

## **Title 16, PHYSICAL THERAPY BOARD OF CALIFORNIA**

NOTICE IS HEREBY GIVEN that the Physical Therapy Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Mount St. Mary's College, Doheny Campus, 10 Chester Place, Rose Hill Auditorium, Los Angeles, CA, 90007 on Wednesday, May 11, 2011 at 1:00 p.m.. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Physical Therapy Board of California at its office not later than 5:00 p.m. on May 9, 2011. The Physical Therapy Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by section 2614 and 2615 of the Business and Professions Code to implement, interpret or make specific Sections 480, 726, 2660, 2660.1, 2660.2, 2660.5, 2660.7, 2661 and 2661.5 of said Code and Section 11425.50, 11500, and 11415.60 Government Code, the Physical Therapy Board of California is considering changes to Division 13.2 of Title 16 of the California Code of Regulations as described in this Notice.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Physical Therapy Board of California (Board) is mandated to protect California consumers of physical therapy services. The process by which the Board meets this mandate are: issue licenses to eligible physical therapist and physical therapist assistant applicants; investigate complaints against physical therapist and physical therapist assistant licensees; discipline physical therapist and physical therapist assistant licensees for violation of the Physical Therapy Practice Act (PTPA); monitor physical therapist and physical therapist assistant licensees who have been placed on probation; and manage a diversion program for physical therapist and physical therapist assistant licensees whose practice may be impaired due to chemical dependency. To enhance its public protection mandate, the Board is proposing the following changes:

#### Amend Section 1398.4 - Delegation of Functions

The Board has statutory authority to employ an Executive Officer to perform the duties delegated by the Board. In current regulation, except for those powers defined under the Administrative Procedure Act, the Board delegates to the Executive Officer all functions necessary to the dispatch of business in connection with investigative and administrative proceedings under the jurisdiction of the Board. This regulatory proposal would authorize the Executive Officer (EO) to delegate this function to the Assistant Executive Officer or other designee.

## Adopt Section 1399.23-Required Actions against Registered Sex Offenders

Authority exists in current law for the Board to deny an application for a license or discipline a licensee based on a sexual violation requiring registration as a sex offender pursuant to Penal Code section 290 since it is a conviction of a crime substantially related to the qualifications, functions, or duties of a license.

The proposed regulations require a specific disciplinary action be taken by the Board if an applicant for licensure, licensee, or petitioner for reinstatement of a revoked license is required to register as a sex offender. The proposed regulations also specify the circumstances in which the requirement for a specific disciplinary action would not apply.

This regulatory proposal specifies the disciplinary action to be taken against such a person.

## Adopt Section 1399.24 - Unprofessional Conduct

Existing law authorizes the Board to take disciplinary action against a licensed physical therapist or physical therapist assistant for unprofessional conduct and defines any violation of the Physical Therapy Practice Act as unprofessional conduct.

In addition to the conduct described in section 2660 of the Business and Professions Code, this regulatory proposal would define additional causes for unprofessional conduct, which are as follows: Prohibiting a physical therapist or physical therapy assistant from: (1) including or attempting to include in civil settlement agreements provisions that prevent a person from contacting, cooperating with, or filing a complaint with the Board, or requiring that a person attempt to withdraw a complaint already filed with the Board; (2) failure to provide lawfully requested records that are under the licensee's control; (3) failure to cooperate and participate in a Board investigation; (4) failure to report to the Board specified actions against the licensee such as indictment, arrest, or conviction; and (5) refusal or failure to comply with a court order mandating the release of records to the Board.

## FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: None

The Physical Therapy Board of California has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. The proposed regulatory action affects: 1) physical therapist and physical therapist assistants who are the subject of proposed Board disciplinary action and 2) applicants for licensure who may be unable to practice safely due to physical or mental illness.

Cost Impact on Private Persons or Entities:

The Physical Therapy Board of California is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Costs associated with any disciplinary order imposed by the Board could result in legal fees, if the individual is represented by legal counsel. The disciplinary order impact varies and could include loss of physical therapist or physical therapist assistant's employment income, if the license is revoked, surrendered, or suspended and or recovery of investigative and attorney costs.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Physical Therapy Board of California has determined that the proposed regulation could affect small businesses if the licensee is the sole owner of the business. Physical therapists placed on probation could be subject to restrictions of ownership for certain type of violations which in turn would affect the business. The Physical Therapy Board does not have the authority to require information regarding ownership of small businesses and therefore does not have information on the number of small businesses owned by physical therapists.

CONSIDERATION OF ALTERNATIVES

The Physical Therapy Board of California must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome on affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of the reasons and all of the other information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the contact person designated in the Notice under Contact Person or by accessing the Board's website at: [www.ptbc.ca.gov](http://www.ptbc.ca.gov)

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be addressed to:

Elsa Ybarra  
2005 Evergreen Street, Suite 1350  
Sacramento, CA 95815  
(916) 561-8262  
(916) 263-2560 – Fax Number  
[Elsa.Ybarra@dca.ca.gov](mailto:Elsa.Ybarra@dca.ca.gov)

The backup contact person is:

Rebecca Marco  
2005 Evergreen Street, Suite 1350  
Sacramento, CA 95815  
(916) 561-8260  
(916) 263-2560 – Fax Number  
[Rebecca.Marco@dca.ca.gov](mailto:Rebecca.Marco@dca.ca.gov)

Website Access: Materials regarding this proposal can be found at [www.ptb.ca.gov](http://www.ptb.ca.gov).