

PHYSICAL THERAPY BOARD OF CALIFORNIA  
Third Modified Text  
Proposed Language Adopted May 11, 2011

Changes to Title 16 of California Code of Regulations as follows:

Changes to the originally proposed text are shown in single underline and strikeout; Changes to the second modified text are shown in yellow highlight, bold and double underline.

Changes to the third modified text are shown in bold and double underline.

Amend Article 1, section 1398.4 of Division 13.2, Delegation of Functions

**1398.4. Delegation of Functions.**

Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the board delegates and confers upon the executive officer of the board, or in his or her absence, the assistant executive officer of the board or other designee of the executive officer, ~~the president of the board, or in his or her absence, the vice-president of the board,~~ all functions necessary to the dispatch of business of the board in connection with investigative and administrative proceedings under the jurisdiction of the board, ~~including, but not limited to, The Board further delegates to the executive officer, or in his or her absence,~~ **the assistant executive officer or other designee of the executive officer**, ~~the ability to approve settlement agreements for revocation or surrender of a license or interim license suspension and to hold administrative citation informal conferences and make decisions to affirm, modify or dismiss citations, including any fine levied or order of abatement issued.~~ This ability delegation shall not include ~~disciplinary decisions where revocation is ordered then stayed.~~

Note: Authority cited: Section 2615, Business and Professions Code. Reference: Sections 2608, and 2614, Business and Professions Code; and Sections 7, 11500, and 11415.60, Government Code.

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3 Add Article 8 and section 1399.23 in Article 8 of Division 13.2 of Title 16 of the California Code  
4 of Regulations to read as follows:

5  
6 **Article 8. Discipline and Reinstatement of License**

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8 **1399.23. Required Actions Against Registered Sex Offenders.**

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10 (a) Except as otherwise provided, if an individual is required to register as a sex offender  
11 pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or  
12 military or federal law, the board may Administrative Law Judge shall, in a Proposed Decision:

13 ~~(1) Deny an application by the individual for licensure, in accordance with the procedures~~  
14 ~~set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the~~  
15 ~~Government Code.~~

16 (2) Promptly revoke the license of the individual, in accordance with the procedures set  
17 forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the  
18 Government Code, and not stay the revocation nor place the license on probation.

19 (3) Not reinstate or reissue the individual's license.

20 (b) This section shall not apply to any of the following:

21 (1) An individual who has been relieved under Section 290.5 of the Penal Code of his or  
22 her duty to register as a sex offender, or whose duty to register has otherwise been formally  
23 terminated under California law or the law of the jurisdiction that required registration, provided,  
24 however, that nothing in this paragraph shall prohibit the board from exercising its discretion to  
25 discipline a licensee under any other provision of state law.

26 (2) An individual who is required to register as a sex offender pursuant to Section 290 of  
27 the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal  
28 Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising  
29 its discretion to discipline a licensee under any other provision of state law based upon the  
30 licensee's conviction under section 314 of the Penal Code.

31 (3) Any administrative proceeding that is fully adjudicated prior to the effective date of  
32 this regulation shall not be subject to the provisions of this section. A petition for reinstatement  
33 of a revoked or surrendered license shall be considered a new proceeding for purposes of this  
34 paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

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36 NOTE: Authority cited: Section 2615, Business and Professions Code. Reference: **Sections**  
37 2221, 2232 2602, 2608, 2660, 2660.1, 2660.2, 2660.5 and 2661, Business and Professions  
38 Code.

1  
2 Add section 1399.24 in Article 8 of Division 13.2 of Title 16 of the California Code of Regulations  
3 to read as follows:

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5 **1399.24. Unprofessional Conduct.**

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7 In addition to the conduct described in Section 2660 of the Code, “unprofessional conduct” also  
8 includes but is not limited to the following:

9 (a) Including or permitting to be included any of the following provisions in an agreement  
10 to settle a civil dispute arising from the licensee’s practice, whether the agreement is made  
11 before or after the filing of an action:

12 (1) A provision that prohibits another party to the dispute from contacting, cooperating, or  
13 filing a complaint with the board.

14 (2) A provision that requires another party to the dispute to withdraw a complaint the  
15 party has filed with the board.

16 (3) A provision that prohibits a party from disclosing the nature of the settlement or the  
17 amount of the settlement or otherwise declares that the settlement is “confidential.”

18 (b) Failure to provide to the board, as directed, lawfully requested certified copies of  
19 documents within 15 days of receipt of the request or within the time specified in the request,  
20 whichever is later, unless the licensee is unable to provide the certified documents with this time  
21 period for good cause, including but not limited to, physical inability to access the records in the  
22 time allowed due to illness or travel. This subsection shall not apply to a licensee who does not  
23 have access to, and control over, medical records.

24 (c) Failure to cooperate and participate in any board investigation pending against the  
25 licensee. This subsection shall not be construed to deprive a licensee of any privilege  
26 guaranteed by the Fifth Amendment to the Constitution of the United States, or any other  
27 constitutional or statutory privileges. This subsection shall not be construed to require a licensee  
28 to cooperate with a request that would require the licensee to waive any constitutional or  
29 statutory privilege or to comply with a request for information or other matters within an  
30 unreasonable period of time in light of the time constraints of the licensee’s practice. Any  
31 exercise by a licensee of any constitutional or statutory privilege shall not be used against the  
32 licensee in a regulatory or disciplinary proceeding against the licensee.

33 (d) Failure to report to the board within 30 days any of the following:

34 (1) The bringing of an indictment or information charging a felony against the licensee.

35 (2) The arrest of the licensee.

36 (3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no  
37 contest, of any felony or misdemeanor.

38 (4) Any disciplinary action taken by another licensing entity or authority of this state or of  
39 another state or an agency of the federal government or the United States military.

40 (e) Failure or refusal to comply with a court order, issued in the enforcement of a  
41 subpoena, mandating the release of records to the board.

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43 NOTE: Authority cited: Section 2615, Business and Professions Code. Reference: **Sections**  
44 2602, 2660, and 2660.2, Business and Professions Code.