

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 467 Physical Therapy Practice  
**SPONSOR(S):** Stevenson  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N	Siples	McElroy
2) Health Care Appropriations Subcommittee	9 Y, 0 N	Mielke	Clark
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

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. In Florida, 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.

HB 467 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 also revises the scope of practice for PTs and terminology to reflect modern physical therapy practice.

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 provides an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED 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.<sup>1</sup> Currently, all entry-level PT education programs in the U.S. only offer the Doctor of Physical Therapy (D.P.T.) degree.<sup>2</sup>

#### Model Practice Act

The FSBPT developed a model physical therapy practice act to revise and modernize state physical therapy laws.<sup>3</sup> 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.<sup>4</sup> In the model practice act, the practice of physical therapy includes:<sup>5</sup>

- 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.

#### *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

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

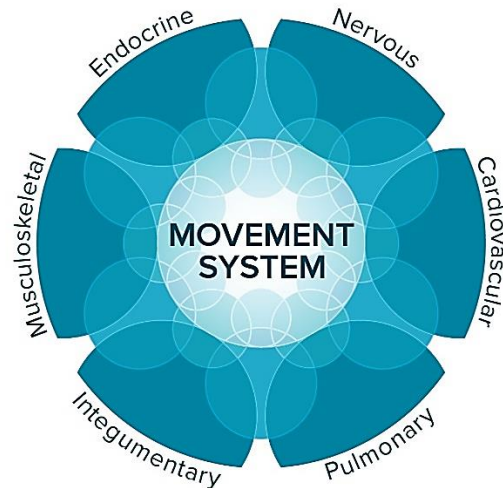
<sup>2</sup> American Physical Therapy Association, *Physical Therapist (PT) Education Overview*, available at [http://www.apta.org/For\\_Prospective\\_Students/PT\\_Education/Physical\\_Therapist\\_\(PT\)\\_Education\\_Overview.aspx](http://www.apta.org/For_Prospective_Students/PT_Education/Physical_Therapist_(PT)_Education_Overview.aspx) (last visited March 4, 2016).

<sup>3</sup> 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).

<sup>4</sup> Federation of State Boards of Physical Therapy, *The Model Practice Act for Physical Therapy: A Tool for Public Protection and Legislative Change*, 6<sup>th</sup> Edition, (last rev. 2016), available at [https://www.fsbpt.org/Portals/0/documents/free-resources/MPA\\_6thEdition2016.pdf?ver=2019-03-06-115216-323](https://www.fsbpt.org/Portals/0/documents/free-resources/MPA_6thEdition2016.pdf?ver=2019-03-06-115216-323) (last visited January 14, 2020).

<sup>5</sup> Id.

practice, education, and research.<sup>6</sup> The movement system is the integration of body systems that generate and maintain movement at all levels of bodily function.<sup>7</sup> The movement system incorporates several of the body's systems.<sup>8</sup>



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.<sup>9</sup> Uniform use of the term “movement system” will assist PTs in communicating effectively with communities internal and external to the profession.<sup>10</sup>

### 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. In the 2018-2019 fiscal year, there were 19,324 licensed PTs in Florida.<sup>11</sup>

#### *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,<sup>12</sup> and meet one of the following requirements:<sup>13</sup>

- 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;<sup>14</sup>
- 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;<sup>15</sup> or

<sup>6</sup> 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).

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

<sup>8</sup> American Physical Therapy Association, *Movement System Diagram*, available at [https://www.apta.org/uploadedFiles/APTAorg/Practice\\_and\\_Patient\\_Care/Movement\\_System/MovementSystemDiagram.pdf](https://www.apta.org/uploadedFiles/APTAorg/Practice_and_Patient_Care/Movement_System/MovementSystemDiagram.pdf) (last visited January 16, 2020).

<sup>9</sup> 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).

<sup>10</sup> *Id.*

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

<sup>12</sup> Rule 64B17-3.002, F.A.C.

<sup>13</sup> Sections 486.031, F.S., and 486.051, F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Rule 64B17-3.001, F.A.C.

- 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.<sup>16</sup>

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

### *Scope of Practice*

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:<sup>19</sup>

- 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 electromyography<sup>20</sup> 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.<sup>21</sup>

### Acupuncture

The Board of Acupuncture, within the Department of Health, regulates the practice of acupuncture.<sup>22</sup> 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.<sup>23</sup> The practice of acupuncture includes, among other things, the insertion of acupuncture needles to specific areas of the human body.<sup>24</sup>

### Dry Needling

Dry needling<sup>25</sup> originated in the 1940s when practitioners discovered that pain could be relieved by simple hypodermic needling without injection of any substance.<sup>26</sup> 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.<sup>27</sup>

<sup>16</sup> Rule 64B17-3.003, F.A.C.

<sup>17</sup> Rule 64B17-9.001, F.A.C.

<sup>18</sup> Id.

<sup>19</sup> Section 486.021(11), F.S.

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

<sup>21</sup> *Supra* note 19.

<sup>22</sup> *See generally*, ch. 457, F.S.

<sup>23</sup> Section 457.102(1), F.S.

<sup>24</sup> Id.

<sup>25</sup> 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).

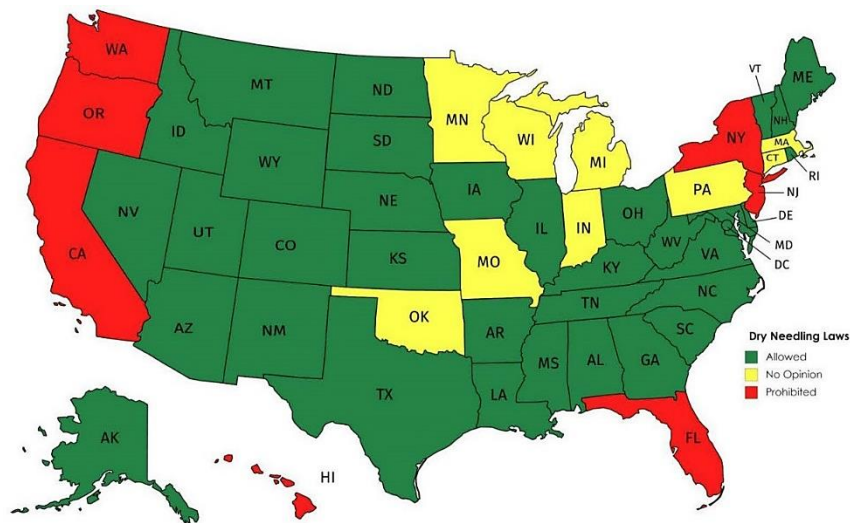
<sup>26</sup> Heming Zhu, PhD, CMD, MD, MAcu, LicAcu, and Heidi Most, MAcu, LicAcu, *Dry Needling Is One Type of Acupuncture*, MEDICAL ACUPUNCTURE 28:4 (2016), available at

[https://pdfs.semanticscholar.org/1340/eb3836f644a3c38813a52ea3eb75a27bfbc.pdf?\\_ga=2.106070723.1123509245.1579131193-624244151.1579131193](https://pdfs.semanticscholar.org/1340/eb3836f644a3c38813a52ea3eb75a27bfbc.pdf?_ga=2.106070723.1123509245.1579131193-624244151.1579131193) (last visited January 15, 2020).

<sup>27</sup> *Supra* note 26.

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.<sup>28</sup> The goal of dry needling is to release or inactivate trigger points and relieve pain.<sup>29</sup>

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.<sup>30</sup>



### Dry Needling in Florida

At least two practitioners have filed Petitions for Declaratory Statement<sup>31</sup> seeking guidance from the Board on whether dry needling was within the scope of practice for PTs licensed in Florida. In June 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.<sup>32</sup> 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.<sup>33</sup>

In February 2018, the Board published a proposed rule that established the minimum standards of practice for dry needling in physical therapy practice.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup>

<sup>28</sup> 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).

<sup>29</sup> *Id.*

<sup>30</sup> 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](https://www.apta.org/uploadedFiles/APTAorg/Advocacy/State/Issues/Dry_Needling/APTADryNeedlingLawsByState.pdf) (last visited January 16, 2020).

<sup>31</sup> 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.

<sup>32</sup> *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).

<sup>33</sup> 44 Fla. Admin. Reg. 165 (Aug. 23, 2018).

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

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

The Florida State Oriental Medical Association (FSOMA) challenged the rule, on the basis that the proposed rule was an invalid exercise of delegated legislative authority.<sup>37</sup> 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 issued an administrative order finding that the proposed rule was invalid, as alleged. Specifically, the Administrative Law Judge found that the proposed rule exceeded the grant of rulemaking authority because it:

- Expands the scope of physical therapy practice;
- Enlarges, modifies, or contravenes the specific provisions of law implemented, s. 489.021(11), F.S., which states that PTs may perform acupuncture only upon compliance with the criteria set by the Board of Medicine, when no penetration of the skin occurs; and
- Is arbitrary because dry needling is not within the statutory scope of practice for PTs in this state.

The Board withdrew the proposed rule in March 2019.<sup>38</sup>

### **Effect of Proposed Changes**

HB 467 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 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 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;
- Therapeutic 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 more systems than the musculoskeletal and neuromuscular system currently in the definition. The bill also allows a PT to evaluate motor control as a part of the physical therapy assessment.

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

## **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 486.021, F.S., relating to definitions.

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<sup>37</sup> *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).

<sup>38</sup> 45 Fla. Admin. Reg. 47 (Mar. 8, 2019).

**Section 2:** Amends s. 486.025, F.S., relating to powers and duties of the Board of Physical Therapy Practice.

**Section 3:** 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 may have an insignificant, negative fiscal impact on the DOH if the Board chooses to adopt 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.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

The bill provides sufficient rulemaking authority to implements its provisions.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**