



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY - GOVERNOR EDMUND G. BROWN JR.

## Physical Therapy Board of California

2005 Evergreen St. Suite 1350, Sacramento, California 95815

Phone: (916) 561-8200 Fax: (916)263-2560

Internet: [www.ptbc.ca.gov](http://www.ptbc.ca.gov)



### AGENDA ITEM #8

**DATE:** July 21, 2011

**TO:** Physical Therapy Board of California

**SUBJECT:** EXECUTIVE OFFICER'S REPORT

This report is to update you on the status of the operations within the Board.

### ADMINISTRATION

**PERSONNEL** – There 18 allocated positions in the Board's budget for FY 2011/12. Of those 18 positions, there currently are seven vacant positions. They are:

- Two (2) Staff Services Manager I (SSM I) vacancies, one was designated for the Assistant Executive Officer (my former position) and one is designated for Enforcement
- Three and one half (3.5) Associate Governmental Program Analyst (AGPA) Limited Term positions for Enforcement
- One AGPA position for Licensing
- One half (.5) Special Investigator position
- One Staff Services Analyst for the Continuing Competency Program. It should be noted the Board was also allocated a full time Office Technician for the program but lost it in the Governor's 5% reduction in personnel services.

The Board is having a difficult time filling these positions due to the Executive Order imposing a freeze on hiring. However, there is a freeze exemption request system for a percentage of your total positions which allowed the Board to request 5 freeze exemption approvals. As of today, we have not received any approvals, even though they were originally submitted to the Department of Consumer Affairs (DCA) earlier this year in March. To obtain a freeze exemption the Board must obtain approval from DCA, Consumer Services Agency, Department of Finance (DOF) and the Governor. Currently, the Board has one SSM I at the Governor's office (hopefully by the date of the meeting it will be approved); one SSM I and the SSA for Continuing Competency at the DOF; and, two AGPA's still at DCA. Also, as you are aware the Board has 11 permanent intermittent staff which the Board hoped to move into the vacant positions; however, there is another obstacle. The Department of Corrections laid off a large number of employees, placing them on a State Restrictions of Appointments (SROA) list which gives employees facing layoffs hiring preference. Because of this, the Board is required to hire from this list; however, the Board must first have an approved freeze exemption. The

Board was fortunate to make commitments to two existing staff prior to SROA being established. The SSA position was committed to Sarah Conley and the SSM I for Enforcement was committed to Jason Kaiser; therefore, if freeze exemption approvals are received for these positions, Sarah and Jason will be placed into them on a permanent full time basis. In the meantime, Sarah has been placed into the SSA position on a permanent intermittent basis since the Executive Order prohibits a change in time base.

**BUDGET** - Taylor Schick, DCA Budget Manager and Robert de los Reyes, DCA Budget Analyst assigned to the Board will be presenting an Analysis of the Board's Fund Condition, Budget Expenditure Report and Revenue Projection. These documents may or may not be included in the agenda book but if not, will be presented at the meeting. They also are going to report on the Budget Change Proposal (BCP) process since the Board is submitting a BCP to redirect funds for staff. Since the Governor's budget isn't public until it's signed, the details of the proposal are not for public consumption; therefore, the Board isn't privy to more information than the concept of the proposal.

Yesterday, July 21, 2011, the Board received an email indicating that in light of the continued challenging fiscal situation statewide, the Agency Secretary is asking all Boards to look for ongoing savings from their budget. This savings is in addition to the 5% workforce cap reduction already reduced from the Board's budgets and the normal budgeted salary savings. It is anticipated these savings plans will be the foundation to achieve the anticipated ongoing target spending reductions outlined in the various Executive Orders issued last fiscal year. Beginning FY 11/12, DCA reduced its pro rata costs by 1.4 million, as a result, all Boards and Bureaus distributed costs were proportionately reduced, which ultimately retains more money in the Boards fund. DCA's Budget Office prepared the Board's 5% target number using the Board's FY 2011-12 base budgets and discounting that number by the pro rata share of the DCA's Administrative Services Division 5% savings, which equaled \$120,001. Consequently, the Board was supplied with a template to assist in taking a critical look at the Board's operations to identify and cost out areas of savings. One of the suggested means of savings was to reduce Board meetings from four to three; however, if the Board agreed to this measure of savings, it has not yet been determined how much of a savings it would be. I hope to have more information regarding this and other identified savings measures to report on at the meeting.

**LEGISLATION AND REGULATION** – Both are being discussed under agenda items 12, 13, 14, 15 and 16.

The amendments to the regulation governing the supervision of physical therapist assistants (§ 1398.44); supervision of physical therapy aides (§1399); and, patient documentation (§1398.13, formerly §1399.85) went into effect on July 14, 2011. The proposed rulemaking amendments to the regulation, Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant (§1398.26.1), requiring the FSBPT Coursework Evaluation Tool in lieu of ELEERS is still at DCA. In fairness, it is still with DCA because I didn't get a chance to review the file prior to it being forwarded to DCA, so I wanted to take time to review the file before it went on to OAL but the time to do that hasn't

seemed to present itself. Therefore, I have instructed DCA to go ahead and forward the file on to OAL. Neither of these regulations appear on the 2011 calendar.

However, while the Sunset Report will be discussed under agenda item #12, it should be noted that preparing the report is an extremely daunting task which staff hasn't yet begun. The plan is to shift staff focus and begin preparing the report immediately after the meeting but this may require other tasks to be postponed in order to meet the November 1, 2011 deadline. Since this is not the first Sunset Report prepared by staff it will be easier than in the past but still will take countless staff hours to give it the attention it deserves to produce a quality report.

**OUTREACH** – Discussed under agenda item 9. However, the Board had voted to post discipline actions on Facebook at the February meeting but directed staff to postpone that action at the May meeting to give the Board time to give it more thought. Therefore, staff is still waiting direction from the Board regarding to post or not to post on Facebook. While it is sure to be uncomfortable for those disciplined licensees, it is a medium for reaching consumers and employers instantaneously.

**TRAVEL** – Travel continues to be restricted to mission critical travel, e.g. Board meetings, probation monitoring, mandated trainings, etc. Since the August meeting is in Sacramento, and Board members are free to travel to meetings without approval, there were no restrictions; however, the meeting in November scheduled at Ohlone College required prior approval for staff travel. I've already obtained that approval because; if not, the Board would have had to vote at this meeting to either cancel the meeting or move it to Sacramento.

One significant impact the Executive Order prohibits is travel to settlement conferences; therefore, these are being settled via discussions with the Deputy Attorney General (DAG) over the telephone. While most Boards settle this way, it is not favored by either the DAG or the Administrative Law Judge (ALJ). This was pursued with DCA when the Executive Order was released and the response was, "it wasn't considered mission critical". Unfortunately, I am now experiencing the consequences of that decision since there is a case with very egregious violations which I am expected to settle without benefit of meeting with the ALJ and the Respondent. The attendance at these settlement conferences are extremely beneficial to everyone involved and result in better decisions and probationers which ultimately provides greater consumer protection. It is believed by all the presence of the Board at settlement conferences demonstrates to the Respondent the Board takes violations of the law very seriously. I would encourage the Board to pursue gaining approval for travel to settlement conferences where the violations are so egregious there is uncertainty whether settlement is appropriate. The Board received a letter supporting the Board's presence at settlement conferences from Ron Diedrich, Director and Chief Administrative Law Judge of the Office of Administrative Hearings.

The Board still has not received approval for out of state travel to the FSBPT annual meeting in September.

**CONTRACTS** - The Board is currently seeking the assistance of the Office of Professional Examination Services (OPES) to update the California Law Examination. If OPES is unable to

provide the service, the Board will be seeking an outside vendor to contact for the service. The FSBPT contract will be discussed under agenda item 19.

**STRATEGIC PLANNING** – The Board requested staff secure a facilitator for strategic planning sometime after the conclusion of the Sunset hearings and receipt of the report from the Senate Committee on Business, Professions & Economic Development. Since the hearings were delayed last year until March/April, the staff is recommending a 2012 strategic planning in conjunction with the Board's summer meeting in Sacramento. This would minimize travel of DCA staff as well as Board staff. Board staff has entered into discussions regarding securing a facilitator from DCA for this purpose.

**PTBC OFFICE LOCATION** – DCA has available space in their building located at 1625 N. Market and they have been encouraging the relocation of the Board. The Board is in need of additional space but has been reluctant to enter into any agreements due to concern regarding costs associated with the move and the increased rent. The Board currently pays \$1.55 sq. ft. and the DCA bldg. rent is \$1.75 sq. ft. The budget office has determined this to be an additional \$66,525 in rent annually for the extra approximate 3,000 sq. ft., plus an additional \$30,000 in move costs (incl. moving expenses, new phones and tenant improvements), which could be difficult to absorb especially with the addition of another 5% budget cut; however, Medical Board wants the Board's current space and DCA is anxious to find a tenant for the unoccupied space; therefore, if both DCA and MBC are willing to absorb these costs, the Board should seriously consider the move since the new space allows for growth.

## **LICENSING**

**APPLICATIONS** – The Board is receiving a high volume of applications due to the summer graduates and the addition of the new physical therapist assistant program at Concorde Career College in North Hollywood. Further discussion of this will be under agenda item 4.

**CONTINUING COMPETENCY** - The staff have continued to make headway in the development of this program which affects both the Licensing and Enforcement programs. Additional reporting of the challenges and progress will be addressed under agenda items 4(B) and 5(A).

**EXAMINATION** – The implementation of new regulatory language regarding supervision and patient records prompted a review of the question pool for the California Law Examination. Staff identified 8 of the 130 questions which were affected by the regulatory change. After consultation with FSBPT, the most immediate solution was to change the scoring on these questions so they would all score as correct. Understanding this was not the best option, it was the best short term solution. In the meantime the Board is updating the 8 items currently being administered but are no longer correct. FSBPT will then make the changes to their system and package them up for Prometric. FSBPT would then go through the publishing, QA and beta-testing processes with Prometric. A specific schedule would be requested from Prometric, but an expedited schedule would be approximately one month from FSBPT sending Prometric the data. FSBPT would need 1-2 weeks to make changes to the items in their system. This will take 5-6 weeks.

Legal counsel identified a deficiency in the regulation regarding the Board's set pass score for its exams. This is not on the rulemaking calendar; however, legal counsel believes it requires immediate attention due to the challenges the Board could face for failure to regulate the exam pass score.

Occupational Analysis, the meetings reflect the Board was interested in contacting Professional Examination Services to discuss performing an occupational analysis for the Board. However, it is uncertain whether this is still the desire of the Board since the Board learned the examination administered by FSBPT has not been compromised. Also, there is question whether the Board can fund the analysis this fiscal year.

FSBPT was contacted to solicit authorization to share the findings of Comira regarding the assessment of the exam integrity. To date, a response has not been received; however, communication with Maribeth Decker of FSBPT disclosed the Board will be discussing it at their meeting at the end of July in Dallas. Contact has been made with Bill Hatherill requesting the outcome of the Board's consideration on August 1<sup>st</sup>.

## **ENFORCEMENT**

Most of the reporting on enforcement will occur under agenda item 5. However, I would like to add the Board staff is now participating in bimonthly meetings with Carlos Ramirez, Senior Assistant Attorney General. And, he has agreed to coordinate training with the investigators from the Division of Investigation. This could be monumental in the outcome of the quality of investigative reports and the overall success of the Board when seeking discipline. Discussion also took place regarding the implementation of continuing competency and the impact on the AG's office. He agreed to assign a DAG in each of the regional office to specifically focus on these cases due to the necessity for an expedited outcome.

Due to budget concerns, except for the most egregious, the Board stopped work on cases sent to the AG's office in mid-May. The AG's have resumed working the cases. Board staff is working with the budget office regarding augmentation to the Board's budget to fund AG costs. This is also a process not for public consumption; however, the Board should be aware of the issue and the efforts made to resolve it.