

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 467 Physical Therapy Practice
SPONSOR(S): Health & Human Services Committee, Stevenson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 792

FINAL HOUSE FLOOR ACTION: 119 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 467 passed the House on March 9, 2020, as amended, and subsequently passed the Senate on March 10, 2020.

Physical therapy practice is the performance of physical therapy assessments and treatment, or prevention of any disability, injury, disease, or other health conditions and rehabilitation using various modalities. The Board of Physical Therapy Practice, within the Department of Health (DOH), regulates physical therapists (PTs).

Current law prohibits PTs from using acupuncture if it punctures the skin. In some states, PTs may use a technique called dry needling, which requires a PT to insert an acupuncture needle to penetrate the skin and stimulate underlying myofascial trigger points, and muscular and connective tissues to manage pain and movement impairments. PTs may not perform dry needling in Florida.

The bill eliminates the prohibition on performing acupuncture that pierces the skin and authorizes the Board of Physical Therapy Practice to adopt rules related to the standards of practice for PTs to perform dry needling. The bill establishes minimum experience, education, and training requirements for PTs who perform dry needling.

The bill also revises the scope of practice for PTs and terminology to more closely align with the model practice act for physical therapy.

The bill may have an insignificant, negative fiscal impact on the DOH, which can be absorbed within existing resources. The bill has no fiscal impact on local governments.

The bill was approved by the Governor on June 29, 2020, ch. 2020-128, L.O.F., and will become effective on July 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Physical therapists (PTs) are licensed in all 50 states. States utilize the National Physical Therapy Exam (NPTE), which was developed by the Federation of State Boards of Physical Therapy (FSBPT), to determine if a person has met competency standards for the safe provision of nationally accepted physical therapy procedural interventions.¹ Currently, all entry-level PT education programs in the U.S. only offer the Doctor of Physical Therapy (D.P.T.) degree.²

Model Practice Act

The FSBPT developed a model physical therapy practice act to revise and modernize state physical therapy laws.³ The model practice act suggests statutory language that addresses the regulatory board's duties and powers, examination and licensure, and the regulation of physical therapy practice.⁴ In the model practice act, the practice of physical therapy includes:⁵

- Examining, evaluating, and testing patients with mechanical, physiological, and developmental impairments, functional limitations, and disabilities or other health and movement-related conditions in order to determine a diagnosis, prognosis, and plan of treatment intervention, and to assess the ongoing effects of intervention.
- Alleviating impairments, functional limitations, and disabilities by designing, implementing, and modifying treatment interventions that may include, but are not limited to:
 - Therapeutic exercise;
 - Functional training in self-care and in-home, community or work integration or reintegration;
 - Manual therapy including soft tissue and joint mobilization/manipulation;
 - Therapeutic massage;
 - Prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment;
 - Airway clearance techniques;
 - Integumentary protection and repair techniques;
 - Debridement and wound care;
 - Physical agents or modalities;
 - Mechanical and electrotherapeutic modalities, and
 - Patient-related instruction.
- Reducing the risk of injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and wellness.
- Engaging in administration, consultation, education, and research.

¹ American Physical Therapy Association, *About the National Physical Therapy Examination*, available at <http://www.apta.org/Licensure/NPTE/> (last visited January 14, 2020).

² American Physical Therapy Association, *Physical Therapist (PT) Education Overview*, available at [http://www.apta.org/For_Pro prospective_Students/PT_Education/Physical_Therapist_\(PT\)_Education_Overview.aspx](http://www.apta.org/For_Pro prospective_Students/PT_Education/Physical_Therapist_(PT)_Education_Overview.aspx) (last visited March 4, 2016).

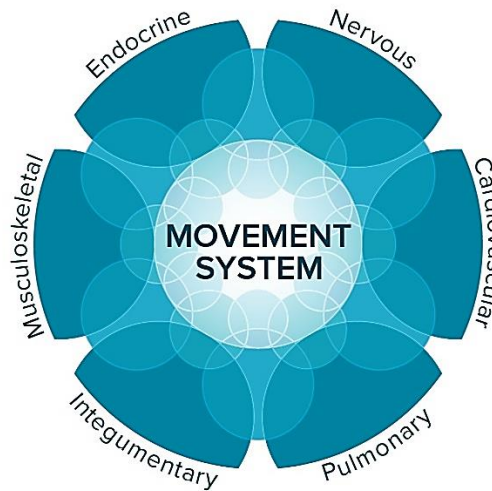
³ Federation of State Boards of Physical Therapy, *Model Practice Act*, available at <https://www.fsbpt.org/Free-Resources/Regulatory-Resources/Model-Practice-Act> (last visited January 14, 2020).

⁴ Federation of State Boards of Physical Therapy, *The Model Practice Act for Physical Therapy: A Tool for Public Protection and Legislative Change*, 6th Edition, (last rev. 2016), available at https://www.fsbpt.org/Portals/0/documents/free-resources/MPA_6thEdition2016.pdf?ver=2019-03-06-115216-323 (last visited January 14, 2020).

⁵ Id.

Movement System

As a part of its guiding principles for the physical therapy profession, the American Physical Therapy Association (APTA), adopted a position that the movement system is at the core of physical therapy practice, education, and research.⁶ The movement system is the integration of body systems that generate and maintain movement at all levels of bodily function.⁷ The movement system incorporates several of the body's systems.⁸



APTA promotes that a PT must examine and evaluate the movement system, including diagnosis and prognosis, to provide a customized and integrated plan of care.⁹ Uniform use of the term “movement system” will assist PTs in communicating effectively with communities internal and external to the profession.¹⁰

Physical Therapy Practice in Florida

PTs are regulated under ch. 486, F.S., the Physical Therapy Practice Act and the Board of Physical Therapy Practice (Board), within the Department of Health (DOH). In the 2018-2019 fiscal year, there were 19,324 licensed PTs in Florida.¹¹

Licensure

To be licensed as a PT, an applicant must be at least 18 years old, be of good moral character, pass the Laws and Rules Examination offered by the FSBPT within 5 years before the date of application for licensure,¹² and meet one of the following requirements:¹³

⁶ American Physical Therapy Association, *Vision Statement for the Physical Therapy Profession and Guiding Principles to Achieve the Vision*, (last rev. Sept. 25, 2019), available at <https://www.apta.org/Vision/> (last visited January 16, 2020).

⁷ American Physical Therapy Association, *Movement System*, available at <https://www.apta.org/MovementSystem/> (last visited January 16, 2020).

⁸ American Physical Therapy Association, *Movement System Diagram*, available at https://www.apta.org/uploadedFiles/APTAorg/Practice_and_Patient_Care/Movement_System/MovementSystemDiagram.pdf (last visited January 16, 2020).

⁹ American Physical Therapy Association, *Physical Therapist Practice and the Movement System*, (Aug. 2015), available at <https://www.apta.org/MovementSystem/WhitePaper/> (last visited January 16, 2020).

¹⁰ Id.

¹¹ Department of Health, *2020 Agency Legislative Bill Analysis for HB 467*, on file with the Health Quality Subcommittee.

¹² Rule 64B17-3.002, F.A.C.

¹³ Sections 486.031, F.S., and 486.051, F.S.

- Have graduated from an accredited PT training program and have passed the National Physical Therapy Examination (NPTE) for PTs offered by the FSBPT within 5 years before the date of application for licensure;¹⁴
- Have graduated from a PT training program in a foreign country, have had his or her credentials deemed by the Foreign Credentialing Commission on Physical Therapy or other board-approved credentialing agency to be equivalent to those of U.S.-educated PTs and have passed the NPTE for PTs within 5 years before the date of application for licensure;¹⁵ or
- Have passed a board-approved examination and hold an active license to practice physical therapy in another state or jurisdiction if the board determines that the standards for licensure in that state or jurisdiction are equivalent to those of Florida.¹⁶

A PT must complete 24 hours of continuing physical therapy education for each biennial licensure renewal.¹⁷ At least 1 hour of education must be on HIV/AIDS, and 2 hours must be on medical error prevention.¹⁸

Scope of Practice

In Florida, physical therapy practice is the performance of physical therapy assessments and treatment, or prevention of any disability, injury, disease, or other health conditions and rehabilitation using various modalities, such as:¹⁹

- Electricity;
- Exercise;
- Massage;
- Radiant energy, including ultraviolet, visible, and infrared rays;
- Ultrasound;
- Water; and
- Physical, chemical, and other properties of air.

A PT may also test neuromuscular functions or perform electromyography²⁰ to diagnose and treat conditions. A PT may only perform acupuncture when no penetration of the skin occurs and in compliance with criteria established by the Board of Medicine.²¹

Acupuncture

The Board of Acupuncture, within the DOH, regulates the practice of acupuncture.²² Acupuncture is a form of primary health care based on traditional Chinese medical concepts and modern oriental medicine techniques that employ acupuncture diagnosis and treatment, as well as adjunctive therapies and diagnostic techniques.²³ The practice of acupuncture includes, among other things, the insertion of acupuncture needles to specific areas of the human body.²⁴

¹⁴ *Id.*

¹⁵ Rule 64B17-3.001, F.A.C.

¹⁶ Rule 64B17-3.003, F.A.C.

¹⁷ Rule 64B17-9.001, F.A.C.

¹⁸ *Id.*

¹⁹ Section 486.021(11), F.S.

²⁰ Rule 64B17-6.003, F.S., establishes the training, education, and supervised practice requirements a PT must meet to perform electromyography.

²¹ *Supra* note 19.

²² *See generally*, ch. 457, F.S.

²³ Section 457.102(1), F.S.

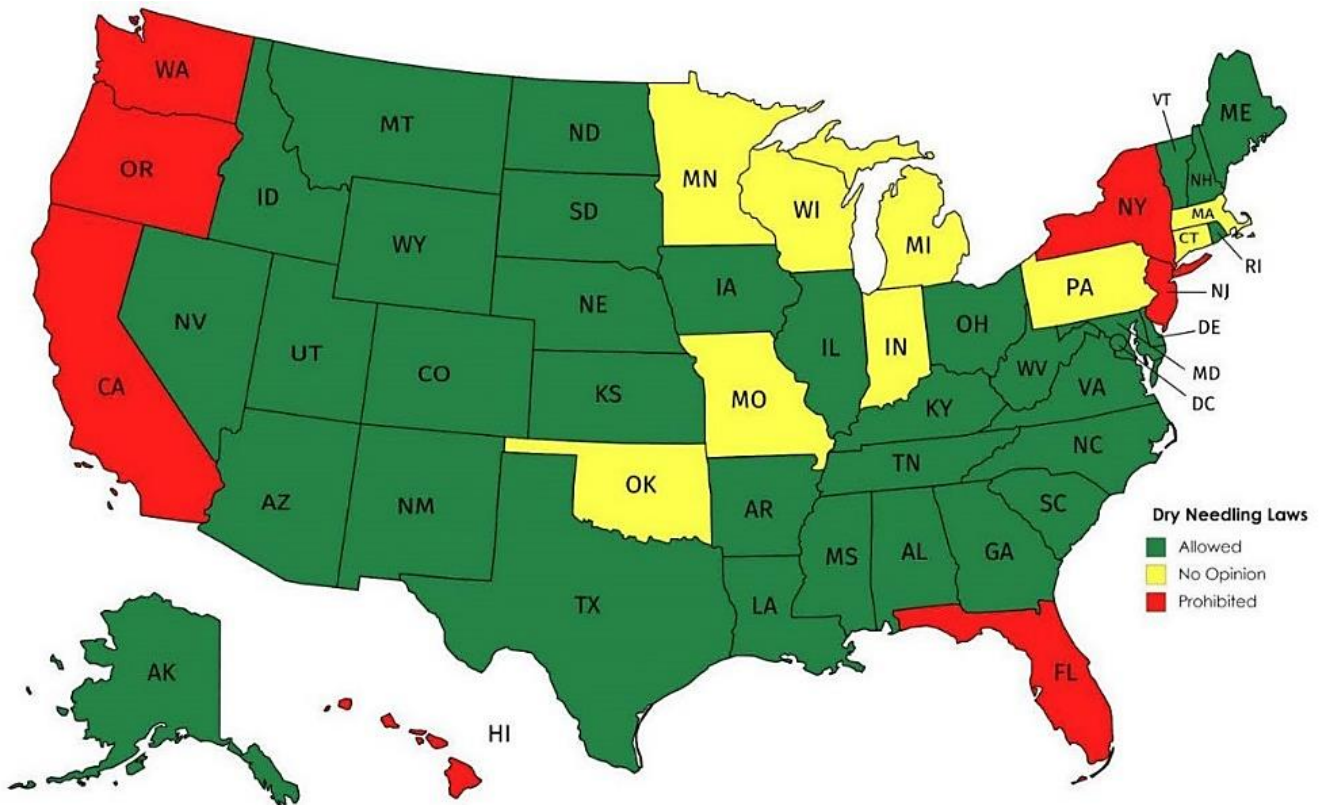
²⁴ *Id.*

Dry Needling

Dry needling²⁵ originated in the 1940s when practitioners discovered that pain could be relieved by simple hypodermic needling without injection of any substance.²⁶ At that time, the needles used were mainly hollow; however, beginning in the late 1970s, acupuncture or solid filiform needles became the instrument of choice.²⁷

The modern practice primarily involves a PT using a thin filiform needle to penetrate the skin and stimulate underlying myofascial trigger points, muscular, and connective tissues to manage neuromusculoskeletal pain and movement impairments.²⁸ The goal of dry needling is to release or inactivate trigger points and relieve pain.²⁹

Thirty-four states authorize PTs to perform dry needling, nine states are silent on the issue, and seven states, including Florida, prohibit PTs from performing dry needling.³⁰



Dry Needling in Florida

²⁵ Dry needling may also be referred to as “trigger point manual therapy” or “intramuscular manual therapy. See American Physical Therapy Association, *Physical Therapists & The Performance of Dry Needling: An Educational Resource Paper*, (Jan. 2012), available at <http://www.apta.org/StateIssues/DryNeedling/ResourcePaper/> (last visited January 16, 2020).

²⁶ Heming Zhu, PhD, CMD, MD, MAcu, LicAcu, and Heidi Most, MAcu, LicAcu, *Dry Needling Is One Type of Acupuncture*, *MEDICAL ACUPUNCTURE* 28:4 (2016), available at https://pdfs.semanticscholar.org/1340/eb3836f644a3c38813a52ea3eb75a27bfbc.pdf?_ga=2.106070723.1123509245.1579131193-624244151.1579131193 (last visited January 15, 2020).

²⁷ *Supra* note 26.

²⁸ American Physical Therapy Association, *Physical Therapists & The Performance of Dry Needling: An Educational Resource Paper*, (Jan. 2012), available at <http://www.apta.org/StateIssues/DryNeedling/ResourcePaper/> (last visited January 16, 2020).

²⁹ *Id.*

³⁰ American Physical Therapy Association, *State Laws and Regulations Governing Dry Needling Performed by Physical Therapists in the U.S.*, (2019), available at https://www.apta.org/uploadedFiles/APTAorg/Advocacy/State/Issues/Dry_Needling/APTADryNeedlingLawsByState.pdf (last visited January 16, 2020).

At least two practitioners have filed Petitions for Declaratory Statement³¹ seeking guidance from the Board on whether dry needling was within the scope of practice for PTs licensed in Florida. In 2017, the Board found that a particular petitioner was uniquely qualified to perform dry needling and authorized the petitioner to do so without violating the practice act.³² The Board denied a subsequent petition stating that dry needling was not prohibited and that the Board was moving forward with rulemaking to set the competencies required for a PT to practice dry needling.³³

In 2018, the Board published a proposed rule that established the minimum standards of practice for dry needling in physical therapy practice.³⁴ The proposed rule defined “dry needling” as a skilled technique based on western medical concepts performed by a PT using filiform needles to penetrate the skin and/or underlying tissue to affect change in body structures and functions for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disability.³⁵ The proposed rule also established minimum education requirements and prohibited a PT from delegating dry needling to a physical therapy assistant, unlicensed personnel, or any other person who is not a PT.³⁶

The Florida State Oriental Medical Association (FSOMA) challenged the rule, arguing it was an invalid exercise of delegated legislative authority.³⁷ FSOMA argued that the proposed rule would allow PTs to perform acupuncture by inserting acupuncture needles into patients, in violation of the definition of the physical therapy scope of practice, which limits PTs’ performance of acupuncture to noninvasive procedures. In January 2019, the Division of Administrative Hearings found that the proposed rule invalid, as alleged. Specifically, the Administrative Law Judge found that the proposed rule exceeded the grant of rulemaking authority because it:

- Expanded the scope of physical therapy practice;
- Enlarged, modified, or contravened the specific provisions of law implemented, s. 489.021(11), F.S., which stated that PTs may perform acupuncture only upon compliance with the criteria set by the Board of Medicine, when no penetration of the skin occurred; and
- Was arbitrary because dry needling was not within the statutory scope of practice for PTs in this state.

The Board withdrew the proposed rule in March 2019.³⁸

Effect of Proposed Changes

The bill eliminates the prohibition on performing acupuncture that pierces the skin and requires the Board to establish the standards of practice for PTs who perform dry needling. The bill defines “dry needling” as a skilled intervention based on western medicine that uses filiform needles and other apparatus or equipment to stimulate a myofascial trigger point³⁹ for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disabilities. The bill requires the

³¹ Pursuant to s. 120.565, F.S., any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.

³² *In re the Petition for Declaratory Statement of Robert Stanborough*, Final Order No. DOH-17-1605-DS-MQA (Aug. 30, 2017), available at http://www.floridahealth.gov/licensing-and-regulation/declaratory/_documents/CLF-5501-14672DOH17-1605DS.pdf (last visited January 16, 2020).

³³ 44 Fla. Admin. Reg. 165 (Aug. 23, 2018).

³⁴ Proposed rule 64B17-6.008, F.A.C., published in 44 Fla. Admin. Reg. 38 (Feb. 23, 2018).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Florida State Oriental Medical Ass’n v. Dep’t of Health and Florida Physical Therapy Ass’n, Inc.*, No. 18-2508RP (Fla. DOAH Jan. 28, 2019).

³⁸ 45 Fla. Admin. Reg. 47 (Mar. 8, 2019).

³⁹ The bill defines “myofascial trigger point” as an irritable section of soft tissue often associated with palpable nodules in taut bands of muscle fibers.

Board to establish the minimum requirements a PT must attain to perform dry needling which must include:

- Two years of licensed practice as a PT;
- Completion of an approved 50-hour face-to-face continuing education course on dry needling that includes instruction on:
 - Dry needling theory;
 - Selection and safe handling of needles and other apparatus or equipment used in dry needling, including the proper handling of biohazardous waste;
 - Indications and contraindications for dry needling;
 - Psychomotor skills needed to perform dry needling and an assessment of whether the PT has the requisite psychomotor skills to safely perform dry needling; and
 - Post-intervention care, including adverse responses, adverse event recordkeeping, and any reporting obligations; and
- Completion of 25 patient sessions of dry needling performed:
 - Under the supervision of any PT who holds an active license to practice physical therapy in any state and who has actively practiced dry needling for at least one year; or
 - As a PT licensed in another state or in the U.S. Armed Forces.

The bill authorizes the Board to establish additional supervision and training requirements for PTs who perform dry needling on the head and neck or torso of a patient.

The bill prohibits a PT from performing dry needling without the patient's consent and requires dry needling to be a part of the patient's documented plan of care. The bill also prohibits a PT from delegating dry needling to a person who is not authorized to perform dry needling. The bill clarifies that the performance of dry needling in physical therapy practice does not limit the scope of practice of other licensed health care practitioners. The bill prohibits a physical therapist from performing acupuncture as defined in Florida law.

The bill requires DOH to submit a report to the Legislature on or before December 31, 2022, that details:

- The number of PTs in the state;
- The number of PTs in the state performing dry needling;
- Increases or decreases in the number of PTs in the state by geographic area; and
- Adverse incidents involving dry needling.

The bill also revises the scope of practice for PTs by amending the definition of "practice of physical therapy" to more closely reflect the definition in the model practice act. The bill revises the description of the modalities used by PT to alleviate impairments, functional movement limitations, and disabilities by designing, implementing, and modifying treatment interventions that may include:

- Therapeutic exercise;
- Functional movement training in self-management and in-home, community, or work integration or reintegration;
- Manual therapy;
- Massage;
- Airway clearance techniques;
- Maintaining and restoring the integumentary system and wound care;
- Physical agent or modality;
- Mechanical and electrotherapeutic modality, and
- Patient-related instruction.

The bill retains the authority of a PT to test neuromuscular functions or perform electromyography to diagnose and treat conditions.

The bill also expands the systems that a PT evaluates for a physical therapy assessment to the movement system, which encompasses endocrine, nervous, cardiovascular, pulmonary, integumentary, and musculoskeletal systems. PTs currently assess the musculoskeletal and neuromuscular systems only. The bill also authorizes a PT to evaluate motor control as a part of the physical therapy assessment.

The bill makes other technical, non-substantive changes.

The bill provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have an insignificant, negative fiscal impact on the DOH relating to the Board to adopting rules related to dry needling.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.