry needling and states:

¹ LAC §46:LIV.311.

² LAC §46:LIV.123 (Emphasis added).

§321. Dry Needling

A. The purpose of this rule, as authorized by R.S. 37:2803, is to provide for the interpretation of R.S. 37:2801(3)(a) to include dry needling and to provide with respect to utilization of the techniques by chiropractic physicians. Dry needling is a physical rehabilitation measure which requires specialized education and training and which falls within the chiropractic scope of practice under the following terms. Prior to utilization of dry needling techniques chiropractic physicians shall successfully complete a board approved course of study consisting of no fewer than 50 hours of face-to-face instruction in intramuscular dry needling treatment and safety. The practice of dry needling techniques without compliance of this education requirement constitutes unprofessional conduct and subjects the licensee to appropriate discipline by the board.³

Dry needling involves the insertion of a solid filiform (as opposed to a hollow) needle through the skin for therapeutic purposes. Both boards have received correspondence from the Louisiana State Board of Medical Examiners (LSBME) stating the LSBME believes dry needling is outside the scope of practice of physical therapy and chiropractic. The LSBME contends that dry needling is included within the practice of medicine generally, and is specifically within the practice of acupuncture.⁴ Correspondence from the LSBME states that they consider dry needling to be the practice of acupuncture which may only be performed by a physician or an acupuncturist's assistant.⁵ The Board of Chiropractic Examiners has received similar communications from the LSBME. Considering the contentions made in the correspondence received from the LSBME, you have asked our office to address the following questions:

- 1) Is dry needling as defined by Rule 123 and regulated by Rule 311 within the scope and practice of physical therapy?
- 2) Is dry needling as defined and interpreted by the Board of Chiropractic Examiners within the scope and practice of chiropractic?

Physical Therapy

Physical therapists were originally licensed and regulated by the Louisiana State Board of Medical Examiners until 1987 when the Louisiana Physical Therapy Board was created within the Department of Health and Hospitals.⁶ The powers and duties of the Louisiana Physical Therapy Board are set forth in La. R.S. 37:2405. The Physical Therapy Board is responsible for the enforcement of the Louisiana Physical Therapy Act

³ LAC §46:XXVII.321.

⁴ June 18, 2013 Correspondence from the LSBME to the Louisiana Physical Therapy Board.

⁵ February 3, 2014 Correspondence from the LSBME to the Louisiana Physical Therapy Board.

⁶ La. R.S. 37:2403.

and has all the powers, duties, and authority specifically granted by, or necessary for the enforcement of, the Act, including adopting rules necessary for the efficient operation of the board in accordance with the provisions of the Louisiana Administrative Procedure Act. Louisiana Revised Statute 37:2405 (8) also grants the Physical Therapy Board the power to establish by rule the standards of practice for physical therapy.

The LSBME is a professional licensing and regulatory agency of the State of Louisiana authorized by the Louisiana Medical Practice Act.⁷ The LSBME functions within the Department of Health and Hospitals and its powers and duties are set forth in La. R.S. 37:1270.⁸ Pursuant to La. R.S. 37:1356 (1), the LSBME also regulates the practice of acupuncture.

Louisiana Revised Statute 37:1262 (3) defines the “practice of medicine” as follows:

the holding out of one's self to the public as being engaged in the business of, or the actual engagement in, the diagnosing, treating, curing, or relieving of any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being, other than himself, whether by the use of any drug, instrument or force, whether physical or psychic, or of what other nature, or any other agency or means; or the examining, either gratuitously or for compensation, of any person or material from any person for such purpose whether such drug, instrument, force, or other agency or means is applied to or used by the patient or by another person; or the attending of a woman in childbirth without the aid of a licensed physician or midwife.

Louisiana Revised Statute 37:1356 (1) defines the practice of acupuncture as follows:

treatment by means of mechanical, thermal or electrical stimulation effected by the insertion of needles at a point or combination of points on the surface of the body predetermined on the basis of the theory of the physiological interrelationship of body organs with an associated point or combination of points, or the application of heat or electrical stimulation to such point or points, for the purpose of inducing anesthesia, relieving pain, or healing diseases, disorders and dysfunctions of the body, or achieving a therapeutic or prophylactic effect with respect thereto. The practice of acupuncture shall be construed to be the practice of medicine as defined by R.S. 37:1261.

⁷ La. R.S. 37:1261-1292.

⁸ La. R.S. 37:1273.

Whether the use of solid filiform needles, also known as “acupuncture needles,” and/or the practice of dry needling is exclusive to the practice of acupuncture has been addressed by attorneys general in several other states.⁹

The attorney general for the State of Maryland issued an opinion on whether dry needling fell within the definition of the practice of physical therapy and whether it was appropriate for the Board of Physical Therapy to include dry needling within the scope of practice of physical therapy without legislation on the subject.¹⁰ The Maryland Attorney General concluded:

The authority to use acupuncture needles for therapeutic purposes is not necessarily reserved exclusively to licensed acupuncturists or those specifically exempted from the licensing requirement for acupuncturists. State law recognizes that the scope of practice of health care professions may overlap and confers extensive discretion on licensing boards to define the scope of a profession within statutory limits. In our opinion, the Physical Therapy Board may determine that dry needling is within the scope of practice of physical therapy if it conducts rulemaking under the State Administrative Procedure Act and adopts a regulation that relates dry needling to the statutory definition of practice of physical therapy.¹¹

The attorney general for the State of Mississippi also addressed whether dry needling was the practice of acupuncture and whether the Mississippi Physical Therapy Board had the authority to include dry needling within its scope of practice by rule making rather than legislation.¹² The Mississippi opinion stated that the use of needles for therapeutic treatment by acupuncturists did not exclude therapeutic use of needles by physical therapists where the Physical Therapy Board has acted to recognize such use as a physical therapy technique. The opinion also found that the Physical Therapy Board acted within the scope of its authority when promulgating the rule that included the use of needles for therapeutic treatment as a technique within the scope of the statutory definition of the practice of physical therapy.

The attorney general for the State of Kentucky has also opined that dry needling is within the scope of the practice of physical therapy. The Kentucky opinion found that even if dry needling by physical therapists could not be distinguished from acupuncture, the law does not prohibit its practice by physical therapists as long as it is within the scope of the practice for which they are licensed. The opinion reasoned that the practice of acupuncture as defined under Kentucky law does not reserve the use of

⁹ Although several Attorney General opinions from other states address whether the scope of acupuncture is within the scope of chiropractic, as of the date of this opinion, we are unaware of any Attorney General opinions that address dry needling by chiropractors.

¹⁰ 95 Md. Op. Atty. Gen. 138.

¹¹ *Id.*

¹² Miss. Atty. Gen. Op. Nos. 2012-00428 and 2012-00478.

solid filiform needles to that profession alone, and the use of dry needling by a licensed physical therapist did not constitute the practice of acupuncture.¹³

Although these opinions are not binding on the State of Louisiana and are unique to the respective state laws that they interpret, we agree that the issue of whether dry needling may be performed by physical therapists and/or chiropractors should not be determined by whether the therapy could also fall under the definition of medicine or acupuncture. The proper analysis is whether dry needling is within the scope of practice of physical therapy as set forth in La. R.S. 37:2407 and within the scope of practice of chiropractic as set forth in La. R.S. 37:2801.

The treatment of dry needling as defined by the Board of Physical Therapy is distinguishable from acupuncture. Although both use solid filiform needles, physical therapists may only use dry needling to treat neuromuscular pain and functional movement deficits. LAC §46:LIV.123 specifically excludes reliance on meridians, Eastern medicine practices, stimulation of auricular points, and acupuncture by physical therapists. Dry needling treatment by a physical therapist also requires that the physical therapist use Western medical concepts to indicate the location of neuromuscular pain and the propriety for using dry needling. In contrast, acupuncture involves the insertion of needles at a point or combination of points on the surface of the body that has been predetermined on the basis of the theory of the physiological interrelationship of body organs with an associated point or combination of points, for the purpose of inducing anesthesia, relieving pain, or healing diseases, disorders and dysfunctions of the body, or achieving a therapeutic or prophylactic effect.¹⁴ However, even if the treatments of dry needling and acupuncture overlap, physical therapists are not precluded from utilizing dry needling if it is allowed by their scope of practice.¹⁵

Louisiana Revised Statute 37:2407 (5) defines the practice of physical therapy as follows:

"Practice of physical therapy" is the health care profession practiced by a physical therapist licensed under this Chapter and means the holding out of one's self to the public as a physical therapist and as being engaged in the business of, or the actual engagement in, the evaluation and treatment of any physical or medical condition to restore normal function of the neuromuscular and skeletal system, to relieve pain, or to prevent disability by use of physical or mechanical means, including therapeutic exercise, mobilization, passive manipulation, therapeutic modalities, and activities or devices for preventative, therapeutic, or medical purposes, and further shall include physical therapy evaluation, treatment planning, instruction,

¹³ Ky. Atty. Gen. Op. No. 13-010.

¹⁴ La. R.S. 37:1356 (1).

¹⁵ La. R.S. 37:1291 (3) recognizes that there may be overlap in the scope of practice of practitioners of allied health fields.

consultative services, and the supervision of physical therapy supportive personnel, including physical therapist assistants.¹⁶

Dry needling is utilized by physical therapists for the treatment of neuromuscular pain and functional movement deficits. The treatment of neuromuscular pain and medical conditions related to the function of the neuromuscular system is specifically authorized by La. R.S. 37:2407 (5). Therefore, the treatment of the conditions listed in Rule 123 is within the scope of the practice of physical therapy.

Next, we must address whether the solid filiform needle used in dry needling is authorized by La. R.S. 37:2407 (5). The Attorney General of Tennessee recently found that dry needling is a “therapeutic intervention” that is outside the scope of practice of the Tennessee Board of Physical Therapy. The Tennessee opinion stated that because dry needling is not specifically listed among the therapeutic interventions identified in the Board of Physical Therapy’s scope of practice, physical therapists are not authorized to insert needles for therapeutic purposes.¹⁷ We believe that La. R.S. 37:2407 (5) is distinguishable from the more restrictive statute analyzed in the Tennessee opinion. Louisiana Revised Statute 37:2407 (5) states that treatment may be by “physical or mechanical means, including therapeutic exercise, mobilization, passive manipulation, therapeutic modalities, and activities or devices for preventative, therapeutic, or medical purposes.” The use of these general descriptive terms in La. R.S. 37:2407 (5), along with the illustrative modifier “including,” indicates that the statute was not intended to specifically list by name every single device or treatment that may be utilized in the practice of physical therapy. The LSBME argues that the term “mechanical means” refers to devices such as equipment, weights, and machines and does not include solid filiform needles. However, we can find no support for this interpretation. Louisiana Revised Statute 37:2407 (5), which authorizes treatment by mechanical means and devices for therapeutic or medical purposes, is broad enough to include the use of solid filiform needles. Support for this conclusion is found in La. R.S. 37:1356 (1), which describes the insertion of needles in the practice of acupuncture as: “treatment by means of mechanical . . . stimulation effected by the insertion of needles.” We also note that other jurisdictions have also found that the definition of “mechanical device” may include acupuncture needles.¹⁸

In conclusion, it is our opinion that the treatment of dry needling, as defined by Rule 123, is within the scope of practice of physical therapy.

¹⁶ (Emphasis added).

¹⁷ Tenn. Op. Atty. Gen. No. 14-62.

¹⁸ 95 Md. Op. Atty. Gen. 138; Miss. Atty. Gen. Op. Nos. 2012-00428 and 2012-00478.

Chiropractors

The Board of Chiropractic Examiners was established in 1974 and is within the Department of Health and Hospitals.¹⁹ The powers and duties of the board are set forth in La. R.S. 37:2804.²⁰ Louisiana Revised Statute 37:2803 (E) states that the Board of Chiropractic Examiners shall adopt and promulgate rules and regulations to govern its actions and to provide for the enforcement of the provisions of Chapter 36, pursuant to the Louisiana Administrative Procedure Act.

In construing an administrative rule or regulation, a court must look to the administrative agency's interpretation where the meaning of the words used is ambiguous because such construction provides the best indication of the agency's intent in promulgating a rule or regulation.²¹ However, this deference is not required for an administrative interpretation of its enabling legislation. It is well established that an administrative agency cannot exceed the authority granted to it by the legislature.²² Although courts may give due consideration to the administrative construction of a statute, the court is not bound by the board's interpretation of such a statute; the interpretation of state law is reserved to the judiciary.²³ Therefore, when analyzing whether dry needling is included within the scope of the practice of chiropractic, we rely on La. R.S. 37:2801, which defines the practice of chiropractic as:

[h]olding one's self out to the public as a chiropractor and as being engaged in the business of, or the actual engagement in, the diagnosing of conditions associated with the functional integrity of the spine and treating by adjustment, manipulation, and the use of the physical and other properties of heat, light, water, electricity, sound, massage, therapeutic exercise, mobilization, mechanical devices, and other physical rehabilitation measures for the purpose of correcting interference with normal nerve transmission and expression. A chiropractor may also make recommendations relative to personal hygiene and proper nutritional practices for the rehabilitation of the patient. A chiropractor may also order such diagnostic tests as are necessary for determining conditions associated with the functional integrity of the spine.

¹⁹ La. R.S. 36:259 (E)(7).

²⁰ Prior to 1974 La. Acts. No. 39 chiropractors were required to be qualified physicians. See *Louisiana State Board of Medical Examiners v. Cronk*, (La. 1924), 157 La. 321, 102 So. 415; *State Board of Medical Examiners v. Fife*, (La. 1927), 162 La. 681, 111 So. 58; and La. Atty. Gen. Op. 1942-44 p. 1153.

²¹ *Women's & Children's Hosp. v. State Dep't of Health and Hosps.*, 08-946 (La. 1/21/09), 2 So.3d. 397,402; *Hill v. Dep't of Health & Human Res., Office of Mental Health & Substance Abuse*, 83-1043 (La.App. 1 Cir. 10/9/1984), 457 So.2d 781, 785 (La.App. 1 Cir. 10/9/1984).

²² *Jurisich v. Jenkins*, 99-0076 (La. 11/17/1999), 749 So.2d. 597, 605.

²³ *Harrah's Bossier City Inv. Co., LLC v. Bridges*, 09-1916 (La. 5/11/10), 41 So.3d 438, 449.

(c) The practice of chiropractic does not include the right to prescribe, dispense, or administer medicine or drugs, or to engage in the practice of major or minor surgery, obstetrics, X-ray therapy, radium therapy, or nuclear medicine. For purposes of this Chapter, the terms "medicine" and "drugs" shall not include orthotic devices, vitamin, mineral, and nutritional supplements, therapeutic devices, postural modification equipment, exercise equipment, or homeopathic remedies. Any chiropractor applying to practice acupuncture shall comply with the provisions of R.S. 37:1358.²⁴

As represented to our office in correspondence concerning dry needling as related to the practice of chiropractic, the Louisiana Board of Chiropractic Examiners interprets Rule 321 as follows:

Dry needling is based on Western neuroanatomy and modern scientific study of the musculoskeletal and nervous system. It is used for the assessment and treatment of myofascial pain syndromes and dysfunction due to myofascial triggerpoints/tension areas, muscle spasm and increased tonicity. The decision to needle is based on identifying a clear clinical relationship between the myofascial trigger point and the patient's pain experience.²⁵

The treatment of dry needling, as defined and interpreted by the Board of Chiropractic Examiners, is distinguishable from the practice of acupuncture. Chiropractors are specifically prohibited from practicing acupuncture, as defined by La. R.S. 37:1356, unless they comply with the provisions of La. R.S. 37:1358. Although both dry needling and acupuncture utilize solid filiform needles, dry needling in chiropractic is limited to treating conditions associated with the functional integrity of the spine using Western medical concepts to determine the location of pain and to determine whether the treatment of dry needling is appropriate. Dry needling, as defined and interpreted by the Board of Chiropractic Examiners, does not involve the insertion of needles at a point or combination of points on the surface of the body that has been predetermined on the basis of the theory of the physiological interrelationship of body organs with an associated point or combination of points, for the purpose of inducing anesthesia, relieving pain, or healing diseases, disorders and dysfunctions of the body, or achieving a therapeutic or prophylactic effect.

As noted earlier, the solid filiform needle utilized in dry needling could fall within the definition of mechanical or therapeutic devices, which are authorized for use by chiropractors in La. R.S. 37:2801. Accordingly, it is our opinion that the treatment of dry needling, as defined and interpreted by the Louisiana Board of Chiropractic Examiners, is within the scope of chiropractic and may be used to treat the conditions set forth in La. R.S. 37:2801.

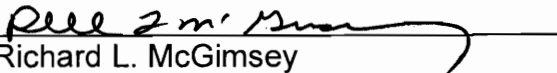
²⁴ (Emphasis added).

²⁵ Correspondence received from the Board of Chiropractic Examiners.

We hope that this opinion has adequately addressed the questions you have submitted. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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ATTORNEY GENERAL

BY: 
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JDC: EGA