



Physical Therapy Board of California

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

## Physical Therapy Board of California

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### AGENDA ITEM #9

**DATE:** October 23, 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 since the last the Board meeting on August 3 and 4, 2011.

### ADMINISTRATION

#### PERSONNEL

In the last Executive Officer report, the following vacancies were identified.

- Two (2) Staff Services Manager I (SSM I) vacancies, one was designated for the Assistant Executive Officer (my former position) but is now designated for Licensing and Administration and one is designated for Enforcement [resulting from the Consumer Protection Enforcement Initiative (CPEI) Budget Change Proposal (BCP)].
- Three and one half (3.5) Associate Governmental Program Analyst (AGPA) Limited Term positions for Enforcement [resulting from the (CPEI) (BCP)]
- One AGPA position for Licensing [vacated by Ilda Romo on May 30, 2011]
- One half (.5) Special Investigator position [resulting from the (CPEI) (BCP)]
- One Staff Services Analyst for the Continuing Competency Program [resulting from AB 120 (Cohn) Chapter 540, Statutes 2006]. 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.

Since then, the Board has filled the two Staff Services Manager I (SSM I) positions.

- Jason Kaiser was appointed to the Enforcement SSM I position on July 26, 2011 (as a result of a freeze exemption approval received July 26, 2011); and,
- Liz Constancio was appointed to the Licensing/Admin SSM I position on September 1, 2011 (based on a transfer from the Board of Barber and Cosmetology). A freeze exemption request was submitted in March for this position but approval was not received until October 13, 2011. Since Ms. Constancio was a DCA employee and a

lateral transfer from the Board of Barber and Cosmetology, a freeze exemption approval was not required.

The Board has filled two (2) of the three and one half (3.5) limited term positions for Enforcement were filled with existing permanent intermittent Staff Services Analysts (SSA) from Enforcement. However, since Executive Order B-06-11 prohibited a change in time base, existing staff were placed into the limited term positions at the permanent intermittent time base. Permanent intermittent employee work hours are limited to working 1500 hours vs. a full time employee who works 1920 hours per calendar year, leaving a 420 hour shortfall per person, per year. With that being said, there has been talk of relief of the hiring freeze for the Boards within the Department of Consumer Affairs, once all Departments within the State and Consumer Services Agency have met the 5% savings reduction. Upon relief from the hiring freeze, these staff will be placed into the limited term positions on a full time basis. The employees filling these positions are:

- Cristy Livramento appointed 1.0, Lisa Chullino appointed .9 (36 hours) and Susan Meadows appointed .6 (24 hours) as permanent intermittent employees into the 2.5 limited term, AGPA positions created by CPEI. One (1.0) limited term AGPA position still remains vacant.

One (1) AGPA position vacancy for Licensing has now been filled.

- Sophia Cornejo was appointed to the position on October 1, 2011. Ms. Cornejo was a transfer from Board of Barber and Cosmetology; therefore, no hiring freeze exemption approval was necessary.

One half (.5) time Special Investigator Position remains vacant; however, the Board has received authorization to over expend the position by .5 to make the position full time for purposes of recruitment.

One (1) full time Staff Services Analyst position for the Continuing Competency Program was filled.

- Sarah Conley was appointed to the position on July 1, 2011 as a permanent intermittent employee; however, on October 13, 2011, the Board received freeze exemption approval and Ms. Conley has now been placed into the position on a permanent full time basis. The Board has reorganized and Ms. Conley will remain in the Administration Program, while the continuing competency function has been assigned to Karin Thompsen in Licensing.

Board Appointments –

Carol Wallisch was appointed on September 1, 2011 by Senator Darrell Steinberg, Chair Senate Rules Committee and on October 18, 2011 James Turner was reappointed by Assemblyman Perez, Speaker of the Assembly. The public member appointment by the Governor remains vacant.

**BUDGET** – Attached are reports detailing expenditures overall and by program component as well as the fund condition current year and projected to 2014.

**LEGISLATION AND REGULATION** – Additional discussion will occur under agenda items 11, 12, 13, 14 and 15.

- SB 541 (chap.399, Stats. 2011) an urgency bill went into effect on September 26, 2011

The law now permits boards and bureaus within DCA to enter into a contract with an expert consultant, without going through the usual contract process. This authority is limited to only expert consultants rendering opinions on enforcement-related matters; serving as subject matter experts in examination development, validation or occupational analyses; and, when evaluating the mental or physical health of a licensee or applicant for licensure, without going through the usual contract process. However, there are a few conditions: 1) the Board must obtain delegated authority from the Director to use the contract, which the Board has done; 2) while the expert can provide more than one type of service, it cannot be done on only one contract; 3) the contract cannot exceed \$50,000; and, 4) the Board must adopt a policy and procedure for the selection process. The Board adopted a policy for selection in 2001.

- SB 543 (chap 448, Stats. 2011)

The law prohibits the Board from taking action against any physical therapist who is a shareholder, officer, director or employee of a Chiropractic, Podiatric or Medical Corporation. The language will sunset in 2013. The bill also authorizes funding for DCA to enter into a contract for BreEZe among other things unrelated to the Board.

- Sunset Review

The sunset review process provides an opportunity to conduct a regular systematic performance review and evaluation of the Board. Sunset provides a formal mechanism for the Legislature, interested parties and stakeholders, as well as the Department of Consumer Affairs (DCA) to make advisory recommendations for Board improvements. DCA will provide testimony at the hearings, review the Committee's findings and recommendations and report its own findings and recommendations to the Committee.

The goal is to improve the quality of services provided to consumers by thoroughly examining the Board's operations. Since the staff has focused mostly on Sunset since the last Board meeting and while it has been quite an undertaking, it also has been a worthwhile exercise. Not only has it provided opportunity to look at areas in need of improvement, it has also served to recognize all of the Board's accomplishments. With the help of the members of the Board, I believe the members of the Senate Committee on Business, Professions and Economic Development will perceive the report as a quality product and an accurate portrayal of the Board's achievements since the last Sunset review.

- California Code of Regulations, Title 16, §1398.26.1

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 will go into effect on October 29, 2011. .

**OUTREACH** – Outreach is still restricted by the Executive Order which prevented the Board’s presence at the CPTA conference in September; however, the Board continues to see cost effective ways to promote outreach.

The Board voted to post discipline actions on Facebook at the February meeting but directed staff to postpone action at the May meeting, giving the Board time for more thought. The Board revisited its decision at the meeting in August and by majority vote directed staff to begin posting discipline. The Board posted its first action on October 14, 2011.

The Board continues to seek meeting locations in schools of physical therapy for outreach to students. Staff is currently seeking a location for the February meeting in San Diego at either San Diego Mesa College, physical therapist assistant program or University of St. Augustine, physical therapist program. The meeting for May, 2012 is set for Loma Linda University and staff is looking for locations in the bay area for November 2012.

While a newsletter is currently in the development stages, there is still room remaining for articles of interest; therefore, if you have any ideas or want to submit an article, please let me know. Once it is complete, it will be forwarded to DCA’s Publication, Design and Editing team for posting on the PTBC website. The plan is to release a four page newsletter biannually.

**TRAVEL** – Travel continues to be restricted to mission critical travel, e.g. Board meetings, probation monitoring, mandated trainings, etc. Consequently, travel to the FSBPT annual meeting scheduled in North Carolina on September 22-24, 2011, was denied. At the August meeting the Board directed I pursue an exemption for travel to settlement conferences where the more egregious violations are alleged. To date, there hasn’t been the necessity to request an exemption.

**CONTRACTS** - The Board recently entered into contract for \$42,766 with the DCA’s Office of Professional Examination Services (OPES) to update the California Law Examination (CLE). I am also in the process of negotiating a multiyear contract for the ongoing review of the CLE as well as for review of the Electromyography examinations since neither examination have been updated since 1998 but was reviewed for currency in 2006.

**AUDIT** – To date I have heard no notice regarding a start date. I received a letter dated September 6, 2011 indicating the Joint Legislative Audit Committee directed the Bureau of State Audits conduct an audit of the Board’s relations with the professional organization and it’s handling of complaints against physical therapists. The letter further ordered that in order to preserve all relevant records, they are requesting staff be immediately notified they should not make changes to any of the records or files, regardless of format, that are not part of the normal course of business and they should not purge files or records, make alterations to existing entries in the files or records or backdate any additions to the files or records.

I did contact them inquiring about when they could be expected to begin the audit and was advised there was no way to know of a start date in advance. Evidently, all those who were approved for audit will be placed into a queue and will be drawn in order of placement. I advised them of the possibility of a move and how having materials packed could impact the efficiency of the audit but it didn't seem to be of concern.

**FINANCIAL INTEGRITY AND STATE MANAGERS ACCOUNTABILITY ACT** – Government Code 13400 – 13407, known as the Financial Integrity and State Manger's Accountability Act of 1983 (FISMA) was enacted to reduce the waste of resources and strengthen accounting and administrative control. FISMA requires each state agency to maintain effective systems of accounting and administrative control, to evaluate the effectiveness of these controls and biennially review and report on the adequacy of the Board's system of internal accounting and administrative control. The Board is required to identify the following, using the Department of Finance's definition of risk as "those objects or impediments that stand in the way of achieving your goals and objectives", 1) what are the three highest risks the Board is facing today; 2) explain the probability and impact of each risk; and, 3) explain what steps have been take to date to reduce or mitigate this risk. The Board's has been ordered to comply with the FISMA by 12/31/2011.

**PTBC OFFICE LOCATION** – DCA is soliciting the PTBC's occupancy in the building located at 1625 N. Market; however, due to Sunset, negotiation discussions have been postponed until next month. I recently learned that even though the Medical Board of California wants the space currently occupied by PTBC, they are unwilling to absorb any of the costs for the PTBC to move. Therefore, those costs would need to be factored into the overall costs. The DCA Budget office indicated the costs associated with moving can be figured at \$300 to \$500 per person.

## **LICENSING**

**APPLICATIONS** – The Board is receiving a high volume of applications due to the upcoming exam date scheduled for December 5, 2011. The deadline for registration is November 5 and the deadline for the staff to make them eligible is November 21, 2011. Licensing data will be discussed further under agenda item 6.

**CONTINUING COMPETENCY** - Due to staffing shortages and Sunset, continuing competency is suffering from a backlog. The last audit letters mailed were in July for March renewals. Agenda item 6(A) offers data on the outcome of the audits to date. Due to the high number of non-compliance, once the audits resume, the volume of those audited will increase from 10% to 20%, the outcome will hopefully reflect a greater number of compliance.

**EXAMINATION** – As reported in August, 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 early September, OPES conducted an exam workshop to review the entire pool of questions for the California Law Examination. The review indicated approximately 12 questions were in need of revision; the revisions were made and forwarded to FSBPT for quality assurance and beta-testing processes with Prometric. The new forms of the exam should be ready for release by the end of November. In the meantime, workshops to update the entire pool of questions have begun. The workshops will be completed in April 2012 and the new exam will be released in July.

A review of the Electromyography exams will be scheduled for early 2012.

## **ENFORCEMENT**

Most of the reporting on enforcement will occur under agenda item 7. There is nothing additional to report.