

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 Ohlone College, Newark Campus, 39399 Cherry Street, Room NC 1100, Newark, CA, 94560 on November 3, 2011 at 9:15 am. 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 November 3, 2011 or must be received at the hearing. 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 2615 of the Business and Professions Code to implement, interpret or make specific Sections 2660, 2660.1, 2661 and 2661.5 of said Code and Section 11425.50(e), 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 follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

(1) Amend section 1399.15

The Model Guidelines for Issuing Citations and Imposing Discipline (Model Guidelines) is a manual addressing public protection while enabling the licensee to practice their profession in a controlled environment.

“Document Incorporated by Reference: The “Uniform Standards Related to Substance Abuse and Guidelines for Issuing Citations and Imposing Discipline,” dated August 2011, 4th Edition.”

The Board has since produced the 3rd edition of the Model Guidelines, to more accurately reflect its purpose and intended use by the public, those subject to the issuance of a citation and fine, as well as those involved in the disciplinary process: Administrative Law Judges, Deputy Attorneys General, members of the Board who review proposed decisions and stipulations and make final decisions, its Executive Officer and staff, and respondents and their counsel. The Board proposes to incorporate the 4th edition of the Model Guidelines into regulation by reference, which

includes additional violations and modifications of the penalties to be consistent and appropriate to the practice of physical therapy. Additionally, there have been changes to the physical therapy laws and regulations that are not reflected in the June 2009 publication of the guidelines thereby hindering the Board's ability to effectively impose an action which would enable a licensee to continue to practice while effectively protecting the public.

The Board currently regulates a total of 31,225 licensees; consisting of 24,984 physical therapists and 6,241 physical therapy assistants. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violating of the Physical Therapy Practice Act (PTPA); monitoring licensees whose licenses have been placed on probation; and managing the Diversion Program for licensees whose practice may be impaired due to abuse of dangerous drugs or alcohol. Business and Professions Code Section 2615 authorizes the Board to adopt regulations that may be necessary to effectuate the provisions of the PTPA.

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 amendment of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other States. The Physical Therapy Board has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.

- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses."

The following types of businesses would be affected:

Businesses owned by licensees of the Board who face disciplinary action.

Businesses that employ licensees of the Board who face disciplinary action.

The Board currently regulates a total of 31,225 licensees, including 24,984 physical therapist and 6,241 physical assistants. A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact. Probationers are responsible for paying the costs of the diversion program, clinical diagnostic evaluations, biological testing, and facilitated group support meetings as terms of probation. The average salary of a practicing physical therapy in California is approximately \$84,600 per year and the average salary of a physical therapist assistant in California is approximately \$57,760 per year. The cost of Biological Testing may have the most significant impact. The average current rate of a urine analysis is around \$58 per test, plus an average collection fee of \$20-\$50, for a total average cost of \$70 - 108 per urine test. A probationer ordered to comply with the Biological Testing condition would incur an expense of approximately \$8,112 for the first year (104 tests for the first year) and approximately \$3,900 per year for the duration of the probationary term (minimum of 50 tests per year for the subsequent probationary years). The average cost of the first year of biological testing is approximately 10% of a physical therapist salary and 14% of a physical therapist assistant's. If the 104-time per year testing requirement results in a probationer's inability to participate in the testing program, the Board will send the case to the Office of the Attorney General to pursue revocation for the probationer's failure to comply with the Biological Testing term and condition. The Board anticipates that at least half of the probationers will not be able to afford the cost of the testing frequency and will result in the Board's pursuit of revocation of the probationer's license. The Board estimates \$3,000 per case for prosecution and hearing costs associated with the revocation of the probationer's license.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal would have an 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. A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. Licensees who are in compliance with the law will not incur any fiscal impact.

Cost Impact on Private Persons or Entities:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to Board are: A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation may affect small businesses. The Board only regulates activities that appear to affect small businesses as defined in California Government Code Section 14837. A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the small business where the licensee works depending on the nature and severity of the violation. A small business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore the number or percentage of small businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a small business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Small businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

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 Physical Therapy Board of California at 2005 Evergreen Street, Suite 1350, Sacramento, California 95815.

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

The backup contact person is:

Jason Kaiser
2005 Evergreen Street, Suite 1350
Sacramento, CA 95815
(916) 561-8278
(916) 263-2560 – Fax Number
Jason.Kaiser@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Elsa Ybarra at (916) 561-8262.

Website Access: Materials regarding this proposal can be found at www.ptb.ca.gov.