



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 20, 2015

Sent via email: karney@ncptboard.org
Kathy O. Arney, Rulemaking Coordinator
Board of Physical Therapy Examiners
18 West Colony Place, Suite 140
Durham, North Carolina 27706

Re: 21 NCAC 48C .0104

Dear Ms. Arney:

At its January 15, 2015 meeting, the Rules Review Commission objected to the above-identified Rule in accordance with G.S. 150B-21.10.

The Board of Physical Therapy Examiners responded in accordance with the provisions of G.S. 150B-21.12 on Thursday, March 19, 2015. At the request of the Board's attorney, this matter will be reviewed at the May 21, 2015 Rules Review Commission meeting.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,


Abigail M. Hammond
Commission Counsel

cc: John M. Silverstein – jms@satiskysilverstein.com

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
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Judges and
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Clerk's Office
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Rules Review
Commission
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SATISKY & SILVERSTEIN, LLP

ATTORNEYS AT LAW

SUITE 201

415 HILLSBOROUGH STREET

RALEIGH, NORTH CAROLINA 27603

JOHN M. SILVERSTEIN
jms@satiskysilverstein.com

TEL: 919.376.2983
FAX: 919.790.1560

March 18, 2015

Ms. Abigail M. Hammond
Commission Counsel
Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: 21 NCAC 48C .0104

Dear Ms. Hammond:

At its meeting on March 12, 2015, the North Carolina Board of Physical Therapy Examiners ("Board") instructed me to respond to your letter dated January 26, 2015, to Ben Massey, Executive Director of the Board, in which you noted that the Rules Review Commission ("Commission") objected to the captioned rule on the basis that the Board did not have statutory authority to adopt the Rule. Pursuant to N.C.G.S. §150B-21.12(a)(2), the Board has decided not to change the rule for the reasons set forth herein. Also, if a transcript of the hearing is available, we would like to purchase a copy.

The focus of the opposition to the Rule at the January 15 meeting was that chiropractors are required to obtain 300 hours of training before engaging in the practice of acupuncture, medical doctors must obtain 200 hours to practice acupuncture, and the 54 hour proposal for physical therapists to engage in dry needling is therefore inadequate. This argument fails to recognize that the Board is not proposing that physical therapists can practice acupuncture, but that these licensed practitioners are able to engage in one modality, dry needling, as an element of their competence and training to utilize deep tissue therapy techniques to relieve pain and promote healing. Although the basic philosophy behind the use of needles in acupuncture and physical therapy is different, the fact that a single modality may be within the scope practice of different health care professions is not unusual.

Moreover, consideration by the Commission of the number of hours of training required is in clear violation of N.C.G.S. §150B-21.9(a), which states: ". . . The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection. . . ." The only standard given as the basis for rejection was lack of statutory authority. The definition of "physical therapy" in N.C.G.S.

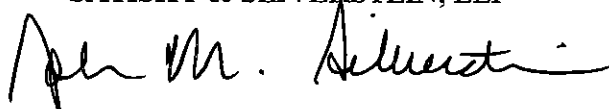
§90-270.24(4) includes the following statement: “. . . Evaluation and treatment of patients may involve physical measures, methods, or procedures as are found commensurate with physical therapy education and training and generally or specifically authorized by regulations of the Board. . . .” Physical therapists have been utilizing needle insertion in connection with the performance of EMG studies for approximately 50 years. Dry needling has been determined to be within the scope of practice of physical therapy and is being performed by physical therapists in more than 30 jurisdictions. Physical therapists have been performing dry needling in North Carolina since 2010, with no complaints of harm to the public being filed with the Board. The only objections received have been from those who might lose patients to physical therapists, not from patients who benefit from the receipt of those services. Finally, both the Attorney General’s Office and RRC Staff Counsel have concluded that dry needling is within the scope of physical therapy practice in North Carolina.

It is my understanding this matter will be reviewed by the Commission at its April 16, 2015 meeting. The Board’s Executive Director, Ben Massey and Rules Coordinator, Kathy Arney will be able to attend that meeting, but I have a conflict. I am a State Bar Councilor, and we have a quarterly meeting from April 15-17. The Grievance Committee, of which I am Chair, is scheduled to meet from 8:00 a.m. to 12:00 Noon on April 16, 2015, and I have other meetings scheduled for 1:30 p.m. to 2:30 p.m. and 3:30 p.m. to 5:30 p.m. that day. If there is any way this matter can be postponed to the May meeting, I would greatly appreciate it, but if not, Mr. Massey and Ms. Arney will attend the April 16 meeting.

Thank you for the continued courtesies you have shown to us during this process.

Very truly yours,

SATISKY & SILVERSTEIN, LLP

A handwritten signature in black ink, appearing to read "John M. Silverstein", written over the printed name below.

John M. Silverstein, Board Attorney

JMS/

cc: Leslie P. Kesler, PT, Board Chair
Ben F. Massey, Jr., PT, Executive Director

g:\ncbpte\HammondRRC.docx

Hammond, Abigail M

From: Ben Massey <benmassey@ncptboard.org>
Sent: Friday, January 16, 2015 9:21 PM
To: Hammond, Abigail M; jms@satiskysilverstein.com; Kathy Arney
Cc: Vojtko, Dana; Brincefield, Julie; Burgos, Alexander N; Ben Massey
Subject: RE: Emailing: 2015.01 - Physical Therapy Objection Letter

Dear Ms. Hammond, This email acknowledges receipt of your attached letter dated Jan 16, 2015. In response, the next meeting of the North Carolina Board of Physical Therapy Examiners is scheduled for March 12, 2015. Pursuant to N.C.G.S. § 150B-21.12(b), since March 22, 2015 is a Sunday, a response to your letter dated January 16, 2015, will be submitted on or before March 23, 2015. Thank you. BFM

Ben F. Massey, Jr., PT, MA, Executive Director
NC Board of Physical Therapy Examiners
18 West Colony Place Suite 140
Durham, NC 27705
Phone: 1-919-490-6393 / 800-800-8982
Fax: 1-919-490-5106
Email: benmassey@ncptboard.org
Web: www.ncptboard.org <<<http://www.ncptboard.org/>>

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Please consider the environment before printing this or any e-mail.

-----Original Message-----

From: Hammond, Abigail M [mailto:abigail.hammond@oah.nc.gov]
Sent: Friday, January 16, 2015 2:59 PM
To: Ben Massey; John Silverstein (jms@satiskysilverstein.com); Kathy Arney
Cc: Vojtko, Dana; Brincefield, Julie; Burgos, Alexander N
Subject: Emailing: 2015.01 - Physical Therapy Objection Letter

Good afternoon,

Please see the attached letter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,
Abby Hammond

Abigail M. Hammond
Counsel to the Rules Review Commission
Office of Administrative Hearings
Direct Dial: (919) 431-3076

Notice: E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by authorized State officials.

Your message is ready to be sent with the following file or link attachments:

2015.01 - Physical Therapy Objection Letter

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1711 New Hope Church Rd
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January 16, 2015

Sent via email: benmassey@ncptboard.org
Ben F. Massey, Jr., Rulemaking Coordinator
Board of Physical Therapy Examiners
18 West Colony Place, Suite 140
Durham, North Carolina 27706

Re: 21 NCAC 48C .0104

Dear Mr. Massey:

At its January 15, 2015 meeting, the Rules Review Commission objected to the above-identified Rule in accordance with G.S. 150B-21.10.

The Commission objected to this Rule based upon lack of statutory authority. 21 NCAC 48C .0104, as adopted by the agency, addresses a matter not within the authority delegated to the agency by the General Assembly, as required by G.S 150B-9(a).

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Abigail M. Hammond
Commission Counsel

cc: John M. Silverstein – jms@satiskysilverstein.com

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Revised letter to correct
statutory citation in the second
paragraph.

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January 26, 2015

Sent via email: benmassey@ncptboard.org
Ben F. Massey, Jr., Rulemaking Coordinator
Board of Physical Therapy Examiners
18 West Colony Place, Suite 140
Durham, North Carolina 27706

Re: 21 NCAC 48C .0104

Dear Mr. Massey:

At its January 15, 2015 meeting, the Rules Review Commission objected to the above-identified Rule in accordance with G.S. 150B-21.10.

The Commission objected to this Rule based upon lack of statutory authority. 21 NCAC 48C .0104, as adopted by the agency, addresses a matter not within the authority delegated to the agency by the General Assembly, as required by G.S. 150B-21.9(a).

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,


Abigail M. Hammond
Commission Counsel

cc: John M. Silverstein – jms@satiskysilverstein.com

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21 NCAC 48C .0104 has been adopted with changes as published in 29:02 NCR 172 as follows:

21 NCAC 48C .0104 DRY NEEDLING

(a) “Dry Needling,” “Intramuscular Manual Therapy,” ~~“Trigger Point Dry Needling,”~~ “Trigger Point Dry Needling,” and “Intramuscular Needling” are used interchangeably to describe a technique using the insertion of a solid filament needle, without medication, into or through the skin to treat various impairments.

(b) Prior to a physical therapist performing dry needling in North Carolina, the physical therapist shall submit an application to the Board containing proof of completion of a course of study approved by the Board. The course of study shall include:

- (1) a minimum of 54 hours of ~~in-person~~ in-person classroom education;
- (2) instruction in clinical techniques of dry needling;
- (3) instruction in indications and contraindications of dry needling; and
- (4) certification of completion of all program requirements.

(c) Dry needling ~~cannot~~ shall not be delegated to physical therapist assistants or physical therapy aides.

(d) The Board shall maintain a list of programs approved to provide the required dry needling training for physical therapists. This information shall be available on the Board's website (www.ncptboard.org).

History Note: *Authority G.S. 90-270.24; 90-270.26;*
Eff. February 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: **Board of Physical Therapy Examiners**

RULE CITATION: **21 NCAC 48C .0104**

DEADLINE FOR RECEIPT: Friday, January 9, 2015

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, add a comma within the quotation marks after "Trigger Point Dry Needling"

Line 14, replace "cannot" with "shall not"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

21 NCAC 48C .0104 has been adopted as published in 29:02 NCR 172 as follows:

21 NCAC 48C .0104 DRY NEEDLING

(a) “Dry Needling,” “Intramuscular Manual Therapy,” “Trigger Point Dry Needling” and “Intramuscular Needling” are used interchangeably to describe a technique using the insertion of a solid filament needle, without medication, into or through the skin to treat various impairments.

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(3) instruction in indications and contraindications of dry needling; and

(4) certification of completion of all program requirements.

(c) Dry needling cannot be delegated to physical therapist assistants or physical therapy aides.

(d) The Board shall maintain a list of programs approved to provide the required dry needling training for physical therapists. This information shall be available on the Board's website (www.ncptboard.org).

History Note: Authority G.S.90-270.24; 90-270.26;

Eff. February 1, 2015.