# SENATE, No. 867

# STATE OF NEW JERSEY

## 219th LEGISLATURE

INTRODUCED JANUARY 14, 2020

**Sponsored by:**
**Senator NELLIE POU**
**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Permits physical therapists to perform dry needling under certain circumstances.

**CURRENT VERSION OF TEXT**

As introduced.

**AN ACT** concerning the practice of physical therapy and amending and supplementing P.L.1983, c.296.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

1. Section 3 of P.L.1983, c.296 (C.45:9-37.13) is amended to read as follows:

3. As used in P.L.1983, c.296 (C.45:9-37.11 et seq.):

"Board" means the State Board of Physical Therapy Examiners established pursuant to section 5 of P.L.1983, c.296 (C.45:9-37.15).

"Direct supervision" means the presence of the supervising physical therapist on site, available to respond to any consequence occurring during any treatment procedure.

"Dry needling" means a physical intervention that uses a dry, filiform needle, without medication or other deliverable, to penetrate the skin and stimulate underlying muscular tissue, connective tissues, or myofascial trigger points for the management of neuromusculoskeletal pain and movement impairments. "Dry needling" shall not mean the stimulation of auricular or distal points or the practice of acupuncture as defined by section 2 of P.L.1983, c.7 (C.45:2C-2).

"General supervision" means supervision by a physical therapist in which: the physical therapist shall be available at all times by telecommunications but is not required to be on-site for direction and supervision; and the supervising physical therapist assesses on an ongoing basis the ability of the physical therapist assistant to perform the selected interventions as directed.

"Physical therapist" means a natural person who holds a current, valid license to practice physical therapy pursuant to the provisions of P.L.1983, c.296 (C.45:9-37.11 et seq.) and in accordance with regulations of the board.

"Physical therapist assistant" means a natural person who is licensed pursuant to the provisions of P.L.1983, c.296 (C.45:9-37.11 et seq.) and who assists a licensed physical therapist under his direct or general supervision in accordance with P.L.1983, c.296 (C.45:9-37.11 et seq.) and regulations of the board.

"Physical therapy" and "physical therapy practice" mean the identification of physical impairment, movement-related functional limitation, or balance disorder that occurs as a result of injury or congenital or acquired disability, or other physical dysfunction through examination, evaluation and diagnosis of the physical impairment or movement-related functional limitation and the establishment of a prognosis for the resolution or amelioration thereof, and treatment of the physical impairment or movement-

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

related functional limitation, which shall include, but is not limited to, the alleviation of pain, physical impairment and movement-related functional limitation by therapeutic intervention, including treatment by means of manual therapy techniques and massage, dry needling, electro-therapeutic modalities, wound debridement and care, the use of physical agents, mechanical modalities, hydrotherapy, therapeutic exercises with or without assistive devices, neurodevelopmental procedures, joint mobilization, movement-related functional training in self-care, providing assistance in community and work integration or reintegration, providing training in techniques for the prevention of injury, impairment, movement-related functional limitation, or dysfunction, providing consultative, educational, other advisory services, and collaboration with other health care providers in connection with patient care, and such other treatments and functions as may be further defined by the board by regulation.

"Physical therapy" and "physical therapy practice" also include the screening, examination, evaluation, and application of interventions for the promotion, improvement, and maintenance of fitness, health, wellness, and prevention services in populations of all ages exclusively related to physical therapy practice.

"Wound debridement and care" means the removal of loosely adhered necrotic and nonviable tissue, by a physical therapist, to promote healing, done in conjunction with a physician or podiatric physician.

(cf: P.L.2017, c.121, s.1)

2. Section 8 of P.L.1983, c.296 (C.45:9-37.18) is amended to read as follows:

8. a. The board shall:

(1) Administer and enforce the provisions of P.L.1983, c.296 (C.45:9-37.11 et seq.) and P.L.2003, c.18 (C.45:9-37.34b et al.);

(2) Establish procedures for application for licensure;

(3) Establish standards for, and adopt and administer examinations for licensure;

(4) Review and pass upon the qualifications of applicants for licensure;

(5) Insure the proper conduct and standards of examinations;

(6) Issue and renew licenses to physical therapists and physical therapist assistants pursuant to P.L.1983, c.296 (C.45:9-37.11 et seq.);

(7) Establish disciplinary measures, including but not limited to, suspending, revoking, or refusing to renew the license of a physical therapist or physical therapist assistant pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.);

(8) Maintain a record of every physical therapist and physical therapist assistant licensed in this State, his place of business, his place of residence, and the date and number of his license;

(9) Conduct hearings into allegations of misconduct by licensees;

(10) Establish requirements and standards for continuing professional education and competency and approve courses that are eligible to meet these requirements and standards, as provided in section 25 of P.L.2003, c.18 (C.45:9-37.34f);

(11) Conduct hearings pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), except that the board shall have the right to administer oaths to witnesses, and shall have the power to issue subpoenas for the compulsory attendance of witnesses and the production of pertinent books, papers or records;

(12) Conduct proceedings before any board, agency or court of competent jurisdiction for the enforcement of the provisions of P.L.1983, c.296 (C.45:9-37.11 et seq.) and P.L.2003, c.18 (C.45:9-37.34b et al.);

(13) Conduct investigations as necessary and have the enforcement powers provided pursuant to P.L.1978, c.73 (C.45:1-14 et seq.);

(14) Within 180 days of the effective date of P.L.2003, c.18, establish standards in accordance with the provisions of section 22 of P.L.2003, c.18 (C.45:9-37.34c), in collaboration with the State Board of Medical Examiners and other appropriate professional licensing boards established pursuant to Title 45 of the Revised Statutes, setting forth the conditions under which a physical therapist is required to refer an individual being treated by a physical therapist to or consult with a practitioner licensed to practice dentistry, podiatry or medicine and surgery in this State, or other appropriate licensed health care professional. Pending adoption of the standards: (a) a physical therapist shall refer any individual who has failed to demonstrate reasonable progress within 30 days of the date of initial treatment to a licensed health care professional; and (b) a physical therapist, not more than 30 days from the date of initial treatment of functional limitation or pain, shall consult with the individual's licensed health care professional of record as to the appropriateness of the treatment, or, in the event that there is no identified licensed health care professional of record, recommend that the individual consult with a licensed health care professional of the individual's choice;

(15) Establish mechanisms to assure that the public has access to physical therapists' services, and report back to the Senate Health, Human Services and Senior Citizens and Assembly Regulated Professions Committees, or their successors, regarding this access; **[**and**]**

(16) Within 180 days of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), establish standards for the provision of dry needling by a physical therapist pursuant to sections 3 and 4 of P.L. , c. (C. ) (pending before the

Legislature as this bill), in collaboration with the State Board of Medical Examiners; and

(17) Promulgate rules and regulations necessary for the performance of its duties and the implementation of P.L.1983, c.296. (C.45:9-37.11 et seq.)

b. In addition to the provisions of subsection a. of this section, the board may establish standards of professional behavior.

(cf: P.L.2017, c.121, s.2)

3. (New section) a. A physical therapist may perform dry needling if the physical therapist meets all of the following requirements:

(1) possesses a doctorate in physical therapy from an accredited college or university or has otherwise been actively licensed as a physical therapist in this State since January 1, 2003;

(2) has no less than two years of active clinical experience in the treatment of patients as a licensed physical therapist in this State and holds a current, unrestricted license to practice physical therapy in this State;

(3) has a current CPR certification issued by the American Red Cross, American Heart Association, National Safety Council, or any other agency or organization approved by the board; and

(4) has obtained documentation of the successful completion of a dry needling continuing education and competency program approved by the board that satisfies subsections b. and c. of this section.

b. The board shall approve a dry needling continuing education and competency program if the program meets all of the following requirements:

(1) provides a minimum of 40 hours of academic instruction which is attended in person by the physical therapist and shall be completed by the physical therapist in no more than two years;

(2) provides the history and a current literature review of dry needling and evidence-based practice;

(3) covers pertinent anatomy and physiology;

(4) covers the choice and operation of dry needling supplies and equipment;

(5) provides knowledge of dry needling technique including indications, contraindications, and precautions for its use;

(6) provides knowledge of the risks and complications of dry needling;

(7) covers safe practice guidelines and generally accepted standards of practice, including clean needle techniques and the Occupational Safety and Health Administration’s bloodborne pathogens standard;

(8) provides knowledge of post intervention care, including an adverse response or emergency;

(9) documents the successful completion of psychomotor and cognitive performance by means of practical and written assessments or examinations; and

(10) provides a minimum of 40 hours of practical hands-on instruction in the application and technique of dry needling under the direct supervision of a licensed physical therapist or physician pursuant to subsection c. of this section, which shall be completed by the physical therapist in no more than two years.

c. The dry needling continuing education and competency program, including the practical hands-on instruction required pursuant to paragraph (10) of subsection b. of this section, shall be taught by a licensed physical therapist who has a minimum of five years of clinical experience in the performance of dry needling or by a physician licensed to practice medicine and surgery in this State.

d. Following successful completion of the dry needling continuing education and competency program, including the practical hands-on instruction required pursuant to paragraph (10) of subsection b. of this section, a physical therapist shall complete 10 of the required minimum credits of continuing education and competency in each biennial license renewal period in board-approved programs in dry needling if the physical therapist chooses to continue to utilize such intervention on patients.

4. (New section) a. Dry needling shall only be performed by a physical therapist who meets the requirements of subsection a. of section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), and the performance of dry needling shall not be delegated to a physical therapist assistant or student physical therapist. A physical therapist who meets the requirements to provide dry needling shall only utilize the specific dry needling techniques for which the physical therapist has completed instruction and demonstrated competency.

b. For patients who receive an order, prescription, or referral for physical therapy from a New Jersey-licensed physician, osteopathic physician, or podiatric physician, dry needling shall only be performed on the patient after the physical therapist licensed in New Jersey to perform dry needling communicates with the physician who ordered, prescribed, or referred the patient to physical therapy. The physical therapist shall maintain documentation of such communication in the patient record. In no event shall a physical therapist perform dry needling on a patient if, in the medical judgment of the physician who ordered, prescribed, or referred the patient to physical therapy, dry needling is contraindicated or clinically inappropriate and such judgment is clearly communicated to the physical therapist by the physician.

c. A physical therapist shall obtain written informed consent from each patient prior to the provision of dry needling. The

patient shall receive a copy of the written informed consent and the physical therapist shall retain a copy in the patient's record. The informed consent shall include, at a minimum, the following:

(1) the patient's signature;

(2) the risks, benefits, and possible complications of dry needling;

(3) the treatment alternatives to dry needling;

(4) the physical therapist's level of education regarding supervised hours of training in dry needling;

(5) the importance of consulting with the patient's physician regarding the patient's condition; and

(6) a clearly and conspicuously written statement that the patient is not receiving acupuncture, which shall include the following language: "DRY NEEDLING IS A TECHNIQUE USED IN THE PRACTICE OF PHYSICAL THERAPY TO TREAT MYOFASCIAL, MUSCULAR, AND CONNECTIVE TISSUES FOR THE MANAGEMENT OF NEUROMUSCULAR PAIN AND MOVEMENT DYSFUNCTION. DRY NEEDLING TECHNIQUE SHOULD NOT BE CONFUSED WITH AN ACUPUNCTURE TREATMENT PERFORMED BY A LICENSED ACUPUNCTURIST."

d. A physical therapist shall only use filiform needles labeled in accordance with the United States Food and Drug Administration guidelines when performing dry needling.

e. A physical therapist shall perform dry needling in a manner that is consistent with generally accepted standards of practice including clean needle techniques, safe disposal of sharp objects, and the Occupational Safety and Health Administration's bloodborne pathogens standard.

f. A physical therapist shall maintain documentation in the patient record of each dry needling session. The documentation shall include the treatment performed, the patient's response to the treatment, and any adverse reactions or complications to the treatment.

g. If requested by the board or a member of the general public, a physical therapist practicing dry needling shall provide documentation of the education and training completed by the physical therapist as required under section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill). The failure to provide documentation in response to a request by the board or a member of the general public shall be deemed prima facie evidence that the physical therapist has not received the required training and shall not be permitted to perform dry needling.

5. This act shall take effect on the 90th day next following enactment.

STATEMENT

This bill permits a physical therapist to perform dry needling if the physical therapist has successfully completed a dry needling continuing education and competency program approved by the New Jersey State Board of Physical Therapy Examiners, has two or more years of clinical experience treating patients as a licensed physical therapist in this State, holds either a doctorate in physical therapy or a current and unrestricted license to practice physical therapy in this State that was issued prior to 2003, and has a current CPR certification issued by the American Red Cross, American Heart Association, National Safety Council, or any other agency or organization approved by the board.

The bill defines "dry needling" as a physical intervention that uses a dry, filiform needle, without medication or other deliverable, to penetrate the skin and stimulate underlying muscular tissue, connective tissues, or myofascial trigger points for the management of neuromusculoskeletal pain and movement impairments. The bill provides that "dry needling" does not mean the stimulation of auricular or distal points or the practice of acupuncture.

The bill establishes requirements for board-approved dry needling continuing education and competency programs, which must include at least 40 hours of academic instruction, attendance in person by a physical therapist, and the ability to complete the program in no more than two years. The programs must also include a minimum of 40 hours in practical hands-on instruction, under the direct supervision of a licensed physical therapist or physician, in the application and technique of dry needling. The required dry needling instruction must be taught by a licensed physical therapist who has a minimum of five years of clinical experience in the performance of dry needling or by a physician licensed to practice medicine and surgery in this State. A physical therapist who meets the bill's requirements and is approved by the board to offer dry needling must complete 10 credits of continuing education and competency in dry needling during each biennial license renewal period, if the therapist chooses to continue offering dry needling.

The bill provides that dry needling will only be performed by a physical therapist who meets the requirements of the bill, and the performance of dry needling may not be delegated to a physical therapist assistant or student physical therapist. A physical therapist who meets the requirements to perform dry needling may only utilize the specific dry needling techniques for which the physical therapist has completed instruction and demonstrated competency.

The bill also stipulates that if a patient is ordered, prescribed, or referred to physical therapy by a New Jersey-licensed physician, osteopathic physician, or podiatric physician, the physical therapist

licensed in New Jersey to perform dry needling can only perform the dry needling service on that patient after communicating with the physician who made the order, prescription, or referral to physical therapy for that patient. The physical therapist is to make note of this communication in the patient's record. Dry needling cannot proceed if the physician, who made the order, prescription, or referral determines and communicates to the physical therapist that dry needling is contraindicated or clinically inappropriate for the patient.

The bill also requires a physical therapist to obtain written informed consent from each patient prior to the provision of dry needling. The patient must receive a copy of the written informed consent and the physical therapist must retain a copy of the informed consent in the patient's record. The informed consent must include, at a minimum, the following:

(1) the patient's signature;

(2) the risks, benefits, and possible complications of dry needling;

(3) the treatment alternatives to dry needling;

(4) the physical therapist's level of education regarding supervised hours of training in dry needling;

(5) the importance of consulting with the patient's physician regarding the patient's condition; and

(6) a clearly and conspicuously written statement that the patient is not receiving acupuncture.

The bill provides that a physical therapist may only use filiform needles labeled in accordance with the United States Food and Drug Administration guidelines when performing dry needling and must perform dry needling in a manner that is consistent with generally accepted standards of practice, including clean needle techniques, safe disposal of sharp objects, and the Occupational Safety and Health Administration's blood borne pathogens standard.

Under the bill, a physical therapist must maintain documentation in the patient record of each dry needling session. The documentation must include the treatment performed, the patient's response to the treatment, and any adverse reactions or complications to the treatment.

Finally, the bill provides that, upon request of the board or a member of the general public, a physical therapist practicing dry needling must provide documentation of the education and training completed by the physical therapist as required by the provisions of the bill. The failure to provide documentation in response to a request by the board or a member of the general public will be deemed prima facie evidence that the physical therapist has not received the required training and will not be permitted to perform dry needling.