

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

November 12, 2024

Opinion No. 24-017

Dry Needling and Athletic Trainers’ Scope of Practice

Question

Is Dry Needling, also known as Intramuscular Manual Therapy and Trigger-Point Dry Needling, within the scope of the practice of athletic trainers under the Athletic Trainers Practice Act, Tenn. Code Ann. §§ 63-24-101, *et seq.*?

Opinion

Likely not.

ANALYSIS

Dry needling is “a skilled intervention that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular, and connective tissues for the management of neuromusculoskeletal conditions, pain, and movement impairments.” Tenn. Code Ann. § 63-13-103(6). Some States allow athletic trainers to perform dry needling; others don’t. *Compare, e.g.,* Ariz. Rev. Stat. Ann. § 32-4101(g)(9) (dry needling is a skilled intervention athletic trainers may perform) *with* 24 Del. Admin. Code § 2600-15.4.1 (dry needling “is not in the scope of practice for Athletic Trainers”). An analysis of Tennessee’s Athletic Trainers Practice Act indicates that Tennessee likely falls on the no-authorization side of that divide.

The Act provides that an athletic trainer “carries out the practice of prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of athletic injuries.” Tenn. Code Ann. § 63-24-101(2). “[I]n carrying out these functions,” an “athletic trainer is authorized to use physical modalities, such as heat, light, sound, cold, electricity, or mechanical devices related to prevention, recognition, evaluation, management, disposition, rehabilitation, and treatment.” *Id.* The pertinent question here, then, is whether dry needling qualifies as a “physical modalit[y]” under the Act.

Statutory interpretation always begins “with the plain language of the statute.” *Funk v. Scripps Media, Inc.*, 570 S.W.3d 205, 219 (Tenn. 2019). When a statutory term is undefined, courts start with “authoritative dictionaries published around the time of a statute’s enactment.” *State v. Deberry*, 651 S.W.3d 918, 925 (Tenn. 2022). And they often “separate a phrase into its ‘component terms’ and then reconstruct it to determine its meaning if the phrase is not a term of art, lacks a technical meaning, and is not otherwise defined in the statute.” *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 605 (Minn. 2016); *see also Deberry*, 651 S.W.3d at 927 (examining phrase in criminal statute by defining each term separately and then reconstructing it). Splitting the phrase into its component parts here, “physical” means “of or relating to the body,”

Physical, Merriam-Webster’s Collegiate Dictionary (9th ed. 1984), and “modality” means “a usu[ally] physical therapeutic agency,” *Modality*, Merriam-Webster’s Collegiate Dictionary (9th ed. 1984); *see also* *Modality*, Random House Dictionary of the English Language (2d ed. 1987) (“the application of a therapeutic agent, usually a physical therapeutic agent”). Thus, “physical modalities” are physical methods for treating ailments. This broad definition would appear to include dry needling, as it could conceivably encompass an almost limitless panoply of treatment methods for athletic injuries (including, for example, injections and other medical interventions).

But the “meaning” of a word or phrase “may only become evident when placed in context.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000). That is, the meaning of statutory phrases “is determined . . . by reference to the language itself” and “by the specific context in which that language is used, and the broader context of the statute as a whole.” *Yates v. United States*, 574 U.S. 528, 537 (2015) (plurality opinion) (cleaned up and citation omitted).

The statutory context suggests that “physical modalities” does not include dry needling. The Tennessee Supreme Court has long held that where specific words follow general words in a statute, the specific words “limit the scope of” the statute. *State v. Wheeler*, 152 S.W. 1037, 1038 (Tenn. 1913); *cf. State ex rel. Metro. Gov’t of Nashville and Davidson Cnty. v. Spicewood Creek Watershed Dist.*, 848 S.W.2d 60, 63 (Tenn. 1993) (holding that a “term must be confined to include only entities of the same type or class as the examples listed”). Here, “physical modalities” is immediately followed by “heat, light, sound, cold, electricity, or mechanical devices.” Tenn. Code Ann. § 63-24-101(2). Dry needling is not on that list and differs entirely in form. For example, whereas heat, light, sound, cold, and electricity are all applied externally, dry needling “penetrate[s] the skin.” Tenn. Code Ann. § 63-13-103(6). And as this Office opined in 2014, dry needling also does not constitute a mechanical device. *See* Tenn. Att’y Gen. Op. 14-62 (June 19, 2014) (discussing that “therapeutic interventions” such as “manual therapy, physical agents and modalities, and mechanical and electrotherapeutic modalities” do not include dry needling) (cleaned up). This suggests that dry needling may not be a “physical modalit[y]” within the scope of the Act.

Looking at the broader statutory context confirms as much. Dry needling is a skilled intervention that requires at least some training beyond that provided in athletic trainer curricula. *See* Board of Certification for the Athletic Trainer, *Athletic Trainers’ Use of Dry Needling in Practice* (Oct. 19, 2022), <https://perma.cc/77KG-XBQA>. Generally, States that allow athletic trainers to perform dry needling require additional education and training. *See, e.g.*, 225 Ill. Comp. Stat. 5/4.5(b) (certification in dry needling requires completion of at least “50 hours of instructional courses,” “30 hours of didactic course work,” “54 practicum hours,” and “200 supervised patient treatment sessions”); Nev. Rev. Stat. § 640B.260(5) (at least “150 hours of didactic education and training in dry needling approved by the Board”); Md. Code Ann., Health Occ. § 14-5D-11.4(b)(1) (“at least 80 hours of instruction”); *see also* 2022 Ariz. Legis. Serv. Ch. 46 § 3 (S.B. 1398) (requiring board of athletic training to “adopt rules establishing the . . . education qualifications for athletic trainers who perform dry needling”). And when Tennessee has previously authorized the performance of dry needling, it has statutorily required “proper training and certification.” *See* Tenn. Code Ann. § 63-13-103(10)(B)(vi) (physical therapists). But the Act currently makes no

provision for additional dry needling training—yet another clue that dry needling falls outside the authorized practice of athletic trainers.¹ This conclusion accords with the only other Attorney General’s Office to opine on whether dry needling fits within an athletic trainers’ scope of practice and the prior opinion of this office. *See* Tenn. Att’y Gen. Op. 14-62 (June 19, 2014).²

In short, reading the statutory language in context suggests that dry needling likely does not fit within the scope of practice of athletic trainers under the Act.

JONATHAN SKRMETTI
Attorney General and Reporter

J. MATTHEW RICE
Solicitor General

JOSHUA D. MINCHIN
OSG Honors Fellow

Requested by:

The Honorable Tim Hicks
State Representative
425 Rep. John Lewis Way N.
Suite 518 Cordell Hull Building
Nashville, Tennessee 37243

¹ Under the Act, the Board of Athletic Trainers has the authority in its “considered discretion” to determine whether an athletic trainer is competent to practice in a particular area. Tenn. Code Ann. § 63-24-101(2). While not binding, the Board noted last year that dry needling “has not been approved for Athletic Trainers in Tennessee due to the rules and statutes.” *Board of Athletic Trainers Minutes*, at 8 (Nov. 2, 2023), <https://perma.cc/G83Y-WVAH>.

² In 2016, the Nebraska Attorney General’s Office concluded that dry needling did “not fall within the scope of practice for athletic trainers.” Neb. Att’y Gen. Op. 16-009, 2016 WL 3682982, at *5 (July 8, 2016). The Nebraska legislature subsequently amended its Athletic Training Practice Act to include dry needling within the scope of practice. *See* 2022 Neb. Laws L.B. 436.