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## **DRY NEEDLING IN MICHIGAN**

February 2020

### **Background**

House Bill 4710 was recently enacted into law and became Public Act 140 of 2019 (2019 PA 140). The new law, which becomes effective March 4, 2020, provides for the licensure of acupuncturists as a separate health profession under the Public Health Code (PHC). Before this statutory change, acupuncture was considered to be the practice of medicine and acupuncturists were required to practice under physician supervision and delegation.

MPTA has been engaged with this issue because it was unclear whether dry needling would be considered to be within the scope of practice of physical therapy under the PHC. Although the MPTA is unaware of any relevant case law or Michigan Board of Physical Therapy (aka the Physical Therapy Licensure Board) action against a physical therapist for utilizing dry needling in his or her practice, the Michigan Department of Licensing and Regulatory Affairs (LARA) had indicated at a Michigan Board of Physical Therapy meeting in 2013 that they considered dry needling to be the same as acupuncture (and therefore the practice of medicine) based on a 1975 Michigan Attorney General opinion.

### **2019 PA 140**

Beginning in early 2017, MPTA was actively engaged with the Michigan Association of Acupuncture and Oriental Medicine in developing the language of HB 4710, and appreciates their collaboration in developing legislation that is helpful to both professions and ultimately to patients in need of dry needling services.

#### **Key provisions of 2019 PA 140:**

By providing for the licensure of acupuncturists and establishing it as a separate health profession, the practice of acupuncture will no longer be considered to be the practice of medicine as of March 4, 2020.

Dry needling is established as a component of the scope of practice of acupuncture. However, it is made clear that “dry needling,” as a procedure performed by acupuncturists, is not synonymous with the practice of “acupuncture” or acupuncture as a procedure.

Other licensed health professionals are not prohibited from performing dry needling if it is included in their respective scopes of practice.



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Dry needling is defined as:

“... a rehabilitative procedure using filiform needles to penetrate the skin or underlying tissues by targeting only myofascial trigger points and muscular and connective tissues to affect change in body structures and functions for the evaluation and management of neuromusculoskeletal pain and movement impairment. Dry needling does not include the stimulation of auricular points or other acupuncture points.”

### Physical Therapist Scope of Practice

The term “scope of practice” is broad and includes:

- 1) The **professional scope of practice** as defined by the Commission on Accreditation in Physical Therapy Education (CAPTE) entry-level education standards, American Physical Therapy Association (APTA) positions and policies, and Federation of State Boards of Physical Therapy (FSBPT) resource papers.
- 2) The **regulatory scope of practice** as defined by state law.

Other factors that may influence a Physical Therapist’s selection of interventions to be performed include personal scope of competence, third party payer regulations, and facility/organization policies, as discussed later in this document.

The regulatory scope of practice for Physical Therapists in Michigan includes “physical measures,” “therapeutic exercise,” and “rehabilitative procedures.” The PHC only provides further definition/clarification for “physical measures.” There is no definition/clarification for “therapeutic exercise” or “rehabilitative procedures.” It is difficult for an individual Physical Therapist to make a determination for his or her own professional practice about permissible “rehabilitative procedures,” including dry needling. There are several sources that should be considered:

- APTA Policies, Positions, and Resource Papers.
  - <http://www.apta.org/StateIssues/DryNeedling/ClinicalPracticeResourcePaper/>
    - The definition of dry needling is nearly identical to the definition of dry needling in 2019 PA 140.
  - <http://www.apta.org/StateIssues/DryNeedling/ResourcePaper/>
    - Affirms that dry needling is specifically listed as a component of physical therapist practice per APTA Board Directors Guideline BOD G02-14-18-12.
    - Note that dry needling is not considered entry-level practice.



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- [http://www.apta.org/uploadedFiles/APTAorg/About\\_Us/Policies/Practice/ProceduralInterventions.pdf](http://www.apta.org/uploadedFiles/APTAorg/About_Us/Policies/Practice/ProceduralInterventions.pdf)
  - Note that dry needling is an intervention that should not be delegated to a physical therapist assistant.
- The Guide to Physical Therapist Practice 3.0.
  - <http://guidetoptpractice.apta.org/>
    - Dry needling is specifically listed as a component of manual therapy techniques.
- FSBPT Resource Papers.
  - <https://www.fsbpt.org/FreeResources/RegulatoryResources/DryNeedlingCompetencies.aspx>
    - Note that dry needling is not considered to be entry-level practice.
- Prevailing practice.
  - The MPTA does not yet have any data to directly measure prevailing practice with regard to dry needling in Michigan. In an effort to determine the extent of its use, MPTA may conduct a survey of practicing physical therapists in the near future.
- Personal scope of competence.
  - Because all existing professional practice standards do not consider dry needling to be an entry level skill, the burden is on the individual licensee to prove that he or she has received training related to the performance of, and is competent to perform, dry needling procedures in his or her practice.

### **Additional Interpretation of PT Scope of Practice Now Warranted**

As stated above, the terms “therapeutic exercise” and “rehabilitative procedures,” while specifically included in the physical therapy scope of practice in Part 178 of the PHC, are not further defined in state law. Because a statute often contains shortcomings in specificity, policymakers, regulators, and practitioners alike must look at other relevant material to make educated decisions regarding scope of practice. It is also true that until 2019 PA 140 becomes law on March 4, 2020, the terms “rehabilitative procedure” and “dry needling” are not used anywhere else in the Michigan Compiled Laws. 2019 PA 140 adds a definition of dry needling in the PHC as a “rehabilitative procedure.” The MPTA believes that the reference to dry needling as a rehabilitative procedure in 2019 PA 140 provides sound rationale to reasonably derive that dry needling is within the scope of practice for physical therapy as a rehabilitative procedure.

If this interpretation is valid, it would mean that with appropriate education and training, dry needling may be performed by physical therapists in Michigan.

This interpretation has not been examined by the regulatory agencies that oversee Physical Therapy practice in Michigan, nor has it been tested in the courts.



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Furthermore, it should not be construed as a legal opinion upon which members base their practice. Rather, members should consult their own legal counsel for formal legal guidance on questions related to their practice.

### **Facility Policies**

If you are employed as a physical therapist, failure to follow facility policies can increase legal exposure in the event of a complaint or lawsuit. Therefore, individual physical therapists should inquire with your employer as to whether performance of dry needling by physical therapists is permitted in your organization.

### **Billing and Coding**

The American Medical Association has recently developed two Common Procedural Terminology codes related to the performance of dry needling:

20560 – Needle insertion(s) without injection(s), 1 or 2 muscle(s).

20561 – Needle insertion(s) without injection(s), 3 or more muscle(s).

It is unclear whether any payer, including Medicare, intends to pay for these procedure codes. MPTA will work with payers regarding payment for these rehabilitative procedures and provide updates to our members as appropriate.

### **Needle Acquisition**

The MPTA is aware of at least one supplier of needles that will not sell needles to physical therapists in any given state unless the appropriate regulatory authority in that state affirms that dry needling is explicitly within the scope of practice of physical therapy. Because dry needling is not specifically listed in Part 178 of the PHC or in rules promulgated by the Michigan Board of Physical Therapy, LARA will not make this statement.

### **Professional Liability**

The MPTA is aware of at least one professional liability carrier that will not provide liability coverage for dry needling unless the appropriate regulatory authority affirms that dry needling is explicitly within the scope of practice of physical therapy. Because dry needling is not specifically listed in Part 178 of the PHC or in rules promulgated by the Michigan Board of Physical Therapy, LARA will not make this statement. Therefore, it is important to contact your professional liability carrier regarding coverage of dry needling.



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