



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)



### Board Members

Debra Alviso, PT, DPT, President

Martha Jewell, Ph.D., PT, Vice-President

Donald Chu, Ph.D., PT, ATC, CSCS

Sara Takii, PT, DPT, MPA

James Turner, MPA

Carol Wallisch, MA, MPH

## Physical Therapy Board of California **AMENDED** Notice of Public Meeting

**August 1, 2012 9:00 a.m.**

**August 2, 2012 9:00 a.m.**

### Board Staff

Rebecca Marco, Executive Officer

Liz Constancio, Manager

Jason Kaiser, Manager

Sarah Conley, Analyst

**Department of Consumer Affairs  
2005 Evergreen Street, Hearing Room  
Sacramento, CA 95815**

**Action may be taken on any agenda item. Agenda items may be taken out of order. Please refer to the informational notes at the end of the agenda.**

**Unless otherwise indicated, all agenda items will be held in OPEN SESSION. THE PUBLIC IS ENCOURAGED TO ATTEND.**

**A live webcast of the meeting will be available at [www.ptbc.ca.gov](http://www.ptbc.ca.gov).**

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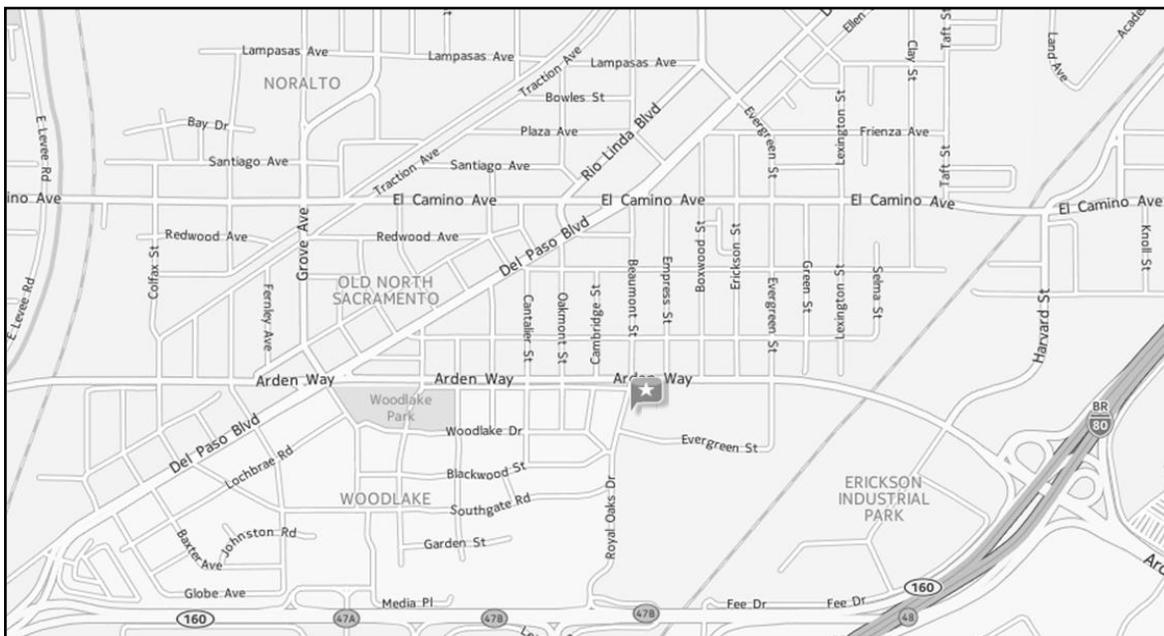
### Amended Agenda

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- 1. Call to Order and Roll Call**
- 2. Closed Session**
  - (A)** Pursuant to Government Code Section 11126(c)(3)  
Deliberation on Disciplinary Actions
  - (B)** Pursuant to Government Code section 11126(e)  
US Equal Employment Opportunity Commission (EEOC) Charge  
Number: 555-2012-00027
  - (C)** Pursuant to Government Code section 11126(a)(1)  
Appointment, Employment, Evaluation of Executive Officer
  - (D)** Pursuant to Government Code section 11126(c)(1)  
Discussion of California Law Exam (CLE) Security Concerns if CLE Used as a  
Component of the Continuing Competency Program and to Prepare, Approve,  
Grade or Administer the CLE
- 3. Approval of Meeting Minutes**
  - (B)** May 9 & 10, 2012
  - (C)** May 30, 2012
- 4. President's Report – Dr. Debra Alviso**

- (A) 2012/2013 Meeting Calendar
- 5. **Executive Officer's Report** – *Rebecca Marco*
  - (A) Bureau of State Audits' Findings of Board Audit
- 6. **Administrative Services Report** – *Liz Constancio*
- 7. **Application & Licensing Services Report** – *Liz Constancio*
- 8. **Consumer Protection Services Enforcement Report** – *Jason Kaiser*
  - (A) Performance Measures
  - (B) Disciplinary Summary
- 9. **Continuing Competency Report** – *Jason Kaiser*
- 10. **Consumer and Professional Associations and Intergovernmental Relations Report**
  - (A) Department of Consumer Affairs (DCA) – *Reichel Everhart*
  - (B) California Physical Therapy Association (CPTA)
  - (C) Federation of State Boards of Physical Therapy (FSBPT)
- 11. **Legislation Report on Relevant 2011/2012 Bills with Staff Recommendations to Board** – *Sarah Conley*
- 12. **Special Order of Business – August 2, 2012 9:00 a.m. Hearing on Petition for Reinstatement – Anthony del Zompo**  
After submission of the matter, the Board will convene in CLOSED SESSION to deliberate per Government Code section 11126(c)(3).
- 13. **DCA BreEZe Presentation** – *Sean O'Connor, BreEZe Business Project Manager*  
BreEZe is an automation system that will provide all of the Department of Consumer Affairs' customers with an integrated licensing and enforcement information technology solution.
- 14. **2012 Rulemaking Calendar Update**– *Sarah Conley*
- 15. **Required E-mail Filing Draft Regulatory Language for Board Consideration and Possible Action for Section 1398.6 of Division 13.2 of Title 16 of the California Code of Regulations** – *Sarah Conley*
- 16. **Modified Text for Board Consideration and Possible Action for Guidelines for Issuing Citations and Imposing Discipline, Section 1399.15 of Division 13.2 of Title 16 of the California Code of Regulations** – *Elsa Ybarra*
- 17. **Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (SB 1441) Language for Board Consideration and Possible Action for Section Number(s) to be Determined of Division 13.2 of Title 16 of the California Code of Regulations** – *Elsa Ybarra*
- 18. **Notice to Consumers Draft Regulatory Language for Board Consideration and Possible Action for Section Number(s) to be Determined of Division 13.2 of Title 16 of the California Code of Regulations** – *Sarah Conley*

19. **Board Consideration of Public Request for Regulatory Action Regarding Notification to Patient of Responsible Care Provider Pursuant to Government Code section 11340.7**
20. **Board Consideration of Continuing Competency Alternate Pathway**
  - (A) Presentation by Jason Tonley, PT, DPT, OCS, from the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE)
  - (B) Staff Comments
21. **Adoption of Precedential Decision**  
Ernest Sluder, PT  
PTBC Case Numbers ID 2008 66674 and 1D 2001 68256
22. **Public Comment on Items Not on the Agenda**
23. **Agenda Items for Next Meeting – Ohlone College, Newark, CA**
24. **Adjournment**



Times stated are approximate and subject to change. Agenda order is tentative and may be changed by the Board without prior notice. This meeting will conform to the Bagley-Keene Open Meeting Act. Agenda discussions and report items are subject to action being taken on them during the meeting by the Board at its discretion. The Board provides the public the opportunity at the meetings to address each agenda item during the Board's discussion or consideration of the item. Total time allocated for public comment on particular issues may be limited.

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Sarah Conley at (916) 561-8210, e-mail [Sarah.Conley@dca.ca.gov](mailto:Sarah.Conley@dca.ca.gov), or send a written request to The Physical Therapy Board of California 2005 Evergreen Street, Suite 1350 Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodations. TDD Line: (916) 322-1700.

**Roll Call**

**Board Meeting – Department of Consumer Affairs, Sacramento, CA**

**August 1, 2012**

	Present	Absent
Debra J. Alviso, PT, DPT, President		
Martha Jewell, Ph.D., PT, Vice-President		
Donald A. Chu, Ph.D., PT, ATC, CSCS		
Sara Takii, PT, DPT, MPA		
James E. Turner, MPA		
Carol A. Wallisch, MA, MPH		

**August 2, 2012**

	Present	Absent
Debra J. Alviso, PT, DPT, President		
Martha Jewell, Ph.D., PT, Vice-President		
Donald A. Chu, Ph.D., PT, ATC, CSCS		
Sara Takii, PT, DPT, MPA		
James E. Turner, MPA		
Carol A. Wallisch, MA, MPH		



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**Physical Therapy Board of California  
DRAFT Meeting Minutes  
May 9 & 10, 2012**

**Wednesday, May 9, 2012                    8:30 a.m.  
Thursday, May 10, 2012                    8:00 a.m.**

**Loma Linda University, Randall Visitors Center  
11072 Anderson St.  
Loma Linda, CA 92350**

For the sake of clarity, the meeting minutes are organized in numerical order to reflect their original order on the agenda; however, issues were taken out of order during the meeting.

**1. Call to Order and Roll Call**

The Physical Therapy Board of California (Board) May 2012 meeting was called to order by Dr. Alviso at 8:37 a.m. All members were present and a quorum was established. Also present at the meeting were Shela Barker, Legal Counsel; Rebecca Marco, Executive Officer; and, other Board staff, including Sarah Conley, Liz Constancio, Jason Kaiser, Monny Martin and Elsa Ybarra.

Before meeting activities commenced, Mr. Turner complemented staff on the quality work they have been producing and the amount of work they have been able to accomplish.

**2. Approval of February 8 & 9, 2012 Board Meeting Minutes**

Corrections were made to the minutes as follows:

Page 3, Line16

*[...] on qualification method\_ Mr. Kaiser responded the data is available, but must be collected manually.*

Page 8, Lines 43-44

Dr. Alviso expressed concern regarding the way the minutes captured the discussion of the changes to the proposed Physical Therapy Practice Act. It appears the Board may have adopted the changes, when in actuality the changes that were captured in the minutes are solely for the proposed Physical Therapy Practice Act which will be provided to the Legislature for its consideration. The proposed Physical Therapy Practice Act has not been enacted.

The following note will be added to the minutes:

*It should be noted the proposed Act is DRAFT language only and has not been introduced to the Legislature. This language must go through the legislative process to be enacted.*

1 Page 10, Lines 46-50

2 *In light of the passage of Business and Professions Code section 2674, I move that the*  
3 *previously passed motion of August 4, 2014<sup>2</sup>, directing the Board's staff to refrain from taking*  
4 *action to conclude investigations of complaints received alleging violations of the Moscone-*  
5 *Knox Professional Corporations Act be rescinded in its entirety.*

6 Page 14, Line 7

7 *(d) Any offense committed or attempted in any other state or against the laws of the United*  
8 *[...].*

9 Page 18, Line 8

10 *Msr. Kaiser presented a briefing paper identifying obstacles within the Continuing Competency*  
11 *[...].*

12 **MOTION: To adopt the draft February 8 & 9, 2012 meeting minutes as edited.**

13 **MOVED: Dr. Jewell**

14

15 **SECOND: Ms. Wallisch**

16

17 **VOTE: 6-0 Motion carried**

18

19 **3. Application and Licensing Services Report – Jason Kaiser**

20

21 **(A) Statistics**

22

23 Mr. Kaiser presented the Application and Licensing Services report. He advised the Board the  
24 format was updated to specifically reflect fixed-date testing data. The Board expressed  
25 concern with the high number of delinquent licenses. Mr. Kaiser explained delinquent status  
26 does not necessarily mean a licensee is practicing with a delinquent license. This statistic  
27 would include licensees who are no longer practicing for various reasons, e.g., retired, medical  
28 reasons, practicing out of state or country, active military. Ms. Marco informed the Board the  
29 Department of Consumer Affairs (DCA) is looking at addressing the definitions of expired  
30 licenses to accurately reflect the reason for expiration with the implementation of BreZEz;  
31 therefore, staff will present information on this at the next meeting.

32

33 Dr. Jewell questioned why the National Physical Therapist Examination (NPTE) pass rate is  
34 significantly lower in this report than in previous reports. Mr. Kaiser explained the lower  
35 average test scores may be due to the recent implementation of new versions of the NPTE,  
36 which gives credibility to the concern regarding the widespread use of recall as a testing  
37 strategy.

38

39 Ms. Marco solicited feedback on the foreign educated statistics from Dr. Jewell. Dr. Jewell  
40 responded she would like to see the number of foreign educated physical therapists who sit for

1 physical therapist assistant exam. Mr. Kaiser explained the data she is requesting was not  
2 specifically tracked, so there is nothing to report at this time; however, staff has recently  
3 implemented a method to track the information for the future.

#### 4 5 **(B) Continuing Competency Audit Monthly Statistics** 6

7 Mr. Kaiser presented Continuing Competency Audit Monthly statistics and noted there has  
8 been a significant decrease in the number of “failed” audits due to 1) staff changing its  
9 approach to audits by allowing licensees, in specific circumstances, to come into compliance,  
10 and 2) licensees becoming more informed of the requirements.

### 11 **4. Consumer Protection Services Enforcement Report**

#### 12 13 **(A) Performance Measures** 14

15 Dr. Alviso inquired as to why the actual number of days for Intake and Investigation is so far  
16 under target. Ms. Ybarra explained this may be due to the fact that the type of complaints  
17 received did not require an investigation.

#### 18 19 **(B) Disciplinary Summary** 20

21 The Board had nothing to discuss on this agenda item.

### 22 **5. President’s Report**

#### 23 24 **(A) 2012/2013 Board Meeting Calendar** 25

26 The Board reviewed the remaining meeting dates and locations for 2012 and confirmed dates  
27 and locations for 2013. All members indicated they would be available for the set meeting  
28 dates and locations; however, Dr. Jewell noted she will not be able to attend the August 2012  
29 meeting if DCA does not reimburse her travel cost. Staff will discuss this issue with the DCA.

30 Dr. Jewell inquired as to whether Board representatives will be permitted to attend the 2012  
31 Annual Conference of the California Physical Therapy Association (CPTA). Ms. Marco  
32 indicated she will discuss travel restrictions under her report.

#### 33 **(B) President’s Activities Since Last Meeting** 34

35 Dr. Alviso thanked Loma Linda University for hosting the meeting.

36 Dr. Alviso introduced a new process for tracking both short and long term topics and issues  
37 that arise at meetings. The document on which the topics and issues are being maintained is  
38 called the Parking Lot and this document is a running list that will be updated following each  
39 meeting.

1 Dr. Alviso complemented staff on the implementation of providing agenda materials  
2 electronically and hopes there is a smooth transition from the hard copy book to the electronic  
3 version.

## 4 **6. Legal Counsel's Report**

5

### 6 **(A) Stipulated Settlements**

7

8 Ms. Barker provided a brief training on Stipulated Settlements and clarified the differences  
9 between Stipulated Settlements and Proposed Decisions. Ms. Barker explained a Stipulated  
10 Settlement is essentially a negotiated compromise between the Board and the licensee and  
11 would be a disciplinary step prior to a hearing. Settlements are generally handled by the  
12 Deputy Attorney General (DAG) with assistance from the Executive Officer and Consumer  
13 Protection Services staff.

14

15 Ms. Barker explained the DAG refers to the Model Guideline for Issuing Citations and Imposing  
16 Discipline for what the Board is looking for in regards to consequences for specific violations;  
17 therefore, the Guidelines document is a highly important tool. Ms. Barker proceeded to explain  
18 the overall process of negotiating a Stipulated Settlement and what the Board's role is in voting  
19 on a Stipulated Settlement. Ms. Barker noted the Board has the right to confer with legal  
20 counsel and with the DAG in making the decision if questions arise. It is not necessary to hold  
21 a vote until a meeting of the entire Board because of a question, but this option should be used  
22 if there is concern with the probationary terms, such as the agreed upon terms not providing  
23 sufficient public protection. Public protection is the main purpose and whether the goal is  
24 reached through a Stipulated Settlement or Proposed Decision, as long as the goal is  
25 achieved, it does not matter how the Board gets there.

26

### 27 **(B) Update on FSBPT Contract**

28

29 Ms. Barker informed the Board of the Federation of State Boards of Physical Therapy (FSBPT)  
30 contract status. Shortly after the February meeting, Ms. Barker was informed the Department  
31 of General Services (DGS) was going to deny the amendments to the current contract due to a  
32 procedural oversight by the DCA on the last contract amendment previously signed in 2010.  
33 The DCA had not submitted the previous contract amendment to DGS for approval, so DGS  
34 does not have the current version of the contract to make the new amendments submitted in  
35 2012. As soon as Ms. Barker became aware of the situation, she wrote a letter explaining the  
36 issue to the FSBPT.

37 Ms. Barker explained she spoke with the DGS' legal counsel and they both agreed drafting a  
38 new contract would be the cleanest way to resolve the issue. Board staff has submitted the  
39 "new" contract to the DCA who will, upon its approval, submit the contract to the DGS for its  
40 approval. Ms. Barker indicated she was confident the contract would be approved quickly,  
41 hopefully by the end of this month, due to no major amendments. Ms. Barker also noted the  
42 contract was written for a term of five years.

1                   **(C) Board Consideration of Standard Motion Language**  
2

3 Ms. Barker presented standard motion language specifically for proceeding with regulatory  
4 packages; however, as Ms. Barker becomes more familiar with the workings of the Board, she  
5 will be able to provide more standard motion language for other items. Standard motion  
6 language will ensure the Board provides the appropriate authority for staff to carry out its  
7 directives.

8                   **7. Executive Officer's Report**  
9

10 Ms. Marco addressed specific items from her written report, beginning with personnel. The  
11 Consumer Protection Services Program continues to be short-staffed due to losing two  
12 analysts; however, recently the CPS Program welcomed a new analyst. Ms. Marco also  
13 provided an update on the Special Investigator position which remains vacant.

14 Ms. Marco brought the new budget report format to the Board's attention, which included an  
15 index of each budget line item. The Board expressed appreciation for the clear expression of  
16 information and staff should continue to report in this format. Ms. Marco complemented Ms.  
17 Constancio on creating the new budget report format.

18 Ms. Marco reported staff was recently made aware that Chapter 547, Statutes of 2011 (AB  
19 415) amended Business and Professions Code section 2290.5 expanding the definition of  
20 health care provider to include any person licensed under Division 2 of the Business and  
21 Profession Code. Ms. Marco requested Ms. Barker provide input on the issue.

22 Ms. Barker explained the analyses of AB 415 do not mention expanding the telehealth  
23 authority beyond what had previously existed, and that previous authority did not extend to  
24 physical therapists. Moreover, most of the amendments were made to the Health and Safety  
25 Code and the Welfare Code to eliminate payment obstacles for physicians offering telehealth  
26 services.

27 Ms. Barker advised the Board the DCA Legal Office is currently reviewing the issue, but has  
28 not yet provided an official opinion. Ms. Barker requested the Board refrain from any action  
29 until the DCA Legal Office makes its determination.

30 Ms. Marco reported SB 1273, as amended on April 9, 2012, would have created an Athletic  
31 Trainers Committee within the Physical Therapy Board to license and regulate athletic trainers.  
32 SB 1273 was heard by the Senate Committee on Business, Professions and Economic  
33 Development on April 16, 2012 and failed to pass with a vote of 2-1. James Syms, CPTA  
34 President, inquired whether the opinion of the bill in the Executive Officer's report, "While the  
35 bill leaves a lot of room for amendments, the testimony [at the Senate Business, Professional  
36 and Economic Development Committee hearing] seemed to indicate there was justification for  
37 licensure to ensure consumer protection," is the Board's official opinion, or the Executive  
38 Officer's opinion. Ms. Marco explained the information provided in her report is her opinion  
39 being provided to the Board for consideration. Dr. Syms requested that since this is in the  
40 Board's materials for public consumption, a distinction be made between the two.

1 Ms. Marco informed the Board Budget Letter 12-05 addressing out-of-state travel was released  
2 on April 20, 2012. This supersedes BL 11-06 and no longer restricts requests to those  
3 defined as mission critical (i.e. mandated) and allows for submission of out-of-state travel that  
4 represents a benefit to the state and consumers. Since travel to the Federation of State  
5 Boards of Physical Therapy (FSBPT) is not considered mission critical as defined, it will  
6 require approval by the Governor. Justification for travel to the FSBPT annual conference  
7 must be strong, clear, and convincing and must clearly identify the individual's role in the  
8 meeting (i.e., speaker, voting member, panel member, participant, or observer). Staff will  
9 make completing the justification a priority; however, assistance from Board members may be  
10 required.

11

12 Ms. Marco informed the Board staff will be collaborating with the Occupational Therapy Board  
13 to put on a WebEx for Kaiser. This WebEx is being put on at the request of Kaiser for  
14 licensees in the Rehabilitation Department.

15 **(A) Update on Audit of the Board by the Bureau of State Audits**

16

17 Ms. Marco updated the Board on the status of the audit. Ms. Marco explained that though she  
18 cannot disclose any details of the audit, she can say she feels confident enough to recommend  
19 the Board delegate the responsibility of responding to the audit findings to staff.

20

21 **MOTION: To allow Board delegate to prepare response to audit findings.**

22

23 **MOVED: Dr. Chu**

24

25 **SECOND: No second. Motion died.**

26

27 Dr. Jewell expressed concern regarding not having the Board President involved with  
28 responding to the findings to represent the Board.

29 **MOTION: To delegate preparation of the response to the findings in the audit**  
30 **report to the Board President and staff.**

31 **MOVED: Dr. Jewell**

32 **SECOND: Mr. Turner**

33 **VOTE: 5-0, 1 Abstention**  
34 **Motion carried**

35

36 Dr. Syms, licentiate, inquired about the cost to the Board (its licensees) in dollars and  
37 resources. Ms. Marco explained staff did not track actual time spent by staff on the audit;  
38 however, Ms. Marco wanted to express her appreciation for the auditors' professionalism, and  
39 for understanding the value of staff's time. The audit will be paid for from the Board's budget  
40 over two fiscal years. Ms. Marco noted she has inquired as to whether the Board will be  
41 charged for the full estimated amount, but has not received an official response.

42

1           **8. Consumer and Professional Associations and Intergovernmental Relations**  
2           **Report**

3  
4           **(A) Department of Consumer Affairs (DCA) – Reichel Everhart**  
5

6 Reichel Everhart, DCA Deputy Director of Board and Bureau Relations, introduced herself to  
7 the Board and discussed issues being addressed by the new DCA Administration. Ms.  
8 Everhart explained that in addition to herself, the DCA has a new Director, Denise Brown and  
9 Deputy Director, Awet Kidane, as well as other new Executive staff. The new DCA  
10 Administration is focusing on: 1) boards teleconferencing meetings for full public access, 2)  
11 filling Board vacancies and 3) addressing travel needs. Ms. Everhart informed the Board out-  
12 of-state travel requires the Governor’s approval and although it may helpful if the reason for  
13 the out-of-state travel is for licensing issues, or if a board has a voting role in the activity to be  
14 attended, it does not guarantee approval. In-state travel is restricted to only mission critical  
15 reasons, and Ms. Everhart shared when the DCA inquired what “mission critical” includes to  
16 the Governor’s Office, the response included: 1) if Board members have a voting role in the  
17 activity to be attended, 2) enforcement and licensing issues and 3) continuing competency (in  
18 some cases). Ms. Everhart encouraged the Board and/or its staff, if they have any concerns,  
19 to contact DCA Executive staff.

20           **(B) California Physical Therapy Association (CPTA)**  
21

22 Dr. Syms, CPTA President, inquired whether the Board has been added to a bill to extend its  
23 sunset date. Ms. Marco responded staff was notified the sunset extension language would be  
24 included in a bill that has already been introduced; however, no specific bill has been  
25 identified. Ms. Wallisch recommended staff pursue this issue to ensure language is in fact  
26 introduced.

27 Dr. Syms informed the Board of the CPTA’s activities regarding physical therapists performing  
28 animal physical therapy. Dr. Syms explained consumers have been a driving force behind this  
29 issue and the CPTA and the VMA are in very early stages of looking at the issue. Dr. Takii  
30 questioned the education of the physical therapist performing animal physical therapy. Dr.  
31 Syms explained there are specific programs for physical therapists to practice on animals as a  
32 specialization and this practice is not intended for entry level physical therapists.

33           **(C) Federation of State Boards of Physical Therapy (FSBPT)**  
34

35 The Board had nothing to discuss for this agenda item.

36           **9. Practice Issues Update**  
37

38 Ms. Conley delivered a PowerPoint presentation identifying 1) how practice issues have been  
39 addressed in the past and how they are addressed currently, 2) obstacles in responding to  
40 practice issues and 3) potential solutions.

1 The Board discussed various aspects of the presentation. Dr. Jewell commented staff could  
2 respond to questions that require only directing the inquirer to the laws and regulations;  
3 however, for issues of standard of care and professional judgment, it would only be  
4 appropriate for a professional.

5 Dr. Alviso and Dr. Jewell discussed the use of a decision tree to assist staff in determining the  
6 appropriate resource for specific questions (e.g. Expert Consultant, Legal Counsel).

7 Dr. Chu expressed concern regarding the Board having a sole source of information – Expert  
8 Consultant – and suggested the Board consider re-establishing a Practice Issues Committee.  
9 The Committee would be comprised of members of the Board, who are considered experts in  
10 the profession, which would eliminate the need to employ another Expert Consultant, an  
11 additional expense for the Board.

12 Ms. Marco noted there seems to be an increase in the volume and depth of practice issue  
13 questions and, if the Board established a Practice Issues Committee to address the questions,  
14 it would take quite some time to get through them all. Additionally, she noted that a Practice  
15 Issues Committee would still require a substantial amount of staff time, which is one of the  
16 concerns.

17 Ms. Wallisch expressed concern regarding the liability of the Board utilizing an Expert  
18 Consultant. Dr. Jewell followed-up inquiring what would happen if the Board were to take  
19 action on a licensee who acted based upon incorrect information provided by a Board  
20 representative such as an Expert Consultant. Additionally, Dr. Jewell requested verification  
21 whether the members who may service on a Practice Issues Committee and who are exposed  
22 to practice issues would have to recuse themselves if the issues they addressed were cause  
23 for discipline. Ms. Barker explained she would have to conduct additional research to  
24 determine the Board's liability in providing information, and she confirmed Dr. Jewell's  
25 comment that a member would have to recuse themselves from a case if the member assisted in  
26 addressing that practice issue.

27 Ms. Barker strongly advised the Board against establishing a Practice Issues Committee  
28 because it may potentially restrict its enforcement abilities due to the need to recuse  
29 participating Board members in later enforcement actions related to the parties who brought  
30 the issue to the Practice Issues Committee. Recusal on a small board risks a quorum to decide  
31 matters by stipulated settlement and to vote on proposed decisions which would then become  
32 effective by operation of law 100 days after the decision is issued by the Administrative Law  
33 Judge.

34 Dr. Syms, licentiate, commented the licensing community sees the Board as the experts and  
35 looks to the Board for guidance. Dr. Syms questioned why the Board cannot interpret its own  
36 laws and regulations.

37 Ms. Barker provided an example of a kind of question the Board cannot respond to and  
38 explained that a professional's decision, if questioned and brought before a hearing, must be  
39 justified to a judge.

1 Dr. Alviso explained this is also a consumer protection issue in that the Board cannot make up  
2 requirements, but instead all requirements are put through a process which provides public  
3 notice of potential changes to be made by the Board allowing for public input.

4 Mitch Kaye, PT, expressed frustration with the current method of responding to practice  
5 issues. Mr. Kaye inquired whether there is a way to 1) determine who (staff) provided a  
6 response to the question submitted to the Board, and 2) appeal a response to the Board itself.

7 Dr. Alviso acknowledged Mr. Kaye's frustration and indicated the Board cannot address the  
8 issue at this time; however, she did explain the Board is working on addressing concerns with  
9 responding to practice issues. Dr. Alviso also noted that there is no option to appeal a  
10 response provided by staff to the Board itself because then it would truly appear to be an  
11 underground regulation.

12 Dr. Jewell noted the importance of staff providing timely responses to those who have practice  
13 issue inquiries.

#### 14 **10.Legislative Report – Sarah Conley**

15

##### 16 **(A)Adoption of Administrative Manual Policy Regarding Board President** 17 **Taking Interim Positions on Pending Legislation**

18

19 Ms. Conley presented a policy to be added to the Board's Administrative Manual that would  
20 allow the Board President to take interim positions on behalf of the Board on pending  
21 legislation between meetings. The Board discussed the policy, and then adopted it as  
22 presented.

23 **MOTION: To authorize the Board President to take interim positions on**  
24 **pending legislation according to the Administrative Manual policy as**  
25 **presented.**

26 **MOVED: Dr. Jewell**

27 **SECOND: Dr. Chu**

28 **VOTE: 6-0 Motion carried**

##### 29 **(B) Relevant 2011-2012 Bills with Staff Recommendations to Board**

30

31 Ms. Conley updated the Board on the status of pending legislation being followed by staff.  
32 Staff recommended the Board take an Oppose position on SB 1374 which would provide that  
33 any person who relies upon a written order, ruling, approval, interpretation, or enforcement  
34 policy of a state agency shall not be liable or subject to punishment for a violation of a civil  
35 statute or regulation in a judicial or administrative proceeding. The Board adopted the  
36 legislative positions as recommended by staff and, for AB 2570, as amended from Support to  
37 Watch.

38

1           **MOTION:**    **To adopt all positions as discussed and delegate the authority to the**  
2                           **Board President to take interim legislative positions according to the**  
3                           **Administrative Manual policy.**

4           **MOVED:**     **Dr. Chu**

5           **SECOND:**   **Dr. Jewell**

6           **VOTE:**      **6-0 Motion carried**

7   Mr. Turner requested staff include existing law in the bill analyses to clearly portray the  
8   changes proposed.

9           **11.2012 Rulemaking Calendar – Sarah Conley**

10  
11   Ms. Conley presented the 2012 Rulemaking Calendar with an update on each of the  
12   rulemaking items. Ms. Conley explained staff re-prioritized items on the Rulemaking Calendar  
13   prior to the last meeting; however, staff failed to request the Board adopt the changes made to  
14   the Rulemaking Calendar. Ms. Conley requested the Board adopt the changes made to the  
15   Rulemaking Calendar by staff.

16           **MOTION:**   **To adopt the priority amendments as recommended by staff on the**  
17                           **2012 Rulemaking Calendar.**

18           **MOVED:**     **Mr. Turner**

19           **SECOND:**   **Ms. Wallisch**

20           **VOTE:**      **6-0 Motion carried**

21           **12. Uniform Standards Related to Substance Abuse and Guidelines for Issuing**  
22                           **Citations and Imposing Discipline Modified Text for Board Consideration and**  
23                           **Possible Action for Section 1399.15 of Division 13.2 of Title 16 of the California**  
24                           **Code of Regulations – Elsa Ybarra**

25  
26   Ms. Ybarra presented the modified text for CCR 1399.15, Uniform Standards Related to  
27   Substance Abuse and Guidelines for Issuing Citations and Imposing Discipline (Guidelines)  
28   and a Legal Opinion issued by the DCA Legal Office regarding the implementation of Uniform  
29   Standards for Substance-Abusing Licensees (Uniform Standards). Ms. Ybarra explained the  
30   DCA Legal opinion referenced both a Legislative Counsel opinion and an Attorney General  
31   opinion stating the healing arts boards do not have the discretion to modify the content of the  
32   specific terms of conditions of probation that make up the Uniform Standards.

33   The Board discussed all the opinions presented, the Guidelines, and three options of proposed  
34   regulatory language to adopt the Uniform Standards provided by Ms. Barker. Ms. Barker  
35   explained the difference between the proposed regulatory language options. Option 1 shifts  
36   the burden of proof to the licensee, but, if adopted, would cause the highest risk for litigation.  
37   Option 2 places the burden on the clinical diagnostician (3<sup>rd</sup> party) because the determination

1 as to whether a licensee is a substance abusing licensee would be made based on the report  
2 of the diagnostician. Ms. Barker cautioned the Board that it is the responsibility of the Board to  
3 determine if a licensee is a substance abusing licensee and that responsibility should not be  
4 delegated as in Option 2. Option 3 places the burden of proof that a licensee is a substance  
5 abusing licensee on the Board and provides the least risk for the Board of all the options;  
6 although, there is no guarantee no litigation will be filed against the Board. The Board  
7 considered the options presented by Ms. Barker and determined, at this time, to focus on the  
8 Guidelines since the deadline to complete the file is quickly approaching. The Board  
9 determined the best way to move forward with the Guidelines would be to remove the Uniform  
10 Standards from the Guidelines and address the Uniform Standards as a separate regulatory  
11 file.

12 The Board directed staff to remove the Uniform Standards that had been included in the  
13 Guidelines and to make the following changes:

14 Entire Document

15 Remove references to the Uniform Standards.

16 Page 2, Line 21

17 *James E. Turner, MPA*

18 Page 2, Line 22

19 *Carol Wallisch, MA, MPH*

20 Page 4, Line 43

21 The language presented contained strikethrough; therefore, the deletion made at the meeting  
22 is indicated by double strikethrough.

23 *[...] ~~Respondant~~, for any reason[...].*

24 Page 5, Line 20

25 *[...] memorandum [...].*

26 Page 12, throughout

27 *Licentiate licensee*

28 Page 14

29 Ms. Wallisch expressed concern that the term “diversion” is being removed from the title of the  
30 section; however, the term is referenced numerous times within the section. Dr. Chu noted,  
31 from previous discussions, the term diversion was to be replaced with “rehabilitation.” Ms.  
32 Barker explained it is appropriate to use the term “diversion” if a licensee self-enrolls in the  
33 program because the licensee is diverting himself or herself from the adverse behavior. The  
34 term “diversion” is not appropriate for a licensee who is required to participate in a

1 “rehabilitation” program as ordered by the Board as part of his or her probationary terms. Staff  
2 will work with Ms. Barker to clarify this.

3 To ensure the deadlines are met for this regulatory file, the Board scheduled a teleconference  
4 for May 30, 2012 at 12:30 p.m. to review the changes.

5 **MOTION: To table the Uniform Standards until the August meeting and direct**  
6 **staff to make the changes to the Guidelines.**

7 **MOVED: Dr. Chu**

8 **SECOND: Dr. Takii**

9 **VOTE: 6-0**

10 **13.Special Order of Business – May 10, 2012 8:00 a.m.**  
11 **Introduction of Board Members and Orientation for Students**

12  
13 The Board members introduced themselves and staff, and explained what the Board’s role is  
14 as a regulatory agency.

15 **14.Special Order of Business – May 10, 2012 8:30 a.m.**  
16 **Regulatory Hearing on Proposed Language for Mandatory Fingerprinting,**  
17 **Sections 1398.14 and 1399.80 of Division 13.2 if Title 16 of the California Code of**  
18 **Regulations**

19  
20 Dr. Alviso opened the regulatory hearing for public comment.

21 Dr. Syms, CPTA President, asked the Board to address the following questions during the  
22 hearing: 1) why 30 days was chosen for a licensee to respond to the Board, 2) when the 30  
23 day window to respond to Board inquires begins and 3) whether the Board means 30 calendar  
24 days or 30 working days. Ms. Barker advised Dr. Syms that the purpose of the public hearing  
25 was for the Board to receive comment and that it would be helpful if he framed his questions  
26 as comments on the problems/issues perceived with the regulation.

27 After the hearing closed, Dr. Syms also inquired as to the need of this regulation to require  
28 fingerprinting. The Board indicated this is addressed in the rulemaking file.

29 The Board made the following non-substantive edits to the modified text:

30 Page 2, Section 1399.80(a)(4)

31 Insert “of” needs to be inserted between “transmission” and “his.”

32 Page 2, Section 1399.80(c)

33 Dr. Jewell requested staff create subsections within this section for clarity.

34 Page 3, Section 1399.98(b)(a)(vi)

1 Insert “been” between “contendere,” and “convicted.”

2 Page 3, Section 1399.98(b)(a)(vi)

3 Insert “and” between “country,” and “disclose.”

4 **MOTION:** To adopt the modified text as edited and delegate to the Executive  
5 **Officer the authority to make any technical or non-substantive**  
6 **changes that may be required in completing the rulemaking file.**

7  
8 **MOVED:** Dr. Jewell

9  
10 **SECOND:** Mr. Turner

11  
12 **VOTE:** 6-0

13  
14 **15.Special Order of Business – May 10, 2012 9:00 a.m.**

15 **Hearing on Modification of Probation – Joy M. Miller, PT**

16  
17 After submission of the matter, the Board convened in closed session to deliberate pursuant to  
18 Government Code section 11126(c)(3). Disciplinary decisions are available on the Board’s  
19 Web site at [www.ptbc.ca.gov](http://www.ptbc.ca.gov).

20  
21 **16.Notice to Consumers Draft Regulatory Language for Board Consideration and**  
22 **Possible Action for Section Number(s) To Be Determined – Sarah Conley**

23  
24 Ms. Conley presented draft regulatory language for Board consideration for a proposed  
25 regulatory action to require licensees to post a Notice to Consumers. The Board made the  
26 following amendments:

27 Page 1, Line 10

28 *Physical ~~t~~Therapists and ~~p~~Physical ~~t~~Therapist ~~a~~Assistants are licensed and regulated by the*  
29 *[...].*

30 Page 1, Line 25

31 *(1) Prominently posting the notice ~~as~~ provided by the Board on at least an 8 ½ by 11*  
32 *[...].*

33  
34 Page 1, Lines 29-33

35 *(2) Including the notice language ~~as provided by the board~~ in this section in a written*  
36 *statement provided during the initial evaluation; An acknowledgment signed and*  
37 *dated by the patient or the patient’s representative ~~and~~ shall be retained in that*  
38 *patient’s medical records, stating the patient understands physical therapists and*  
39 *physical therapist assistants are licensed and regulated by the board.*

1  
2 **MOTION:** To accept the amendments to subsection (b)(2) as recommended  
3 **Legal Counsel.**

4  
5 **MOVED:** Dr. Jewell

6 **SECOND:** Dr. Takii

7 **VOTE:** 6-0 Motion carried

8  
9 **MOTION:** To approve the proposed regulatory language for noticing and set it  
10 **for hearing at the August meeting.**

11 **MOVED:** Dr. Jewell

12 **SECOND:** Ms. Wallisch

13 **VOTE:** 6-0 Motion carried

14  
15 **17.Required E-mail Submission Draft Regulatory Language for Board Consideration**  
16 **and Possible Action for Section 1398.6 of Division 13.2 of Title 16 of the**  
17 **California Code of Regulations – Sarah Conley**

18  
19 Ms. Conley presented draft regulatory language for Board consideration for amendments to  
20 CCR 1398.6, Filing of Addresses. The Board made the following amendments:

21  
22 Page 1, Lines 5-13

23  
24 The language as presented contained strikethrough and underline text; therefore, the deleted  
25 proposed text is shown here with double strikethrough.

26  
27 ~~(a) Each licensee shall report to the board each and every change of residence address within~~  
28 ~~30 days after each change, giving both the old and new address. A licensee may provide the~~  
29 ~~board with an alternate address in addition to a residence address to list as the address of~~  
30 ~~record. If a licensee uses a P.O. Box, the licensee must also submit his or her residence~~  
31 ~~address. In addition to the address of residence, a licensee may provide the board with an~~  
32 ~~alternate address of record. Only the address reported as the address of record will be~~  
33 ~~disclosed to the public. If an alternate address is the licensee's address of record, he or she~~  
34 ~~may request that the residence address not be disclosed to the public.~~

35 The deleted text was replaced with the following:

36  
37 (a) Address of Record: Every licensee shall provide an address to the board which will  
38 be designated as their address of record, which will be utilized for all official and  
39 formal communications from the board, and which will be disclosed to the public. A

1 licensee need not provide a residence address as the address of record, but may  
2 use an alternative address, such as a business address or a P.O. Box, as their  
3 address of record. Every licensee shall report any change of the address of record  
4 to the board no later than thirty (30) calendar days after the address change has  
5 occurred. The report of change of address of record shall contain the old address,  
6 the new address, and the effective date of the change of address.

7  
8 (b) Residence Address. Every licensee shall provide a residence address to the board.  
9 Only if the licensee also provides an alternative address of record as described in  
10 subsection (a) above, shall the board maintain the residence address as  
11 confidential. Every licensee shall report any change of their residential address to  
12 the board no later than thirty (30) calendar days after the address change has  
13 occurred. The report of change of residential address shall contain the old address,  
14 the new address, and the effective date of the change of address.

15  
16 **MOTION: To adopt Legal Counsel's proposed language as amended and**  
17 **reorder the subsections accordingly.**

18 **MOVED: Dr. Jewell**

19 **SECOND: Dr. Chu**

20 **VOTE: 6-0 Motion carried**

21  
22  
23 **MOTION: To approve the proposed regulatory language for noticing and set it**  
24 **for hearing at the August meeting.**

25 **MOVED: Dr. Jewell**

26 **SECOND: Dr. Takii**

27 **VOTE: 6-0 Motion carried**

28 **18.Sponsored Free Health Care Events Modified Text for Board Consideration and**  
29 **Possible Action for Sections 1400-1400.3 of Title 16 of the California Code of**  
30 **Regulations – Jason Kaiser**  
31

32 Mr. Kaiser presented modified text for Section 1400-1400.3, Sponsored Free Health Care  
33 Events for Board consideration. Mr. Kaiser explained the DCA identified inconsistencies with  
34 the forms and/or requirements for all board, and recommended changes. The only change  
35 made to the language itself was updating the form name.

36 **MOTION: To adopt the modified text as presented and delegate to the**  
37 **Executive Officer the authority to make any technical or non-**

1 substantive changes that may be required in completing the  
2 rulemaking file.

3 **MOVED: Dr. Chu**

4 **SECOND: Mr. Turner**

5 **VOTE: 6-0 Motion carried**

6  
7 **19. Board Consideration of Public Request for Regulatory Action Regarding**  
8 **Notification to Patient of Responsible Care Provider Pursuant to Government**  
9 **Code Section 11340.7**

10  
11 Ms. Marco presented a public request for regulatory action and noted the concerns identified in  
12 the request are frequently heard by staff. Ms. Barker explained pursuant to the Government  
13 Code 11340.7, the Board is required to respond to the requestor within thirty days; however,  
14 only the Board can authorize the type of response and the request was received between  
15 meetings. Ms. Barker further explained the Board does not have to accept the proposals;  
16 however, the Board must inform the requestor of what the Board decides to do with the  
17 request. The Board identified merit in the request and motioned to add the request to the  
18 August meeting agenda for further consideration.

19 **MOTION: To direct staff to add this item to the August 2012 meeting agenda so**  
20 **the Board can determine if it wishes to address the request through**  
21 **regulation.**

22 **MOVED: Dr. Jewell**

23 **SECOND: Dr. Takii**

24 **VOTE: 6-0 Motion carried**

25  
26 **20. Public Comment on Items Not on the Agenda**

27 **Note:** *The Board may not discuss or take action on any matter raised during this public*  
28 *comment section that is not included on this agenda, except to decide to place the*  
29 *matter on the agenda of a future meeting [Government Code Sections 11125 and*  
30 *11125.7(a)]*

31  
32 Jason Tonley, PT, DPT, OCS, from the American Board of Physical Therapy Residency and  
33 Fellowship Education (ABPTRFE), the credentialing body for the American Physical Therapy  
34 Association, requested the Board consider adding an alternate pathway to obtain continuing  
35 competency credit, which would be participation in post-graduate physical therapy residency or  
36 fellowship programs whether as a student, or as a credentialed instructor who acts as a mentor  
37 in the programs.  
38

1 Dr. Tonley provided some information on the residency and fellowship programs explaining  
2 that the programs undergo an extensive review by the ABPTRFE, which evaluates the  
3 following: 1) the program itself, 2) the faculty, 3) the curriculum and 4) how the program  
4 evaluates its participants. The programs have minimum didactic and hands-on requirements  
5 set by the ABPTRFE and the ABPTRFE conducts on-site visits and reviews the programs  
6 every five years with additional reports required annually to ensure the programs are meeting  
7 the requirements.

8  
9 The Board considered Dr. Tonley's request and motioned to consider the request at the  
10 August 2012 meeting.

11  
12 **MOTION: To add consideration of adding an additional pathway to earn**  
13 **continuing competency credits by participating in a residency or**  
14 **fellowship program whether as a student or as a mentor to the**  
15 **August meeting agenda.**

16  
17 **MOVED: Dr. Jewell**

18  
19 **SECOND: Ms. Wallisch**

20  
21 **VOTE: 6-0 Motion carried**

22  
23 **21. Agenda Items for Next Meeting – July 31 & August 1 & 2, 2012 – Sacramento, CA**

24  
25 Dr. Jewell will provide staff with a list of items she collected throughout the meeting to be  
26 considered for next meeting.

27 **22. Closed Session**

28  
29 **(A) Pursuant to Government Code Section 11126(c)(3) to Deliberate on**  
30 **Disciplinary Actions**

31 The Board convened in closed session to deliberate on disciplinary actions pursuant to  
32 Government Code Section 11126(c)(3).

33  
34 Disciplinary decisions will be available on the Board's Web site at [www.ptbc.ca.gov](http://www.ptbc.ca.gov).

35  
36 **(B) Pursuant to Government Code section 11126(e) US Equal Employment**  
37 **Opportunity Commission (EEOC) Charge Number: 555-2012-00027**

38 Ms. Barker had no update for the Board on this matter.

39 **(C) Pursuant to Government Code section 11126(a)(1) Evaluation of Executive**  
40 **Officer**

1 The Board discussed the evaluation and the outcome of the evaluation will be provided at the  
2 next meeting.

3 **23.Adjournment**

4

5 The meeting adjourned at 4:06 p.m. on Thursday, May 10, 2012.



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



## Agenda Item #3(C)

### PHYSICAL THERAPY BOARD OF CALIFORNIA DRAFT TELECONFERENCE MINUTES

Wednesday, May 30, 2012

12:30 p.m.

#### Teleconference Locations

Southcoast Rehab  
1800 Westwind Dr., Suite 107  
Bakersfield, CA 93301

Physical Therapy Board of California  
2005 Evergreen St., Lake Tahoe Room  
Sacramento, CA 95815

New Horizon Physical Therapy  
5475 N. Fresno St., Suite 110  
Fresno, CA 93710

Telegraph Cove Resorts  
Site #12  
Telegraph Cove, BC Canada VON 3J0

Athercare Fitness and Rehab  
20994 Redwood Rd.  
Castro Valley, CA 94546

#### 1. Call to Order and Roll Call

Debra J. Alviso, PT, D.P.T., President  
Marty Jewell, Ph.D., PT, Vice-President  
Donald A. Chu, Ph.D., PT, ATC, CSCS  
Sara Takii, PT, D.P.T., M.P.A  
James E. Turner, M.P.A.  
Carol Wallisch, M.A., M.P.H.

The Physical Therapy Board of California (Board) teleconference was called to order by Dr. Alviso at 12:30 p.m. All members were present with the exception of Dr. Takii; however, a quorum was established. Also present for the teleconference were Shela Barker, Legal Counsel; Rebecca Marco, Executive Officer; and Board staff, Sarah Conley, Jason Kaiser, Monny Martin and Elsa Ybarra. Dr. Takii joined the teleconference at 12:49 p.m.

#### 2. Model Guidelines for Issuing Citations and Imposing Discipline Modified Text for Board Consideration and Possible Action for Section 1399.15 of Division 13.2 of Title 16 of the California Code of Regulations

Ms. Ybarra presented the Model Guidelines for Issuing Citations and Imposing Discipline (Guidelines) and informed the Board she removed all references to the Uniform Standards since the Board decided to include them in a separate rulemaking file. The Board reviewed the Guidelines page by page and made various changes.

1  
2           **MOTION:**    **To approve the proposed modified text for a 15-day public**  
3                           **comment period and delegate to the Executive Officer the**  
4                           **authority to adopt the proposed regulatory changes as**  
5                           **modified if there are no adverse comments received during**  
6                           **the public comment period and also delegate to the**  
7                           **Executive Officer the authority to make any technical or**  
8                           **non-substantive changes that may be required in**  
9                           **completing the rulemaking file.**

10  
11           **MOVED:**     **Dr. Jewell**

12  
13           **SECOND:**    **Mr. Turner**

14  
15           **VOTE:**       **6-0 Motion carried**

16  
17 **3. Executive Officer's Report**

18  
19           Ms. Marco informed the Board the Department of Consumer Affairs Director,  
20           Denise Brown, explained out-of-state travel is prohibited unless the travel is  
21           deemed mission critical. Therefore, since Dr. Jewell's travel from Canada to  
22           California for the August 2012 meeting will not be reimbursed, she may not be  
23           attending the August meeting. The Board was planning to conduct its Strategic  
24           Planning session in conjunction with the August Board meeting; however, Ms.  
25           Marco suggested the Board may want to postpone Strategic Planning until all Board  
26           members were sure to be in attendance. All members concurred and will discuss a  
27           date at the August meeting.

28  
29           **MOTION:**    **To postpone Strategic Planning until the next meeting.**

30  
31           **MOVED:**     **Mr. Turner**

32  
33           **SECOND:**    **Ms. Wallisch**

34  
35           **VOTE:**       **6-0 Motion carried**

36  
37 **4. Public Comment on Items Not on the Agenda**

38  
39           There were no public comments.

40  
41 **5. Adjournment**

42  
43           The teleconference was adjourned at 2:30 p.m. on May 30, 2012.

# Physical Therapy Board 2012 Meeting Calendar

# 2012

January							February							March							April						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7				1	2	3	4					1	2	3	1	2	3	4	5	6	7
8	9	10	11	12	13	14	5	6	7	8	9	10	11	4	5	6	7	8	9	10	8	9	10	11	12	13	14
15	16	17	18	19	20	21	12	13	14	15	16	17	18	11	12	13	14	15	16	17	15	16	17	18	19	20	21
22	23	24	25	26	27	28	19	20	21	22	23	24	25	18	19	20	21	22	23	24	22	23	24	25	26	27	28
29	30	31					26	27	28	29				25	26	27	28	29	30	31	29	30					
May							June							July							August						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
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6	7	8	9	10	11	12	3	4	5	6	7	8	9	8	9	10	11	12	13	14	5	6	7	8	9	10	11
13	14	15	16	17	18	19	10	11	12	13	14	15	16	15	16	17	18	19	20	21	12	13	14	15	16	17	18
20	21	22	23	24	25	26	17	18	19	20	21	22	23	22	23	24	25	26	27	28	19	20	21	22	23	24	25
27	28	29	30	31			24	25	26	27	28	29	30	29	30	31					26	27	28	29	30	31	
September							October							November							December						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
						1		1	2	3	4	5	6					1	2	3							1
2	3	4	5	6	7	8	7	8	9	10	11	12	13	4	5	6	7	8	9	10	2	3	4	5	6	7	8
9	10	11	12	13	14	15	14	15	16	17	18	19	20	11	12	13	14	15	16	17	9	10	11	12	13	14	15
16	17	18	19	20	21	22	21	22	23	24	25	26	27	18	19	20	21	22	23	24	16	17	18	19	20	21	22
23	24	25	26	27	28	29	28	29	30	31				25	26	27	28	29	30	23	24	25	26	27	28	29	
30																					30	31					

**January**

1 New Year's Day  
16 Martin Luther King Jr. Day

**February**

8-9 PTBC Meeting - San Diego  
20 President's Day

**March**

**April**

8 Easter

**May**

13 Mother's Day  
9-10 PTBC Meeting - Loma Linda  
30 Memorial Day

**June**

17 Father's Day  
6-9 APTA Annual Conference Tampa, FL

**July**

4 Independence Day

**August**

1-2 PTBC Meeting - Sacramento

**September**

3 Labor Day  
20-22 FSBPT Annual Meeting Indianapolis, IN  
28-29 CPTA Annual Conference Santa Clara, CA

**October**

25-26 PTBC Meeting - Ohlone College

**November**

11 Veteran's Day  
22 Thanksgiving

**December**

25 Christmas

**Physical Therapy Board  
Proposed 2013 Meeting Calendar**

JANUARY							FEBRUARY							MARCH							APRIL											
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S					
																					1	2										
		1	2	3	4	5						1	2	3	4	5	6	7	8	9			1	2	3	4	5	6				
6	7	8	9	10	11	12	3	4	5	6	7	8	9	10	11	12	13	14	15	16	7	8	9	10	11	12	13					
13	14	15	16	17	18	19	10	11	12	13	14	15	16	17	18	19	20	21	22	23	14	15	16	17	18	19	20					
20	21	22	23	24	25	26	17	18	19	20	21	22	23	24	25	26	27	28	29	30	21	22	23	24	25	26	27					
27	28	29	30	31			24	25	26	27	28			31							28	29	30									

MAY							JUNE							JULY							AUGUST											
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S					
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5	6	7	8	9	10	11	9	10	11	12	13	14	15	7	8	9	10	11	12	13	4	5	6	7	8	9	10					
12	13	14	15	16	17	18	16	17	18	19	20	21	22	14	15	16	17	18	19	20	11	12	13	14	15	16	17					
19	20	21	22	23	24	25	23	24	25	26	27	28	29	21	22	23	24	25	26	27	18	19	20	21	22	23	24					
26	27	28	29	30	31		30							28	29	30	31				25	26	27	28	29	30	31					

SEPTEMBER							OCTOBER							NOVEMBER							DECEMBER							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
1	2	3	4	5	6	7			1	2	3	4	5							1	2	1	2	3	4	5	6	7
8	9	10	11	12	13	14	6	7	8	9	10	11	12	3	4	5	6	7	8	9	8	9	10	11	12	13	14	
15	16	17	18	19	20	21	13	14	15	16	17	18	19	10	11	12	13	14	15	16	15	16	17	18	19	20	21	
22	23	24	25	26	27	28	20	21	22	23	24	25	26	17	18	19	20	21	22	23	22	23	24	25	26	27	28	
29	30						27	28	29	30	31			24	25	26	27	28	29	30	29	30	31					

January

1 New Year's Day  
21 Martin Luther King Jr. Day

February

13-14 PTBC Meeting – Chapman University  
18 President's Day

March

31 Easter

April

May

8-9 PTBC Meeting – UCLA  
12 Mother's Day  
27 Memorial Day

June

16 Father's Day

July

4 Independence Day

August

7-8 PTBC Meeting – Sacramento

September

2 Labor Day  
19-21 FSBPT Annual Meeting  
19-22 CPTA Annual Conference

October

November

6-7 PTBC Meeting – Samuel Merritt University  
11 Veteran's Day  
28 Thanksgiving Day

December

25 Christmas



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 # 5

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**DATE:** July 15, 2012

**TO:** Physical Therapy Board of California

**FROM:** Rebecca Marco  
Executive Officer

**SUBJECT:** EXECUTIVE OFFICER'S REPORT

### ADMINISTRATIVE SERVICES

#### PERSONNEL -

Effective July 1, 2012, all Board employees are required to take eight (8) hours of personal leave time each month and a 4.6% reduction in pay. This equates to approximately 150 hours of staff time lost each month.

Additionally, effective September 1, 2012 all non-mission critical Retired Annuitants will be terminated from state service and Student Assistants will be furloughed until July 1, 2013. While there is a provision for agencies to justify retention of a Retired Annuitant, there is no such provision to justify retention of Student Assistants. The Board doesn't currently rely on the services of Retired Annuitants, however the Board does rely on the services of two (2) Student Assistants; therefore, as of September 1, 2012 both Student Assistants will be furloughed from the Board. This equates to approximately 120 hours of staff time lost each month.

On September 30, 2012, those employees filling the three full time limited term analyst positions gained through the Consumer Protection Services Initiative (CPEI) will return to their former positions. Carole Phelps and Beatriz Reynoso were existing permanent intermittent employees with the Board; therefore, they will return to their former permanent intermittent time base. However, Stacy Meza will be returning to her former place of employment with CalSTRS,. This equates to approximately 214 hours of staff time lost each month.

1 On a positive note, effective July 1, 2012, Liz Constancio began management of both  
2 the Administrative Services and Application and Licensing Services Programs and  
3 Jason Kaiser, now manages the Consumer Protection Services Program in addition to  
4 the Continuing Competency Services Program. While both are in training the transition  
5 to date has been seamless.

6  
7 On June 29, 2012 the Board was assigned new legal counsel, Laura Freedman. Ms.  
8 Freedman was former counsel to the Board; therefore, it has been an easy transition  
9 and she is quickly coming up to speed on the current issues of the Board.

10  
11 **BUDGET –**

12  
13 The Budget Expenditure and Revenue Reports will be addressed by Ms. Constancio  
14 under the Administrative Services Report, agenda Item #6.

15  
16 **LEGISLATION AND REGULATION –**

17 Board staff was directed to precede with the rulemaking packages regarding E-mail  
18 Filing, Notice to Consumers and the Model Guidelines; however, during processing it  
19 was determined each package had reason for reconsideration by the Board. After  
20 discussion with the Board President it was agreed they each be readdressed at this  
21 meeting. They appear in the agenda materials under agenda items #15, 16 & 18.

22 **OUTREACH –**

23 The Outreach report will be addressed by Ms. Constancio under the Administrative  
24 Services Report, agenda item #6. The PTBC newsletter has been completed and has  
25 been sent to DCA's Publication, Design and Editing (PD&E) team. Once PD&E has  
26 completed their design, it will be transmitted to Board counsel for legal review.

27 The PTBC has begun design of the new website. The launch date should occur  
28 sometime in September.

29 Board staff participated in a WebEx for Kaiser Los Angeles on June 13, 2012.

30 **PRACTICE ISSUES –**

31 As directed by the Board at the meeting on May 10, 2012, staff forwarded 10 random  
32 inquiries to Ms. Jewell for review and feedback. She reviewed them and provided  
33 comment on each and offered guidance and/or resources for reference. She did not  
34 provide responses, but provided a lot of insight that staff would never have had tapped  
35 into. While her guidance was helpful it still leaves staff with doing the research and  
36 developing the response, which probably would then need review again by Ms. Jewell  
37 to ensure staff is on the right track.

38 Ms. Conley is in the process of building a resource library for use by licensees. Since  
39 staff resources become more and more limited it is hopeful it will give licensees the  
40 necessary resources for conducting their own research.

1 **STRATEGIC PLANNING -**

2 Board members agreed to postpone strategic planning until a time when all members  
3 are present; therefore, staff has been seeking dates of availability. So far, it's been  
4 difficult to determine a time conducive to all members' schedules; however,  
5 consideration could be given to combining it with the next meeting. This would  
6 eliminate the extra expense incurred with an additional meeting and enable staff to  
7 participate.

8 **TRAVEL –**

9 Travel remains restricted; therefore, the Board will be prohibited from attending and or  
10 participating in the Council on Licensure, Examination and Regulation (CLEAR)  
11 conference scheduled for September 6 - 8, 2012 in San Francisco, the Federation of  
12 State Boards of Physical Therapy conference scheduled for September 20 - 22, 2012 in  
13 Indianapolis, Indiana or the California Physical Therapy Association conference  
14 scheduled for September 28 – 29, 2012 in Santa Clara.

15 **APPLICATION & LICENSING**

16  
17 The item writing workshops for the California Law Exam concluded on April 18 and 19,  
18 2012. The new forms of the exam are currently being reviewed for accuracy.

19  
20 Additional information regarding the Application and Licensing Services Program  
21 activities will be addressed by Ms. Constancio under agenda item #7.

22

23 **CONTINUING COMPETENCY**

24  
25 Reports addressing activities of the Continuing Competency Services Program will be  
26 addressed by Mr. Kaiser under agenda item E9.

27

28 **CONSUMER PROTECTION SERVICES**

29  
30 Reports addressing activities of the Consumer Protection Services Program are  
31 addressed under agenda item #9.

32

33

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35



Physical Therapy Board of California

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

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### **Briefing Paper**

Date: July 20, 2012

To: Physical Therapy Board of California

From: Rebecca Marco, Executive Officer

Subject: Report of Recommendations by the Bureau of State Audits

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### **Background:**

May 26, 2011 – Mary Hayashi, Assembly Member and Chair of Assembly Business, Professions and Consumer Protection Committee, submitted a letter to the Joint Legislative Audit Committee (JLAC) requesting an audit of the Physical Therapy Board of California (Board).

August 17, 2011 – Notification of hearing request from Ricardo Lara, Chair of JLAC

August 24, 2011 – JLAC voted 12-2 in favor of the audit.

November 18, 2012 - Letter received from the BSA advising the Board of the upcoming audit.

December 7, 2011 – Board staff participated in an Entrance Conference with BSA staff. Board staff was advised of the audit objectives and the audit process

April 9, 2012 – Board staff and Department of Consumer Affairs' staff participated in a Pre-Exit Conference with BSA staff. At the Pre-Exit Conference, BSA staff disclosed the "unofficial" findings of the audit.

May 16, 2012 – The Board President, Board Legal Counsel, Board staff and Department of Consumer Affairs' staff participated in an Exit Conference with BSA staff

May 30 to June 4, 2012 – The BSA audit report was released to the Board.

June 4, 2012 - The Board responded to the findings within the report.

June 26, 2012 – The audit report was released.

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### **Analysis:**

The report made three recommendations of the Board. 1) Explore the feasibility of establishing a state position to perform the duties of the in-house consultant; 2) Develop a process for evaluating expert consultants including the in-house expert consultant; and, 3) notify Department of Consumer Affairs promptly when Board members are appointed or separated from office. It also recommended the Department of Consumer Affairs establish procedures to ensure that Board members attend Board member Orientation and complete the required ethics training.

In response, 1) staff will begin the process of exploring the feasibility of establishing an expert consultant position within state services; however, this would require approval of a budget change proposal for position authority by the Department of Consumer Affairs, State and Consumer Services Agency and the Department of

Finance. Given the Budget Letter issued last fiscal year prohibiting staffing increases, it is doubtful it would be supported. 2) A tool for evaluating the performance of expert consultants has been developed and will be implemented as soon as there is a signed budget and expert consultants commence providing service to the Board once again; and, 3) A process has been developed for tracking and reporting within ten days of appointment and/or separation of Board members to the Department of Consumer Affairs.

---

**Action Requested:**

It is recommended the Board delegate preparation of the response demonstrating the efforts to implement the recommendations of the California State Auditor to the Board President and staff. These responses are due within 60 days, six months, and one year.

**Physical Therapy Board of California  
Budget Expenditure Report (FY 11/12)  
(As of June 30, 2012)**

AGENDA ITEM #6  
Budget Report

<b>Description</b>	<b>Budget</b>	<b>Expended</b>	<b>% Budget</b>	<b>Balance</b>
<b><u>Personnel Services</u></b>				
<b>Personnel Services Totals</b>	<b>1,280,679</b>	<b>1,522,632</b>	<b>119%</b>	<b>241,953</b>
Civil Services Permanent	800,514	761,774	95%	38,740
Statutory Exempt	80,347	77,105	96%	3,242
Temp help	3,767	207,859	5518%	-204,092
Committee Member	11,786	30,100	-255%	-18,314
Overtime	0	17,469	-	-17,469
Staff Benefits	422,676	428,325	101%	-5,649
Salary Savings	-38,411	0	0	-38,411
<b>*TOTALS, PERSONNEL SERVICES</b>	<b>1,280,679</b>	<b>1,522,632</b>	<b>119%</b>	<b>(241,953)</b>
<b><u>Operating Expense &amp; Equipment</u></b>				
<b>General Services Totals</b>	<b>577,269</b>	<b>308,819</b>	<b>53%</b>	<b>268,450</b>
Fingerprints	99,090	26,194	26%	72,896
General Expense	66,790	17,090	26%	49,700
Minor Equipment	1,400	6,811	487%	-5411
Printing	64,816	12,489	19%	52,327
Communication	27,970	8,653	31%	19,317
Postage	42,789	33,685	79%	9,104
Travel in State	82,317	37,008	45%	45,309
Training	9,332	700	8%	8,632
Facilities Ops	118,121	108,699	92%	9,422
C&P Services Internal	11,828	1,800	15%	10,028
C&P Services External	52,816	55,690	105%	-2,874
<b>Departmental Services Totals</b>	<b>519,439</b>	<b>510,744</b>	<b>98%</b>	<b>8,695</b>
OIS Pro Rata	207,191	208,694	101%	-1,503
Indirect Dist. Cost	139,197	137,694	99%	1,503
DOI Pro Rata	5,673	5,673	100%	0
Public Affairs Pro Rata	9,629	9,623	100%	6
CCED Pro Rata	10,137	10,137	100%	0
IA with OER	0	42,766	-	-42,766
Interagency Services	37,136	0	0%	37,136
Consolidated Data Center	6,257	1,669	27%	4,588
DP Maintenance & Supplies	16,796	7,065	-100%	9,731
Central Admin Services	87,423	87,423	100%	0
<b>Exams Totals</b>	<b>72,616</b>	<b>13,453</b>	<b>19%</b>	<b>59,163</b>
Admin and C/P Services	0	1,660	0	-1660
Exam Contracts	69,931	2,365	0	0
Exam Subject Matter Experts	2,685	9,428	351%	-6,743
<b>Enforcement Totals</b>	<b>971,035</b>	<b>949,217</b>	<b>98%</b>	<b>21,818</b>
Attorney General	435,668	435,668	100%	0
Office of Admin Hearings	59,584	50,048	84%	9,536
Evidence/Witness	100,145	78,165	78%	21,980
Court Reporters	0	9,712	-	-9,712
DOI Investigation	375,638	375,624	100%	14
<b>**TOTALS, OE &amp; E</b>	<b>2,140,359</b>	<b>1,782,233</b>	<b>83%</b>	<b>358,126</b>
<b>***TOTALS</b>	<b>3,421,038</b>	<b>3,304,865</b>	<b>97%</b>	<b>116,173</b>

\* Total reflects by line item. \*\*Total reflects by line item.\*\*\* Total reflects overall expenditures of entire budget.

**PERSONNEL SERVICES**

Civil Services Permanent	Salary and wages of civil service - permanent employees (i.e. authorized).
Statutory Exempt	Employees appointed/elected to state (i.e. Executive Officer).
Temp help	Blanket positions (i.e. Student Assistant, Permanent Intermittent, etc.).
Board Commission	Exempt/Statutory - Per Diem (i.e. Board Members per diem reimbursement).
Overtime	Ordered work time in excess of regular scheduled workweek.
Staff Benefits	Benefits for both authorized and temporary positions (i.e. health, dental, vision, retirement, etc).
Salary Savings	Salary and wage savings of civil service - permanent employees (i.e. vacancies).

**GENERAL SERVICES**

Fingerprints	Fingerprint Reports (i.e. DOJ - name checks, and subsequent arrest reports).
General Expense	Office supplies, freight/drayage (FedEx shipping), transcription services, admin overhead (DGS service fees; purchase orders, contracts, etc.), library purchase/subscription, mail equipment maintenance).
Minor Equipment	Minor Equipement (Replacement/Additional) less than \$5,000 per unit (i.e. printer, copier, office furniture, etc.).
Printing	Printing costs (i.e. Newsletter's, booklets, etc.).
Communication	Communications costs (i.e. cell phones, office land lines and fax line, etc.).
Postage	Stamps, registered and certified mail charges, postage meter, postage charges by DCA mail room and license renewal notices processed by EDD, etc.
Travel in State	Per Diem, commercial air, private car (mileage, tolls, parking), rental car (rental, gas, parking, etc.), CalAters (transaction fees).
Training	Tuition and registration fees for training classes and conferences (i.e. DCA - SOLID, State Training Center, colleges).
Facilities Ops	Rent - Building and Grounds (Non-State Owned), includes, self storage and overtime utility charges.
C&P Services Internal	Consultant/Professional (Inter-departmental) services provided by other state agencies or interagency agreement with DCA.
C&P Services External	Consultant/Professional Services - Interdepartmental for credit card processing (i.e. credit card transactions for online license renewals and American Express).

**Departmental Services Totals**

OIS Pro Rata	<b>Pro-rata</b> assessment to support the DCA, Office of Information Systems (OIS).
Indirect Dist. Cost Pro-rata	<b>Pro-rata</b> assessment to support the DCA, Administrative Services (OAS).
DOI Pro-rata	<b>Pro-rata</b> assessment for Division of Investigations (DOI) service costs for administering new employment background checks, etc.
Public Affairs Pro Rata	<b>Pro-rata</b> assessment for media inquiries; creating and executing marketing plans, and developing consumer education and media campaigns (i.e. graphic art for publications, business cards, envelopes, website, etc.).
CCED Pro-rata	<b>Pro-rata</b> assessment for Consumer and Community Empowerment Division (CCED). CCED develops partnerships with all facets of DCA, by working with all its various programs to convey their messages to the public.
IA with OER	Services provided by Office of Examination Resources (OER) to the Board within DCA (inter-
Interagency Services	Services provided by another Board to the Board within DCA (inter-agency agreement).
Consolidated Data Center	TEALE data center (i.e. Board's costs for number of records on Consumer Affairs System (CAS)).

DP Maintenance & Supplies	Data Processing (DP) provide information technology services (i.e. maintenance, security services, archival services, etc.; copier and printer paper, software, hardware and electronic waste recycling and disposal).
Central Admin Services	<b>Pro-rata</b> (Statewide) assessment to support of Personnel Board, Department of Finance, State Controller, State Treasurer, Legislature, Governor's office, etc.).

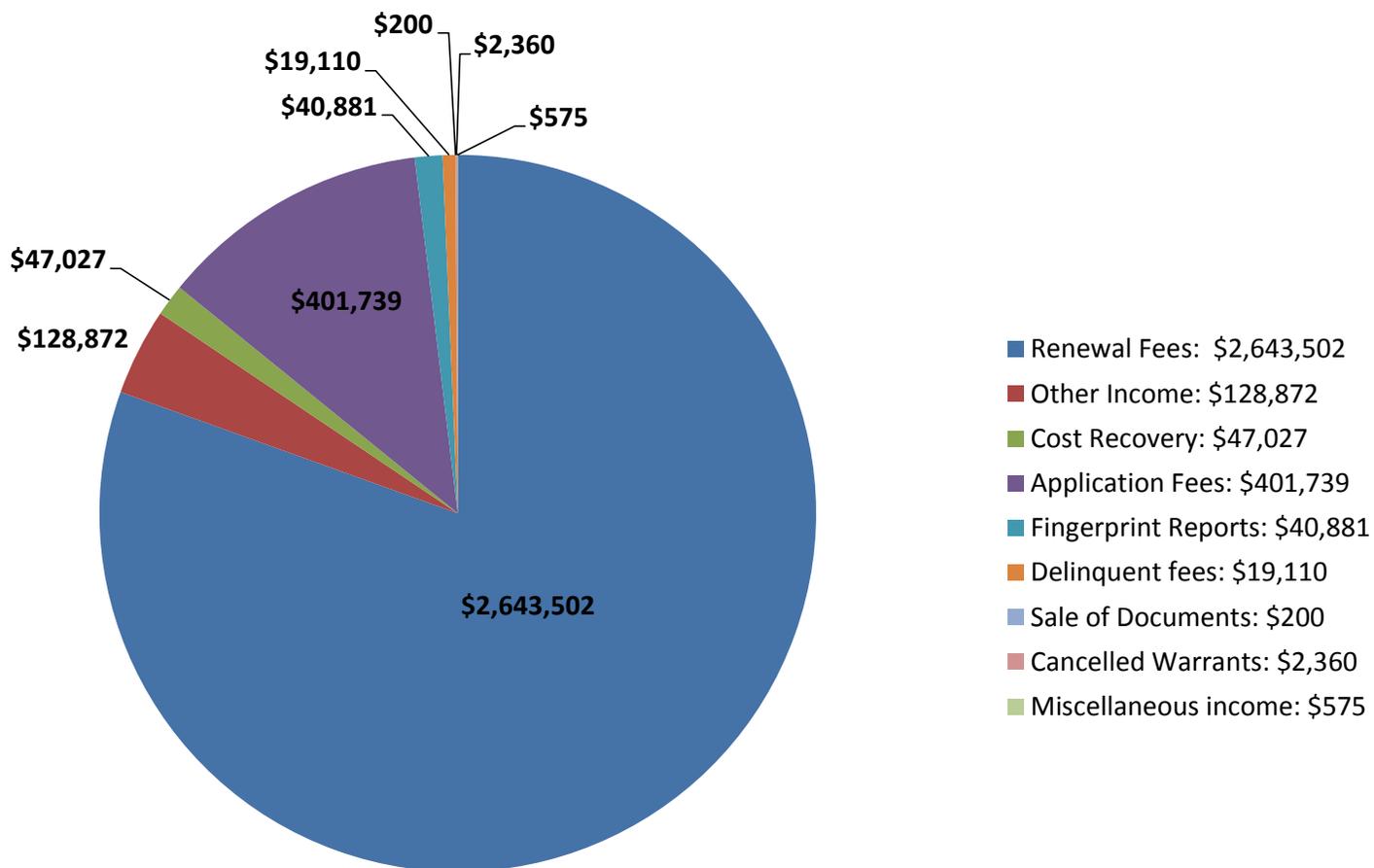
**Exams Totals**

C/P Administrative	Consultant/Professional (External) Services (i.e. FSBPT service contract).
C/P Exam Contracts	Consultant/Professional Services (External) - Wages for services provided by Expert Examiner in the oral/written exam process.
C/P Exam Subject Matter Experts	Consultant/Professional (External) Services (i.e. Wages for services provided by Subject Matter Experts in the oral/written examination processes, including travel).

**Enforcement Totals**

Attorney General	Legal services provided by the Attorney General's Office.
Office of Admin Hearings	Services provide by Office of Administrative Hearings (i.e. hearing officer, judges' and filing fees).
Evidence/Witness	Payment of witness fees, including hourly wages and travel expenses, undercover operative fees, films and flash bulbs and includes medical services for use as evidence.
Court Reporters (C/P -External)	Services provided for court reporter services and invoices for transcriptions provided by a private vendor (i.e. hearing transcripts, etc.).
DOI Investigation	Services provided by Division of Investigations (DOI) for investigative services.

**Physical Therapy Board of California  
Budget Revenues (FY 2011/12)  
(As of June 30, 2012)**

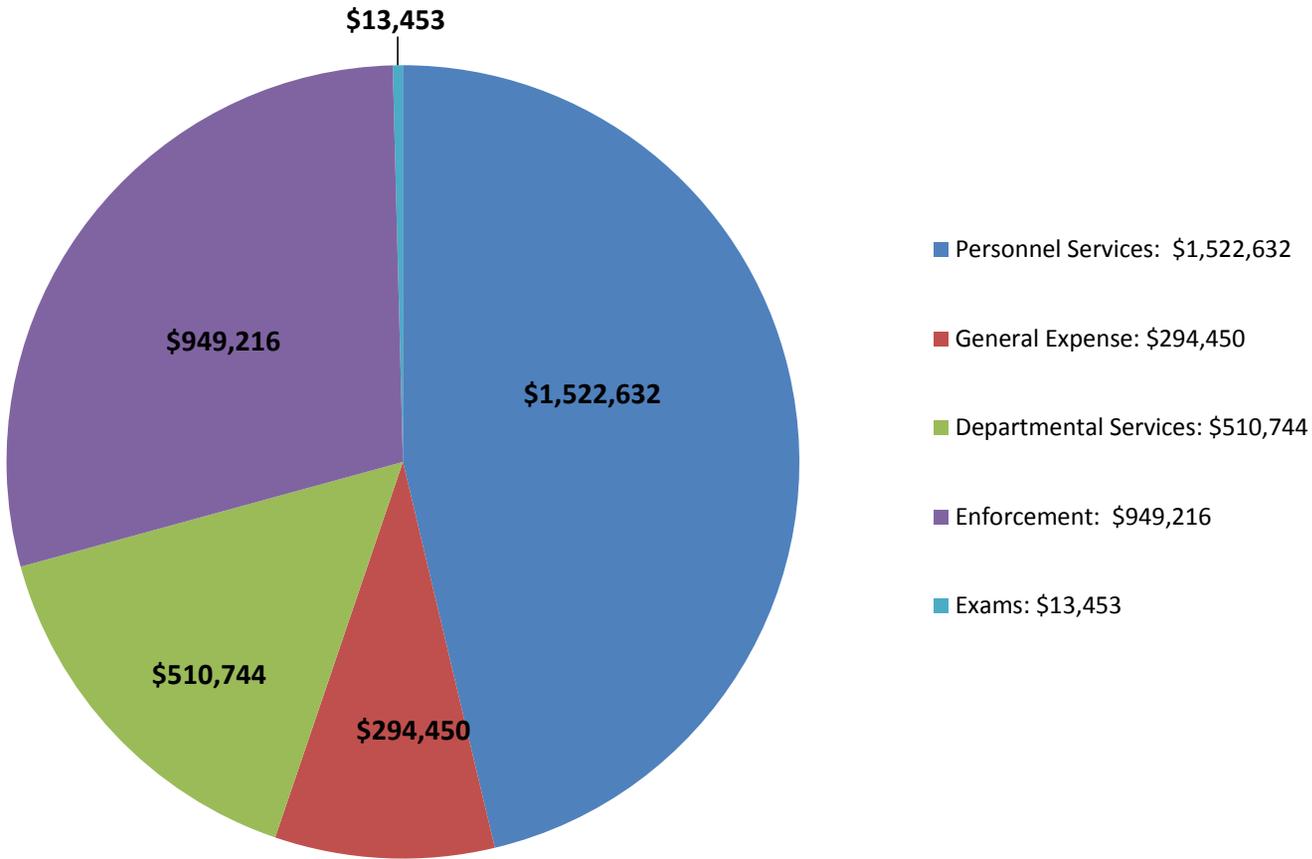


**Other Income :** Administrative Citations, Endorcement Fees, Duplicate Licenses.

**Cost Recovery:** Administrative Citations, Probation Monitoring Fees.

**Miscellaneous Income:** Dishonored Checks.

**Physical Therapy Board of California  
Budget Expenditures (FY 2011/12)  
(As of 6/30/2012)**



**Personnel Services :** Salary and Wages, Board Member Per Diem, Temp Help, Overtime, Benefits.

**General Services :** General Expense, Fingerprint, Minor Equipment, Printing, Postage, Travel In-State, Training, Facility Ops, Consultant Services.

**Departmental Services:** Pro Rata ,Interagency Services, Consolidated Data, Data Processing, Central Admin.

**Enforcement:** Attorney General, Office of Administrative Hearing, Evidence Witness, Court Reporter, DOI.

**Exams:** Examination Contracts, Expert Consultant Contracts.

# 0759 - Physical Therapy Analysis of Fund Condition

AGENDA ITEM # 6

(Dollars in Thousands)

Fund Condition

## Gov Bud FY 12-13 'w AG Augmentation

	Acutal 2010-11	CY 2011-12	Governor's Budget BY 2012-13	BY +1 2013-14	BY +2 2014-15
<b>BEGINNING BALANCE</b>	\$ 1,996	\$ 2,407	\$ 757	\$ 715	\$ 612
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,996	\$ 2,407	\$ 757	\$ 715	\$ 612
<b>REVENUES AND TRANSFERS</b>					
Revenues:					
125600 Other regulatory fees	\$ 150	\$ 153	\$ 156	\$ 156	\$ 156
125700 Other regulatory licenses and permits	\$ 366	\$ 384	\$ 395	\$ 395	\$ 395
125800 Renewal fees	\$ 2,562	\$ 2,589	\$ 2,609	\$ 2,609	\$ 2,609
125900 Delinquent fees	\$ 16	\$ 16	\$ 16	\$ 16	\$ 16
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 13	\$ 23	\$ 6	\$ 4	\$ 1
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2
161400 Miscellaneous revenues	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1
Totals, Revenues	\$ 3,110	\$ 3,168	\$ 3,185	\$ 3,183	\$ 3,180
Transfers from Other Funds					
Proposed GF Loan Repayment	\$ -	\$ -	\$ -	\$ -	\$ -
Transfers to Other Funds					
Proposed GF Loan	\$ -	\$ -1,500	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 3,110	\$ 1,668	\$ 3,185	\$ 3,183	\$ 3,180
Totals, Resources	\$ 5,106	\$ 4,075	\$ 3,942	\$ 3,898	\$ 3,792
<b>EXPENDITURES</b>					
Disbursements:					
0840 State Controllers (State Operations)	\$ 2	\$ 3	\$ 3	\$ -	\$ -
8880 FSCU (State Operations)	\$ 1	\$ 9	\$ 2	\$ -	\$ -
OE&E Savings (Approved by Agency)					
1110 Program Expenditures (State Operations) - AG Augmentation Request	\$ 2,696 \$ -	\$ 3,156 \$ 150	\$ 3,222 \$ -	\$ 3,286 \$ -	\$ 3,352 \$ -
Total Disbursements	\$ 2,699	\$ 3,318	\$ 3,227	\$ 3,286	\$ 3,352
<b>FUND BALANCE</b>					
Reserve for economic uncertainties	\$ 2,407	\$ 757	\$ 715	\$ 612	\$ 440
Months in Reserve	8.7	2.8	2.6	2.2	1.5

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2010-11.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.

Prepared 7/6/12

Web Hit Statistics			
Web Page within Web Site	Web Hits During 1/01/2012 – 3/31/2012	Web Hits During 4/1/2012-6/30/2012	% Increase/Decrease
Home	77,863	74,282	5% ↓
Consumers	198,401	222,266	12% ↑
Applicants	94,047	106,239	11% ↑
Licensees	55,765	52,005	7% ↓
Laws/Regs	80,512	75,669	6% ↓
Form/Pub	79,057	76,153	3% ↑
About Us	45,684	67,711	48% ↑
Continuing Competency	11,185	9,038	19% ↓

Twitter Statistics			
Category	Data As Of 4/13/2012	Data As Of 7/6/2012	% Increase/Decrease
Number of Tweets	118	139	17% ↑
Number of Followers	89	100	12% ↑

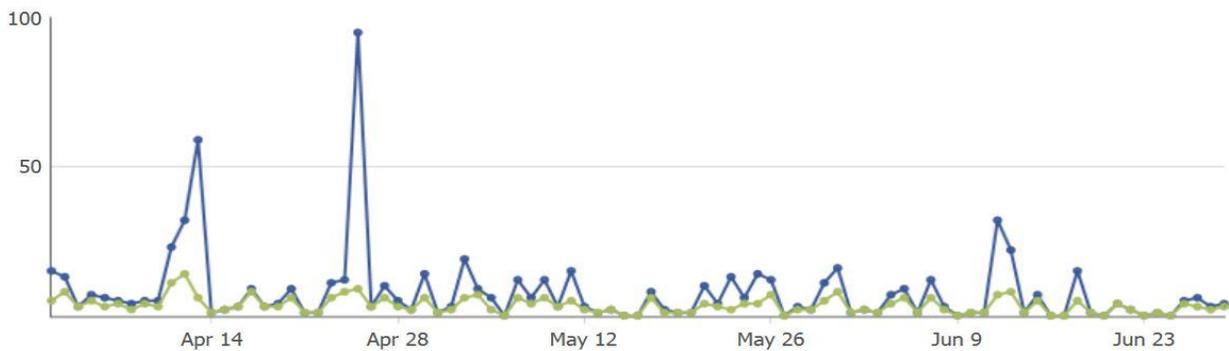
\*Account opened on 2/27/2011

Facebook Statistics			
Category	Data During 1/01/12 – 3/31/12	Data During 4/01/12 – 6/30/12	% Increase/Decrease
Total Likes	929	987	6% ↑
Friend of Fans	290,556	324,335	12% ↑
People Talking About Page	39	52	33% ↑

Facebook Page Visits: 4/01/2012-6/30/2012

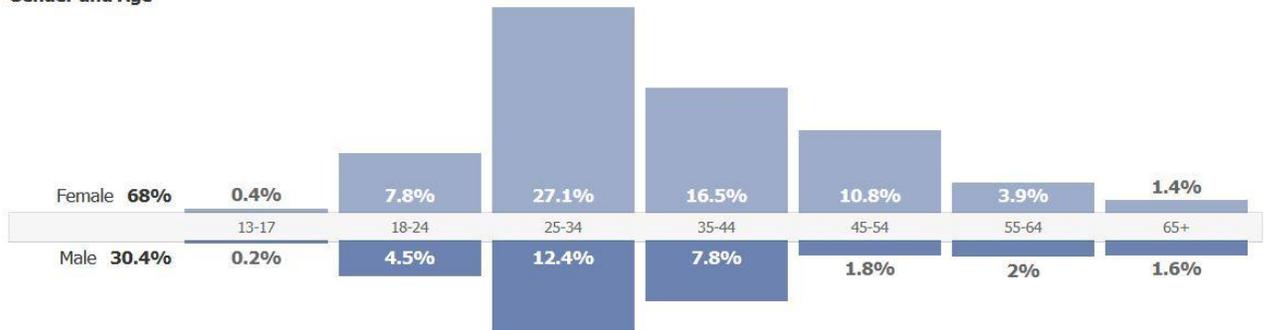
Page Views

Page Views?  Unique Visitors?



Facebook Demographic Users: 4/01/2012-6/30/2012

Gender and Age?



Note: Effective April 2012, data reflects periods by quarters per fiscal year, with the exception of Twitter.

## APPLICATION AND LICENSING SERVICES STATISTICS FY 2011/12

AGENDA ITEM # 7

### Application Statistics

APPLICATIONS RECEIVED													
Application Type	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
PT	81	88	125	90	37	125	69	50	44	78	208		995
FOREIGN PT	24	39	29	23	22	22	30	20	17	25	22		273
FOREIGN PTA	9	17	11	3	0	2	8	4	8	5	10		77
AT	17	16	9	34	11	14	13	16	41	19	72		262
EQUIV AT	0	1	0	0	1	0	0	2	1	0	2		7
EK	0	0	0	0	0	0	0	0	0	0	0		0
EN	0	0	0	0	0	0	0	0	0	0	0		0
<b>Total</b>	<b>131</b>	<b>161</b>	<b>174</b>	<b>150</b>	<b>71</b>	<b>163</b>	<b>120</b>	<b>92</b>	<b>111</b>	<b>127</b>	<b>314</b>	<b>0</b>	<b>1,614</b>

### Licensing Statistics

LICENSES ISSUED*													
License Type	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
PT	120	52	133	76	142	136	107	115	52	92	37		1,062
AT	45	59	26	27	12	26	31	20	14	17	29		306
EK	0	0	0	0	2	0	0	0	0	0	0		2
EN	0	0	0	0	0	0	0	0	0	0	0		0
<b>Total</b>	<b>165</b>	<b>111</b>	<b>159</b>	<b>103</b>	<b>156</b>	<b>162</b>	<b>138</b>	<b>135</b>	<b>66</b>	<b>109</b>	<b>66</b>	<b>0</b>	<b>1,370</b>

### License Renewal Statistics

LICENSES RENEWED													
License Type	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
PT	809	1,504	1,867	863	841	745	898	832	925	771	391		10,446
AT	176	348	433	209	188	213	233	211	241	224	124		2,600
EK	1	1	3	3	0	0	1	1	0	1	0		11
EN	0	1	2	0	0	2	0	0	1	0	0		6
<b>Total</b>	<b>986</b>	<b>1,854</b>	<b>2,305</b>	<b>1,075</b>	<b>1,029</b>	<b>960</b>	<b>1,132</b>	<b>1,044</b>	<b>1,167</b>	<b>996</b>	<b>515</b>	<b>0</b>	<b>13,063</b>

\*The Licenses Issued statistics will not match the Applications Received statistics due to the length of time an application may remain on file.

## APPLICATION AND LICENSING SERVICES STATISTICS FY 2011/12

AGENDA ITEM # 7

### License Status Statistics

ACTIVE LICENSES												
License Type	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
PT	21,835	21,772	21,739	21,698	21,702	21,747	21,695	21,733	21,701	21,729	21,514	
AT	5,318	5,301	5,329	5,307	5,314	5,302	5,281	5,303	5,286	5,279	5,238	
EK	26	27	27	27	27	29	29	29	29	30	28	
EN	23	23	23	23	23	23	23	23	23	22	21	
<b>Total</b>	<b>27,202</b>	<b>27,123</b>	<b>27,118</b>	<b>27,055</b>	<b>27,066</b>	<b>27,101</b>	<b>27,028</b>	<b>27,088</b>	<b>27,039</b>	<b>27,060</b>	<b>26,801</b>	<b>0</b>

INACTIVE LICENSES												
License Type	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
PT	451	484	507	585	633	653	703	767	834	859	1,003	
AT	123	136	141	160	175	181	189	207	230	236	273	
<b>Total</b>	<b>574</b>	<b>620</b>	<b>648</b>	<b>745</b>	<b>808</b>	<b>834</b>	<b>892</b>	<b>974</b>	<b>1,064</b>	<b>1,095</b>	<b>1,276</b>	<b>0</b>

DELINQUENT LICENSES												
License Type	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
PT	2,798	2,925	2,948	3,014	3,007	3,029	3,129	3,063	3,100	3,103	3,175	
AT	803	855	860	869	870	877	903	882	888	891	910	
EK	7	6	6	6	6	6	6	5	5	4	5	
EN	5	5	5	5	5	4	4	4	4	5	6	
<b>Total</b>	<b>3,611</b>	<b>3,791</b>	<b>3,819</b>	<b>3,894</b>	<b>3,888</b>	<b>3,916</b>	<b>4,042</b>	<b>3,954</b>	<b>3,997</b>	<b>4,003</b>	<b>4,096</b>	<b>0</b>

*Licensees in Delinquent status are eligible to renew their license and make it active/valid.*

# APPLICATION AND LICENSING SERVICES STATISTICS FY 2011/12

## National Physical Therapist (PT) Examination - CALIFORNIA STATISTICS

### Accredited PT Program & Foreign Educated PT Combined Pass/Fail

	July*	Aug*	Sept	Oct	Nov*	Dec	Jan	Feb*	Mar	Apr*	May*	Jun*	FY Total
Pass			107	122		97	91		59				476
Fail			88	88		75	49		91				391
<b>Total</b>			<b>195</b>	<b>210</b>		<b>172</b>	<b>140</b>		<b>150</b>				<b>867</b>
<b>Pass Rate</b>			<b>55%</b>	<b>58%</b>		<b>56%</b>	<b>65%</b>		<b>39%</b>				<b>55%</b>

### Accredited PT Program Pass/Fail

	July*	Aug*	Sept	Oct	Nov*	Dec	Jan	Feb*	Mar	Apr*	May*	Jun*	FY Total
Pass			103	117		90	89		50				449
Fail			41	27		21	13		26				128
<b>Total</b>			<b>144</b>	<b>144</b>		<b>111</b>	<b>102</b>		<b>76</b>				<b>577</b>
<b>Pass Rate</b>			<b>72%</b>	<b>81%</b>		<b>81%</b>	<b>87%</b>		<b>66%</b>				<b>78%</b>

### Foreign Educated PT Pass/Fail

	July*	Aug*	Sept	Oct	Nov*	Dec	Jan	Feb*	Mar	Apr*	May*	Jun*	FY Total
Pass			4	5		7	2		9				27
Fail			47	61		54	36		65				263
<b>Total</b>			<b>51</b>	<b>66</b>		<b>61</b>	<b>38</b>		<b>74</b>				<b>290</b>
<b>Pass Rate</b>			<b>8%</b>	<b>8%</b>		<b>11%</b>	<b>5%</b>		<b>12%</b>				<b>9%</b>

\*Due to fixed date testing, no examination was given during this month.

# APPLICATION AND LICENSING SERVICES STATISTICS FY 2011/12

## National Physical Therapist Assistant (PTA) Examination - CALIFORNIA STATISTICS

### Accredited PTA Program, Foreign Educated PTA, & Equivalency Combined Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar*	Apr	May*	Jun*	FY Total
Pass	42	36	19	9	19	26	13	17		32			181
Fail	13	19	15	9	9	20	7	22		48			114
<b>Total</b>	<b>55</b>	<b>55</b>	<b>34</b>	<b>18</b>	<b>28</b>	<b>46</b>	<b>20</b>	<b>39</b>		<b>80</b>			<b>295</b>
<b>Pass Rate</b>	<b>76%</b>	<b>65%</b>	<b>56%</b>	<b>50%</b>	<b>68%</b>	<b>57%</b>	<b>65%</b>	<b>44%</b>		<b>40%</b>			<b>61%</b>

### Accredited PTA Program Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar*	Apr	May*	Jun*	FY Total
Pass	37	29	8	5	12	20	12	9		22			132
Fail	6	9	7	2	2	6	2	8		22			42
<b>Total</b>	<b>43</b>	<b>38</b>	<b>15</b>	<b>7</b>	<b>14</b>	<b>26</b>	<b>14</b>	<b>17</b>		<b>44</b>			<b>174</b>
<b>Pass Rate</b>	<b>86%</b>	<b>76%</b>	<b>53%</b>	<b>71%</b>	<b>86%</b>	<b>77%</b>	<b>86%</b>	<b>53%</b>		<b>50%</b>			<b>76%</b>

### Foreign Educated PTA Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar*	Apr	May*	Jun*	FY Total
Pass	5	7	11	4	7	6	1	8		10			49
Fail	7	10	8	7	7	14	5	14		26			72
<b>Total</b>	<b>12</b>	<b>17</b>	<b>19</b>	<b>11</b>	<b>14</b>	<b>20</b>	<b>6</b>	<b>22</b>		<b>36</b>			<b>121</b>
<b>Pass Rate</b>	<b>42%</b>	<b>41%</b>	<b>58%</b>	<b>36%</b>	<b>50%</b>	<b>30%</b>	<b>17%</b>	<b>36%</b>		<b>28%</b>			<b>40%</b>

### Equivalency PTA Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar*	Apr	May*	Jun*	FY Total
Pass	0	0	0	0	0	0	0	0		0			0
Fail	0	0	0	0	0	0	0	0		0			0
<b>Total</b>	<b>0</b>		<b>0</b>			<b>0</b>							
<b>Pass Rate</b>	<b>0%</b>		<b>0%</b>			<b>0%</b>							

\*Fixed date testing began on February 29, 2012. There was no examination given this month.

# APPLICATION AND LICENSING SERVICES STATISTICS FY 2011/12

AGENDA ITEM # 7

## California Law Examination (CLE)

### Accredited & Foreign Educated Combined Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	154	140	174	125	167	140	92	117	95	78	86	161	1529
Fail	7	5	1	3	2	3	4	5	9	10	10	12	71
<b>Total</b>	<b>161</b>	<b>145</b>	<b>175</b>	<b>128</b>	<b>169</b>	<b>143</b>	<b>96</b>	<b>122</b>	<b>104</b>	<b>88</b>	<b>96</b>	<b>173</b>	<b>1600</b>
<b>Pass Rate</b>	<b>96%</b>	<b>97%</b>	<b>99%</b>	<b>98%</b>	<b>99%</b>	<b>98%</b>	<b>96%</b>	<b>96%</b>	<b>91%</b>	<b>89%</b>	<b>90%</b>	<b>93%</b>	<b>97%</b>

### Accredited Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	129	116	147	99	140	121	76	104	75	57	72	135	1271
Fail	6	3	0	1	1	2	1	3	5	2	6	7	37
<b>Total</b>	<b>135</b>	<b>119</b>	<b>147</b>	<b>100</b>	<b>141</b>	<b>123</b>	<b>77</b>	<b>107</b>	<b>80</b>	<b>59</b>	<b>78</b>	<b>142</b>	<b>1308</b>
<b>Pass Rate</b>	<b>96%</b>	<b>97%</b>	<b>100%</b>	<b>99%</b>	<b>99%</b>	<b>98%</b>	<b>99%</b>	<b>97%</b>	<b>94%</b>	<b>97%</b>	<b>92%</b>	<b>95%</b>	<b>98%</b>

### Foreign Educated Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	25	24	27	26	27	19	16	13	20	21	14	26	258
Fail	1	2	1	2	1	1	3	2	4	8	4	5	34
<b>Total</b>	<b>26</b>	<b>26</b>	<b>28</b>	<b>28</b>	<b>28</b>	<b>20</b>	<b>19</b>	<b>15</b>	<b>24</b>	<b>29</b>	<b>18</b>	<b>31</b>	<b>292</b>
<b>Pass Rate</b>	<b>96%</b>	<b>92%</b>	<b>96%</b>	<b>93%</b>	<b>96%</b>	<b>95%</b>	<b>84%</b>	<b>87%</b>	<b>83%</b>	<b>72%</b>	<b>78%</b>	<b>84%</b>	<b>92%</b>

# APPLICATION AND LICENSING SERVICES STATISTICS FY 2011/12

## National Physical Therapist (PT) Examination - NATIONAL STATISTICS

### Accredited PT Program & Foreign Educated PT Combined Pass/Fail

	July*	Aug*	Sept	Oct	Nov*	Dec	Jan	Feb	Mar	Apr*	May*	Jun*	FY Total
Pass			1422	797		427	941	1	855				4443
Fail			966	966		816	724	1	1241				4714
<b>Total</b>			<b>2388</b>	<b>1763</b>		<b>1243</b>	<b>1665</b>	<b>2</b>	<b>2096</b>				<b>9157</b>
<b>Pass Rate</b>			<b>60%</b>	<b>45%</b>		<b>34%</b>	<b>57%</b>	<b>50%</b>	<b>41%</b>				<b>49%</b>

### Accredited PT Program Pass/Fail

	July*	Aug*	Sept	Oct	Nov*	Dec	Jan	Feb	Mar	Apr*	May*	Jun*	FY Total
Pass			1285	655		301	753	1	631				3626
Fail			380	335		192	195	0	316				1418
<b>Total</b>			<b>1665</b>	<b>990</b>		<b>493</b>	<b>948</b>	<b>1</b>	<b>947</b>				<b>5044</b>
<b>Pass Rate</b>			<b>77%</b>	<b>66%</b>		<b>61%</b>	<b>79%</b>	<b>100%</b>	<b>67%</b>				<b>72%</b>

### Foreign Educated PT Pass/Fail

	July*	Aug*	Sept	Oct	Nov*	Dec	Jan	Feb	Mar	Apr*	May*	Jun*	FY Total
Pass			137	142		126	188	0	224				817
Fail			586	630		624	529	1	925				3295
<b>Total</b>			<b>723</b>	<b>772</b>		<b>750</b>	<b>717</b>	<b>1</b>	<b>1149</b>				<b>4112</b>
<b>Pass Rate</b>			<b>19%</b>	<b>18%</b>		<b>17%</b>	<b>26%</b>	<b>0%</b>	<b>19%</b>				<b>20%</b>

\*Due to fixed date testing, no examination was given during this month.

# APPLICATION AND LICENSING SERVICES STATISTICS FY 2011/12

## National Physical Therapist Assistant (PTA) Examination - NATIONAL STATISTICS

### Accredited PTA Program, Foreign Educated PTA, & Equivalency Combined Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar*	Apr	May*	Jun*	FY Total
Pass	975	695	538	549	373	412	358	583		735	1		4483
Fail	231	258	213	251	202	253	164	336		523	0		1908
<b>Total</b>	<b>1206</b>	<b>953</b>	<b>751</b>	<b>800</b>	<b>575</b>	<b>665</b>	<b>522</b>	<b>919</b>		<b>1258</b>	<b>1</b>		<b>6391</b>
<b>Pass Rate</b>	<b>81%</b>	<b>73%</b>	<b>72%</b>	<b>69%</b>	<b>65%</b>	<b>62%</b>	<b>69%</b>	<b>63%</b>		<b>58%</b>	<b>100%</b>		<b>70%</b>

### Accredited PTA Program Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar*	Apr	May*	Jun*	FY Total
Pass	942	666	515	516	339	365	315	489		669	1		4147
Fail	212	231	194	216	174	211	141	269		411	0		1648
<b>Total</b>	<b>1154</b>	<b>897</b>	<b>709</b>	<b>732</b>	<b>513</b>	<b>576</b>	<b>456</b>	<b>758</b>		<b>1080</b>	<b>1</b>		<b>5795</b>
<b>Pass Rate</b>	<b>82%</b>	<b>74%</b>	<b>73%</b>	<b>70%</b>	<b>66%</b>	<b>63%</b>	<b>69%</b>	<b>65%</b>		<b>62%</b>	<b>100%</b>		<b>72%</b>

### Foreign Educated PTA Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar*	Apr	May*	Jun*	FY Total
Pass	33	29	23	33	34	47	43	94		66			336
Fail	19	27	19	35	28	42	23	67		112			260
<b>Total</b>	<b>52</b>	<b>56</b>	<b>42</b>	<b>68</b>	<b>62</b>	<b>89</b>	<b>66</b>	<b>161</b>		<b>178</b>			<b>596</b>
<b>Pass Rate</b>	<b>63%</b>	<b>52%</b>	<b>55%</b>	<b>49%</b>	<b>55%</b>	<b>53%</b>	<b>65%</b>	<b>58%</b>		<b>37%</b>			<b>56%</b>

### Equivalency PTA Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar*	Apr	May*	Jun*	FY Total
Pass	0	0	0	0	0	0	0	0		0			0
Fail	0	0	0	0	0	0	0	0		0			0
<b>Total</b>	<b>0</b>		<b>0</b>			<b>0</b>							
<b>Pass Rate</b>	<b>0%</b>		<b>0%</b>			<b>0%</b>							

\*Fixed date testing began on February 29, 2012. There was no examination given this month.

# APPLICATION AND LICENSING SERVICES STATISTICS FY 2011/12

AGENDA ITEM # 7

## Law Examination - NATIONAL STATISTICS

### Law Examination Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	711	499	611	492	442	360	352	399	291	286	508	847	5798
Fail	59	54	62	86	50	46	49	44	65	58	70	79	722
<b>Total</b>	<b>770</b>	<b>553</b>	<b>673</b>	<b>578</b>	<b>492</b>	<b>406</b>	<b>401</b>	<b>443</b>	<b>356</b>	<b>344</b>	<b>578</b>	<b>926</b>	<b>6520</b>
Pass Rate	92%	90%	91%	85%	90%	89%	88%	90%	82%	83%	88%	91%	89%

### Accredited Program Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	667	460	560	439	390	317	317	368	252	243	466	802	5281
Fail	52	52	53	68	39	35	41	40	41	41	55	64	581
<b>Total</b>	<b>719</b>	<b>512</b>	<b>613</b>	<b>507</b>	<b>429</b>	<b>352</b>	<b>358</b>	<b>408</b>	<b>293</b>	<b>284</b>	<b>521</b>	<b>866</b>	<b>5862</b>
Pass Rate	93%	90%	91%	87%	91%	90%	89%	90%	86%	86%	89%	93%	90%

### Foreign Educated Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	44	39	51	53	52	43	35	31	39	43	42	45	517
Fail	7	2	9	18	11	11	8	4	24	17	15	15	141
<b>Total</b>	<b>51</b>	<b>41</b>	<b>60</b>	<b>71</b>	<b>63</b>	<b>54</b>	<b>43</b>	<b>35</b>	<b>63</b>	<b>60</b>	<b>57</b>	<b>60</b>	<b>658</b>
Pass Rate	86%	95%	85%	75%	83%	80%	81%	89%	62%	72%	74%	75%	79%

## Performance Measures

### Q4 Report (April - June 2012)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

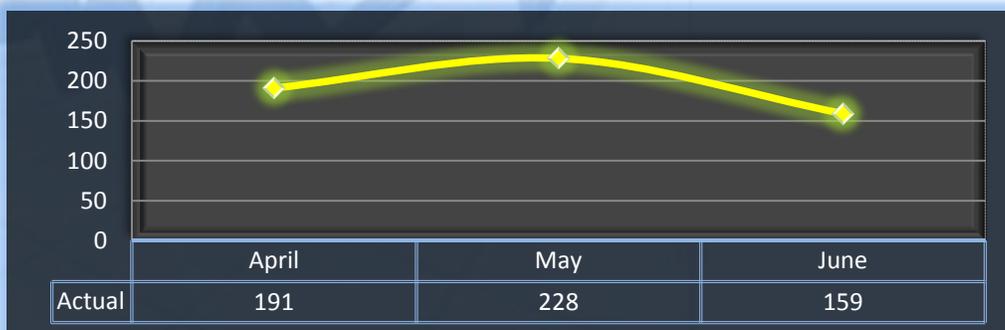
#### Volume

Number of complaints and convictions received.

**Q4 Total: 578**

*Complaints: 528 Convictions: 50*

**Q4 Monthly Average: 193**



#### Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

**Target: 9 Days**

**Q4 Average: 3 Days**



## Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

**Target: 90 Days**

**Q4 Average: 42 Days**



## Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

**Target: 540 Days**

**Q4 Average: 504 Days**

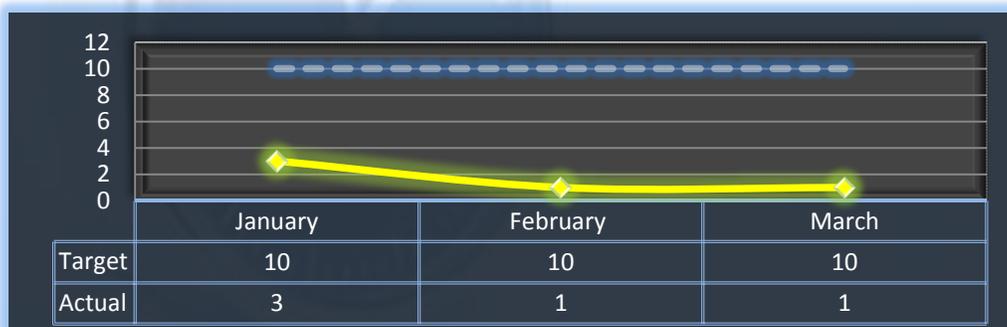


## Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

**Target: 10 Days**

**Q4 Average: 2 Days**



## **Probation Violation Response**

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

**Target: 7 Days**

**Q4 Average: N/A**

*The Board did not handle any probation violations this quarter .*

# CHART 1 - Monthly Enforcement Report to DCA 2011/2012

AGENDA ITEM # 8(A)

## Complaint Intake

Complaints Received by the Program.

Measured from date received to assignment for investigation or closure without action.

Complaints	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
Received	103	136	121	55	53	291	65	81	152	182	200	146	1585
Closed without Assignment for Investigation	1	4	0	0	1	3	1	0	0	0	0	2	12
Assigned for Investigation - <i>Note: Number of assigned cases may include cases from previous month; therefore totals will not add up.</i>	108	98	156	51	42	108	249	88	153	182	196	138	1569
Average Days to Close or Assigned for Investigation	7	5	6	6	7	6	8	5	5	3	4	2	5.3333
Pending	7	40	5	9	9	*199	13	6	5	2	6	12	

\* The high volume of "pending" cases in Complaint Intake is due to the majority of cases being opened between Dec 27 & 30, 2011. This did not allow time for the analysts to assign all of the cases to themselves prior to Dec 31, 2011. Therefore these cases remain in "intake" for the month of December; however, the cases were assigned first week in January 2012.

Convictions/Arrest Reports	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
Received	17	29	26	27	14	10	27	22	9	9	28	13	231
Closed / Assigned for Investigation	18	29	29	26	14	6	29	19	9	14	28	11	232
Average Days to Close	6	5	5	4	5	3	4	3	4	4	4	2	4.0833
Pending	3	3	0	1	1	4	2	5	5	0	0	2	

Total Intake	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
Received	120	165	147	82	67	301	92	103	161	191	228	159	1816
Closed w/o Inv. Assignment	2	4	1	0	2	3	1	0	0	0	0	2	15
Assigned for Investigation	125	127	184	77	55	114	278	107	162	196	224	149	1798
Avg. Days to Close or Assign	7	5	6	5	6	6	7	5	5	3	4	2	5.0833
Pending	10	43	5	10	20	*203	15	11	10	2	6	14	146

\* The high volume of "pending" cases in Total Intake is due to the majority of cases being opened between Dec 27 & 30, 2011. This did not allow time for the analysts to assign all of the cases to themselves prior to Dec 31, 2011. Therefore these cases remain in "intake" for the month of December; however, the cases were assigned first week in January 2012.

Complaints investigated by the program whether by desk investigation or by field investigation.

## Investigation

Measured by date the complaint is received to the date the complaint is closed or referred for enforcement action.

If a complaint is never referred for Field Investigation, it will be counted as 'Closed' under Desk Investigation.

If a complaint is referred for Field Investigation, it will be counted as 'Closed' under Non-Sworn or Sworn.

<b>Desk Investigation</b>	<b>Jul-11</b>	<b>Aug-11</b>	<b>Sep-11</b>	<b>Oct-11</b>	<b>Nov-11</b>	<b>Dec-11</b>	<b>Jan-12</b>	<b>Feb-12</b>	<b>Mar-12</b>	<b>Apr-12</b>	<b>May-12</b>	<b>Jun-12</b>	<b>YTD</b>
Initial Assignment for Desk Investigation	125	127	184	77	55	114	278	106	161	196	224	149	1796
Closed	89	126	114	103	126	85	257	149	126	185	119	224	1703
Average Days to Close	48	56	75	97	75	165	40	47	26	38	31	68	63.833
Pending	499	498	568	538	463	490	508	462	490	517	598	532	

<b>Field Investigation (Non-Sworn)</b>	<b>Jul-11</b>	<b>Aug-11</b>	<b>Sep-11</b>	<b>Oct-11</b>	<b>Nov-11</b>	<b>Dec-11</b>	<b>Jan-12</b>	<b>Feb-12</b>	<b>Mar-12</b>	<b>Apr-12</b>	<b>May-12</b>	<b>Jun-12</b>	<b>YTD</b>
Assignment for Non-Sworn Field Investigation	N/A												0
Closed													0
Average Days to Close													
Pending													

<b>Field Investigation (Sworn)</b>	<b>Jul-11</b>	<b>Aug-11</b>	<b>Sep-11</b>	<b>Oct-11</b>	<b>Nov-11</b>	<b>Dec-11</b>	<b>Jan-12</b>	<b>Feb-12</b>	<b>Mar-12</b>	<b>Apr-12</b>	<b>May-12</b>	<b>Jun-12</b>	<b>YTD</b>
Assignment for Sworn Field Investigation	4	4	4	5	5	5	3	4	7	2	3	8	54
Closed	10	3	4	5	2	4	5	0	4	6	3	3	49
Average Days to Close	273	257	420	268	702	385	682	0	317	556	710	533	425.25
Pending	45	46	45	45	51	50	49	54	57	54	54	59	

**FY 2011/2012**

<b>All Investigations</b>	<b>Jul-11</b>	<b>Aug-11</b>	<b>Sep-11</b>	<b>Oct-11</b>	<b>Nov-11</b>	<b>Dec-11</b>	<b>Jan-12</b>	<b>Feb-12</b>	<b>Mar-12</b>	<b>Apr-12</b>	<b>May-12</b>	<b>Jun-12</b>	<b>YTD</b>
First Assignments	125	127	184	77	55	114	278	107	162	196	224	149	1798
Closed	99	129	118	108	128	89	262	149	130	191	122	227	1752
Average Days to Close	71	60	86	105	85	175	52	47	35	54	48	74	74.333
Pending	544	544	613	583	514	540	557	516	547	571	652	591	

<b>All Investigations Aging</b>	<b>Jul-11</b>	<b>Aug-11</b>	<b>Sep-11</b>	<b>Oct-11</b>	<b>Nov-11</b>	<b>Dec-11</b>	<b>Jan-12</b>	<b>Feb-12</b>	<b>Mar-12</b>	<b>Apr-12</b>	<b>May-12</b>	<b>Jun-12</b>	<b>YTD</b>
Up to 90 Days	76	100	90	55	112	56	236	136	122	171	111	206	1471
91 to 180 Days	15	23	17	34	9	11	13	8	4	8	4	13	159
181 Days to 1 Year	5	5	5	17	3	13	6	3	3	6	5	3	74
1 to 2 Years	2	1	4	2	2	6	5	2	0	4	1	2	31
2 to 3 Years	1	0	2	0	2	2	2	0	1	1	0	1	12
Over 3 Years	0	0	0	0	0	1	0	0	0	1	1	2	5

**Enforcement Actions**

This section DOES NOT include subsequent discipline on a license. Data from complaint records combined/consolidated into a single case will not appear in this section.

	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
AG Cases Initiated	7	5	5	11	6	7	7	8	1	6	0	6	69
AG Cases Pending	71	73	73	77	81	78	81	89	84	87	85	86	
SOIs Filed	0	2	1	0	0	0	0	1	0	0	0	2	6
Accusations Filed	1	3	5	3	5	8	7	4	2	3	3	0	44

<b>ACC Decisions/Stips</b>	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
Prop/Default Decisions	0	0	0	0	0	3	1	0	2	0	0	2	8
Stipulations	0	1	5	2	1	2	0	0	2	3	1	2	19

<b>SOI Disciplinary Orders</b>	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Jan-00	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
SOI Final Orders (Dec/Stips)	0	0	0	1	0	0	0	0	0	0	0	1	2
Average Days to Complete	0	0	0	1141	0	0	0	0	0	0	0	569	142.5

<b>ACC Disciplinary Orders</b>	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
ACC Final Orders (Dec/Stips)	4	1	5	2	1	5	1	0	4	3	1	4	31
Average Days to Complete	667	1100	815	1795	1416	755	486	0	629	471	277	812	768.58

<b>Total Disciplinary Orders</b>	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
Total Final Orders (Dec/Stips)	4	1	5	3	1	5	1	0	4	3	1	5	33
Total Average Days to Complete	667	1100	815	1577	1416	755	486	0	629	471	277	764	746.42

<b>Total Orders Aging</b>	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
Up to 90 Days	0	0	0	0	0	0	0	0	0	0	0	0	0
91 to 180 Days	0	0	1	0	0	0	0	0	1	0	0	1	3
181 Days to 1 Year	0	0	0	0	0	0	0	0	0	1	1	0	2
1 to 2 Years	4	0	1	0	0	2	1	0	2	2	0	1	13
2 to 3 Years	0	0	2	0	0	3	0	0	0	0	0	2	7
Over 3 Years	0	1	1	3	1	0	0	0	1	0	0	1	8

<b>Disciplinary Orders</b>	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
Final Orders (Proposed Decisions, Default Decisions, Stipulations)	4	1	5	3	1	5	1	0	4	3	1	5	33
Average Days to Complete*	667	1100	815	1577	1416	755	486	0	629	471	277	764	746.42

<b>Citations</b>	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	YTD
Final Citations	27	42	31	65	75	43	90	90	20	64	10	79	636
Average Days to Complete*	79	71	118	113	74	123	59	54	90	60	48	58	78.917

Performance Measures	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12
PM1 Volume	103	136	121	55	53	291	65	81	152	182	200	146
PM1 Conv/Arrest Rpts Volume	17	29	26	27	14	10	27	22	9	9	28	13
PM2 Cycle Time - Intake	7	5	6	5	6	6	7	5	5	3	4	2
PM3 Cycle Time-No Discipline	58	59	64	101	67	114	38	45	26	42	48	38
PM 4 Cycle Time-Discipline	667	322	815	1220	743	618	399	0	629	471	277	764

**PM1: VOLUME**

Number of Complaints Received within the specified time period.

**PM2: CYCLE TIME-INTAKE**

Average Number of Days to complete Complaint Intake during the specified time period.

**PM3: CYCLE TIME-NO DISCIPLINE (Target 90 Days)**

Average Number of Days to complete Complaint Intake and Investigation steps of the Enforcement process for Closed Complaints not resulting in Formal Discipline during the specified time period.

**PM4: CYCLE TIME-DISCIPLINE (Target 540 Days)**

Average Number of Days to complete the Enforcement process (Complaint Intake, Investigation, and Formal Discipline steps) for Cases Closed which had gone to the Formal Discipline step during the specified time period.

The following is a list of disciplinary actions taken by the Physical Therapy Board of California, in **May, June, July 2012**. The Decisions become operative on the Effective Date, with the exception of situations where the licensee has obtained a court ordered stay. Stay orders do not occur in stipulated decisions, which are negotiated settlements waiving court appeals.

Copies of Accusations, Decisions, or Citations may be obtained by visiting our website at [www.ptbc.ca.gov](http://www.ptbc.ca.gov). In addition to obtaining this information from our website, you may also request it by telephone, fax, or mail. Please address your request to:

Physical Therapy Board of California  
2005 Evergreen Street, Suite 1350  
Sacramento, CA 95815  
(916) 561-8200/ FAX (916) 263-2560

**Physical Therapy Board of California Disciplinary Summary**



**May 2012**

**DAHM, MARCIA (PT 26583)**  
Violation of B & P Code: 2660(k) Commit Fraud, Dishonest Act. In House Public Letter of Reprimand Issued 05/15/12.

**FRALEY, PAULA (AT 4702)**  
Accusation Filed 01/18/12. Violation of B & P Codes: 2237 Conviction of Drug Violations, 2238 Violation of Drug Statutes, 2239 Self-Use of Drugs or Alcohol, 2660(d) Conviction of Criminal Offense, 2660(e) Habitual Intemperance, 2660(h) Violating the Code. Stipulated Revocation of License and Order Effective 05/11/12, License Revoked.

**June 2012**

**BOSE, RONN JEFFREY (PT 12076)**  
Accusation Filed 09/02/11. Violation of B & P Codes: 2261 False Statements on Documents, 2262 Alteration of Medical Records, 2266 Fail to Maintain Adequate and Accurate Records, 2660(h) Violating the Code, 2660(k) Commit Fraud, Dishonest Act. Proposed Decision Effective 06/04/12, Public Reapproval.

**KAMAL, KHALID (PT 32962)**  
Accusation Filed: 10/30/08. Violation of B & P Codes: 2660(d) Conviction of Crime Substantially Related to the Practice, 2661 Conviction of a Crime Substantially Related to the practice. Violation of CCR: 1399.20 Criminal Substantial Relation. Stipulated Settlement and Disciplinary Order Effective 06/15/12, Public Reapproval.

**LEWIS, STEVEN (AT 4706)**  
Accusation Filed 02/09/12. Violation of B & P Codes: 125.9(b)(5) Failure to Pay Fine w/in 30 Days. Default Decision and Order Effective 06/02/12, License Revoked.

**THOMPSON, BYRON M. (PT 22397)**  
Accusation Filed 05/31/2011. Violation of B & P Codes: 2234 Unprofessional Conduct, 2660(g) Gross Negligence, 2660(h) Violating the Code, 2660(m) Verbal Abuse or Sexual Harassment. Stipulated Surrender of License and Order Effective 06/08/12, License Surrendered.

54 July 2012

55  
56 **FLETCHER, CELICE (PT 9810)**

57 Accusation Filed 02/06/12. Violation of B & P Codes: 2660(d) Conviction of a Criminal Offense, 2660(h) Violating  
58 the Code, 2661 Conviction of a Crime, 2676 Renewal Cont Comp Requirements. Violation of CCR: 1399.91  
59 Continuing Comp Required, 1399.92 Content Standards-Cont Comp, 1399.93 Cont Comp Required & Limitations.  
60 Stipulated Surrender of License and Order Effective 07/21/12. License Surrendered.

61  
62 **LA CONTE, LEENDA (PT 29164)**

63 Accusation Filed 07/23/10. Violation of B & P Codes: 490 Conviction of a Crime, 2239 Self-Use of Drugs or  
64 Alcohol, 2239(a) Conviction of More than one Misdemeanor, 2660(d) Conviction of a Crime, 2660(h) Violating the  
65 Code. Stipulated Settlement and Disciplinary Order Effective 07/25/11, Revocation, Stayed, 4 Yrs. Prob. License  
66 Suspended 08/23/11. Petition to Revoke Probation Filed 09/29/11. Stipulated Surrender of License and Order  
67 Effective 07/04/12. License Surrendered.

68  
69 **POTTER, STEPHANIE (PT 13352)**

70 Violation of B & P Codes: 141(a) Discipline Action Taken by Others, 2305 Discipline by Another State. In House  
71 Public Letter of Reprimand Issued 07/12/12.

72  
73  
74  
75 **Administrative Citations and Fines Paid**



79 May 2012

80  
81 **DELA CRUZ, MAGNOLIA (PT 38795)**

82 Violation of B & P Codes: 2660 Unprofessional Conducts. Citation and Fine Ordered 04/25/12. Citation Paid in  
83 Full 05/08/12.

84  
85 **HAVNER, DEBRA (PT 21208)**

86 Violation of B & P Code: 2660 Unprofessional Conduct. Violation of CCR: 1399.91 Continuing Comp Required,  
87 1399.93 Cont Comp Requir & Limitations. Citation and Fine Ordered 05/10/12. Citation Paid in Full 05/24/12.

88  
89 **LEE, VALERIE (PT 35137)**

90 Violation of B & P Codes: 2239 Self-Use of Drugs or Alcohol, 2660(d) Conviction of Criminal Offense, 2660(h)  
91 Violating the Code. Citation and Fine Ordered 05/18/12. Citation Paid in Full 05/23/12.

92  
93 **POBLANO, ROBERT (PT 21227)**

94 Violation of B & P Codes: 2660(i) Aiding and Abetting, 2660(j) Aiding and Abetting Unlic Activity. Citation and  
95 Fine Ordered 04/09/12. Citation Paid in Full 05/21/12.

96  
97 **WATTS, RHONA (AT 5530)**

98 Violation of B & P Code: 2660 Unprofessional Conduct. Violation of CCR: 1399.91 Continuing Comp Required,  
99 1399.93 Cont Comp Requir & Limitations. Citation and Fine Ordered 05/10/12. Citation Paid in Full 05/17/12.

100  
101 Violation of CCR: 1398.6 Filing of Address  
102 Citations Paid in Full in May 2012

- 103  
104 ABAD, MELISSA (PT 35307)  
105 BERGESON, MIA (PT 37461)  
106 BLANKENSHIP, JEFFREY (PT 37510)  
107 BREUNINGER, AMY (PT 37672)  
108 COURANT JR., JOHN (PT 26580)

109 COX, HAILEY (PT 35051)  
110 CRENSHAW, RONDA (PT 15458)  
111 DOHERTY, JENNIFER (PT 36666)  
112 ELLERBE, SARA (PT 7858)  
113 GAITE, ALMA (PT 34725)  
114 HALL, JUDITH (PT 33240)  
115 HEBEL, SCOTT (PT 26523)  
116 HERMOSILLA, HARVEY (AT 8458)  
117 HUANG, DER-HOW (PT 38249)  
118 HUGHES, KEVIN (PT 10111)  
119 JONES, SARA (PT 38288)  
120 KADE, ALEXANDER (PT 36346)  
121 KINSMAN, SEAN (PT 37091)  
122 LARSEN, GREGORY (PT 17167)  
123 LE, CHRISTINE-THAO (PT 33208)  
124 LUND, JOSH (AT 8793)  
125 MENDOZA, BRENDA (AT 5896)  
126 MOHAMMAD, RUSALY (AT 8258)  
127 PADILLA, FIDEL (AT 9751)  
128 PARIKH, MANSI (PT 34393)  
129 PATEL, SHITAL (PT 27588)  
130 RAGHEB, NAYER (PT 27539)  
131 RANFT, CHRISTIANE (AT 6607)  
132 RODA, SERENA (PT 26281)  
133 SAMATRA, CHRISTINE (PT 30125)  
134 SANCHEZ, VIRGIE (AT 6494)  
135 TAYLOR, MOLLY (PT 37999)  
136 TSUI, ANDY (PT 29030)  
137 VALENCIA, ADAN (PT 21846)  
138 VANIS, QUINN (PT 21336)  
139 WALTERS, MICHELLE (PT 32702)  
140 ZINGG, CHRIS (PT 27168)

141  
142 **June 2012**

143  
144 **ALAVI, HOOMAN (AT 6929)**  
145 Violation of B & P Code: 2660 Unprofessional Conduct. Violation of CCR: 1399.91 Continuing Comp Required,  
146 1399.93 Cont Comp Requir & Limitations. Citation and Fine Ordered 05/10/12. Citation Paid in Full 06/20/12.

147  
148 **ARREDONDO, MONA (AT 1355)**  
149 Violation of B & P Codes: 2239 Self-Use of Drugs or Alcohol, 2660(d) Conviction of Criminal Offense, 2660(h)  
150 Violating the Code. Citation and Fine Ordered 06/11/12. Citation Paid in Full 06/21/12.

151  
152 **BROWN, KEVIN (PT 9695)**  
153 Violation of B & P Code: 2660 Unprofessional Conduct. Violation of CCR: 1399.91 Continuing Comp Required,  
154 1399.93 Cont Comp Requir & Limitations. Citation and Fine Ordered 05/10/12. Citation Paid in Full 06/25/12.

155  
156 **ROONEY, MICHELE (PT 28219)**  
157 Violation of B & P Code: 2660 Unprofessional Conduct. Violation of CCR: 1399.91 Continuing Comp Required,  
158 1399.93 Cont Comp Requir & Limitations. Citation and Fine Ordered 05/10/12. Citation Paid in Full 06/15/12.

159  
160 **SETO, RAYMOND (PT 6676)**  
161 Violation of B & P Codes: 2660(k) Commit Fraud, Dishonest Act. Citation and Fine Ordered 05/18/12. Citation  
162 Paid in Full 06/04/12.

163  
164

165 **VANIS, QUINN (PT 21336)**  
166 Violation of B & P Codes: 2660 Unprofessional Conduct. Citation and Fine Ordered 05/10/12. Citation Paid in  
167 Full 06/27/12.  
168  
169 Violation of CCR: 1398.6 Filing of Address  
170 Citations Paid in Full June 2012  
171  
172 ALLINGTON, LISA (PT 20295)  
173 ALSTADT, ARLENE (AT 359)  
174 ALSTADT, SCOTT (PT 9224)  
175 AMLING, JESSICA (PT 35754)  
176 BRANDT, JAMIE (PT 37223)  
177 CALVERT, JULIE (AT 9335)  
178 DEFIEBRE, BRIAN (AT 4290)  
179 DILLON, MARC (AT 3543)  
180 DREWS, JOSAN (AT 8723)  
181 FERNANDEZ, GLADYS (PT 27399)  
182 GHAZVINI, MINA (PT 26001)  
183 GOODEN, CYNDEE (PT 32998)  
184 GORDINEER, MEGHAN (PT 18864)  
185 GREENGARD, SUSANNE (PT 17619)  
186 GROTHE, BRITA (PT 35304)  
187 HANSON, MELISSA (AT 6456)  
188 HERSHBERGER, NEIL (PT 10893)  
189 KEPNER, KATIE (PT 35317)  
190 LUM, JEFFREY (PT 35353)  
191 MCCLURG, MAUREEN (PT 36441)  
192 MCGRATH, DANIEL (PT 21174)  
193 MILES, DANIELLE (PT 26079)  
194 MOORE, JOYCE (AT 3774)  
195 NEMEROFF, HAYLEY (AT 4747)  
196 NESPOLE, ROBYN (PT 26040)  
197 NOLTE, MARK (PT 20582)  
198 PACK, JACOB (PT 35448)  
199 PASCH, EMILY (PT 34998)  
200 REDMON, KEVIN (PT 27864)  
201 SCHMIDT, BRYAN (PT 28061)  
202 SEBASTIAN, KAREN (PT 21464)  
203 SHARMA, ANJU (PT 38039)  
204 SILSBEE, LUCAS (PT 25154)  
205 SMITH, DIANE (AT 5206)  
206 SMITH, HEIDI (PT 25571)  
207 SONI, DAZY (PT 34085)  
208 STANFIELD, ADRIENNE (PT 25384)  
209 STARK, RANDY (PT 18867)  
210 TAYLOR, RAY (PT 23000)  
211 TEAL, SHEILA (PT 29625)  
212 TIBBETTS, JULIE (PT 34929)  
213 TOSH, CHAD (PT 29535)  
214 VANCE, ANDREA (PT 21815)  
215 WILLIAMS, PATRICK (PT 25885)  
216 WILLIS, AARON (PT 25468)  
217 ZHANG, HELEN (PT 33451)  
218  
219  
220

221 **July 2012**  
 222  
 223 **UBANOS, ASHMIRR (AT 9001)**  
 224 Violation of B & P Code: 2660 Unprofessional Conduct. Violation of CCR: 1399.91 Continuing Comp Required,  
 225 1399.93 Cont Comp Requir & Limitations. Citation and Fine Issued 06/20/12. Citation Paid in Full 07/09/12.  
 226  
 227 Violation of CCR: 1398.6 Filing of Address  
 228 Citations Paid in Full July 2012  
 229  
 230 BARHAM, KAREE (AT 6403)  
 231 BOUCHER, ADAM (AT 8851)  
 232 BROWN, JEFF (PT 25520)  
 233 DE LEON, JEFFRAYE (AT 9265)  
 234 DE VRIES, AUGUSTUS (PT 23430)  
 235 FAISON, AFRICA (PT 27745)  
 236 FINKLESTEIN, KIM (PT 21287)  
 237 GRAKO, JILL (AT 6410)  
 238 RICHARDS, DENNUS (PT 5808)  
 239 SERANIA, MARIA (PT 33279)  
 240

241 **Glossary of Terms**

242  
 243 B & P Code – Business and Professions Code  
 244 H & S Code – Health and Safety Code  
 245 R & R – Rules and Regulations  
 246 CCR – California Code Regulations  
 247 Accusations: Charges and allegations, which still must undergo rigorous tests of proof at later administrative  
 248 hearings.  
 249 Citation & Fine: An alternative means to address relatively minor violations that are not discipline in order to  
 250 protect the public. Citations and Fine Orders are not disciplinary actions, but are matters of public record.  
 251  
 252 Petition to Revoke Probation: A Petition to Revoke Probation is filed when a licensee is charged with violation of a  
 253 prior disciplinary decision.  
 254  
 255 Probationary License: Where good cause exists to deny a license, the licensing agency has the option to issue a  
 256 conditional license subject to probationary terms and conditions.  
 257  
 258 Statement of Issues Filed: When an applicant for licensure is informed the license will be denied for cause, the  
 259 applicant has a right to demand a formal hearing, usually before an Administrative Law Judge. The process is  
 260 initiated by the filing of a Statement of Issues, which is similar to an accusation.  
 261  
 262 Surrender of License: License surrenders are accepted in lieu of further proceedings.  
 263  
 264 Statement of Issues Decision: These are decisions rendered after the filing of a Statement of Issues.  
 265  
 266 Stipulated Decision: Negotiated settlements waiving court appeals.



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY – EDMUND G. BROWN JR., GOVERNOR

# 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



## 1 Briefing Paper

## Agenda Item 9

2 Date: 7/16/12

3 Prepared for: PTBC Members

4 Prepared by: Jason Kaiser

5 SUBJECT: Continuing Competency Update

6

7 **Purpose:** Provide Board members with an update on continuing competency licensee audits  
8 and the development of the Recognized Approval Agency audit process.

9

### 10 **Background:**

#### 11 **Audit of Licensee**

12 Pursuant to Section 2676 of the Business and Professions Code, the PTBC is required to  
13 randomly audit a percentage of licensees renewing their license in the month to verify  
14 compliance with the continuing competency requirements. The audits are slowly being  
15 performed despite the limitation in staffing in the Continuing Competency Services Program.

16 Currently, 20% of licensees renewing their license in a month are randomly selected for audit.  
17 The system takes all licensees who submitted a renewal payment within that month and from  
18 this report a random 20% sample is selected for audit.

19 The audits commenced with the licensees who renewed in October 2010. The Continuing  
20 Competency Services Program is currently auditing renewal candidates from August and  
21 September of 2011. To date 148 PTAs and 723 PTs have been audited. 90% of those audited  
22 are in compliance with the required continuing competency regulations.

23

24 Continuing competency cases are sent to the Consumer Protection Services Program when it is  
25 determined the licensee has failed the audit or cannot provide proof they have fulfilled the  
26 continuing competency requirement. Factors for audit failure can include missing hours,  
27 missing basic life support for health care providers, an ethics, laws, and regulation course, or  
28 completing courses not approved by a PTBC Recognized Approval Agency.

29 Failing a continuing competency audit may result in a citation or disciplinary action. Fines for  
30 citations are approximately \$500 which includes a \$250 fine for not being in compliance with the  
31 regulation and a \$250 fine for a false statement to the Board. An order of abatement is included  
32 with the citation requiring the licensee to come into compliance with the regulation. Depending

33 on the circumstance of the audit, the licensee may be ordered to complete up to 30 hours of  
34 continuing competency.

35 If a licensee does not provide proof of continuing competency hours or ignores the Board's  
36 requests for compliance, the case will be forwarded to the DAG's office.

37 **Audit of Recognized Approval Agency**

38 The Continuing Competency Services Program is in the early stages of developing the audit  
39 process for Recognized Approval Agencies. Currently there are approximately 120 Recognized  
40 Approval Agencies.

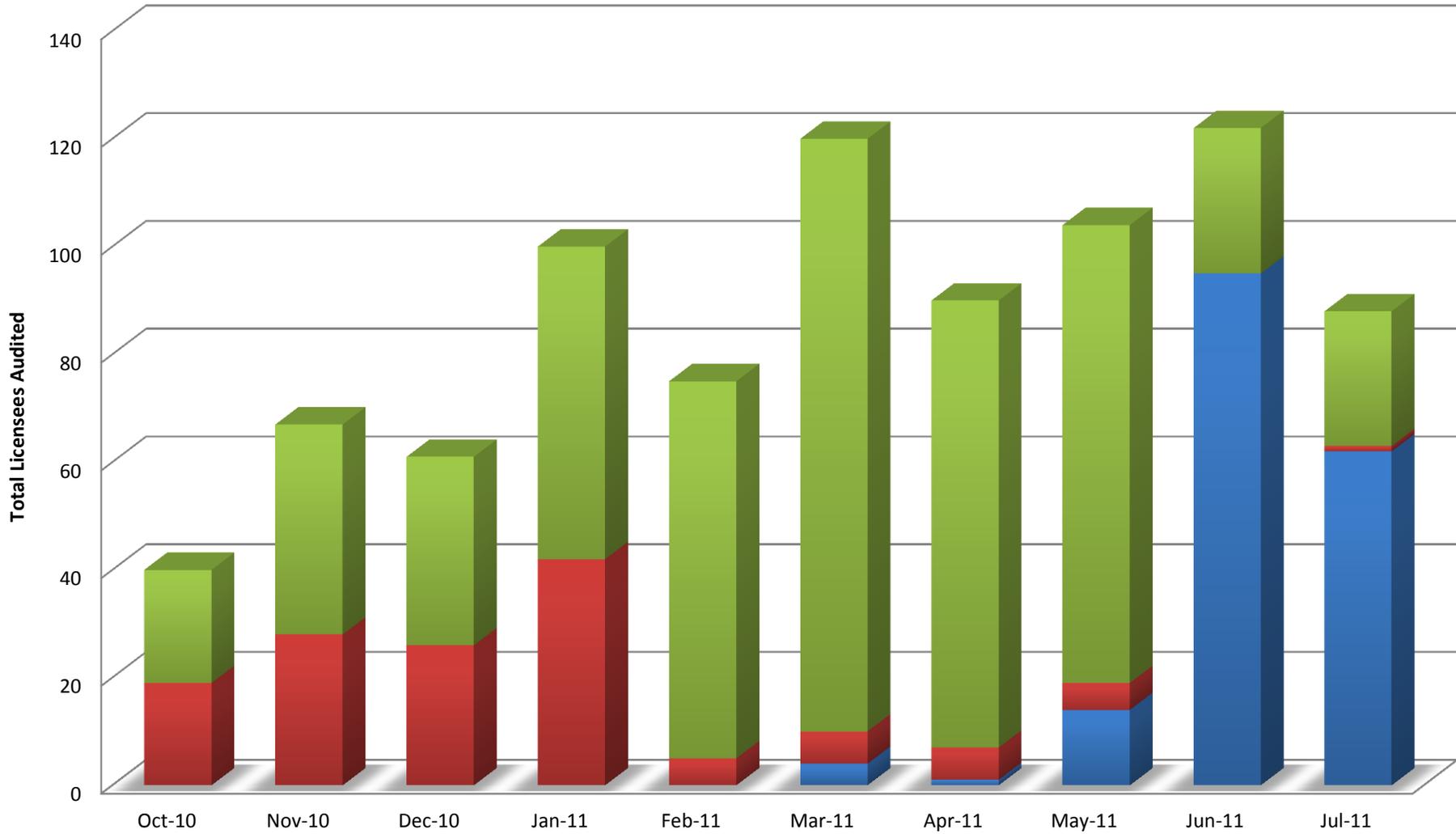
41 In February of this year the Continuing Competency Services Program sent a Records  
42 Compliance Template (RCT) to all Recognized Approval Agencies, collecting course and  
43 provider information to be used as a tool for auditing. To date, all but 4 Recognized Approval  
44 Agencies have complied with this request. If those 4 Recognized Approval Agencies do not  
45 come into compliance, the Continuing Competency Services Program will make a  
46 recommendation to the Board to remove their Recognition as an Approval Agency.

47

---

48 **Action Requested:** No action is being requested

### Continuing Competency Audits 2012



	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11
Pass	21	39	35	58	70	110	83	85	27	25
Fail	19	28	26	42	5	6	6	5	0	1
Pending	0	0	0	0	0	4	1	14	95	62

Legislation Report

**AB 2570** (Hill D) Licensees: settlement agreements.

Recommended  
Position:  
**Support**

**Status:** 7/5/2012-From committee: Do pass and re-refer to Com. on APPR. (Ayes 4. Noes 0.) (July 3). Re-referred to Com. on APPR.

**Location:** 7/5/2012-S. APPR.

2Year	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
Dead	1st House				2nd House				Conc.			

**Summary:** Existing law provides that it is a cause for suspension, disbarment, or other discipline for an attorney to agree or seek agreement that the professional misconduct or the terms of a settlement of a claim for professional misconduct are not to be reported to the disciplinary agency, or to agree or seek agreement that the plaintiff shall withdraw a disciplinary complaint or not cooperate with an investigation or prosecution conducted by the disciplinary agency. This bill would prohibit a licensee who is regulated by the Department of Consumer Affairs or various boards, bureaus, or programs, or an entity or person acting as an authorized agent of a licensee, from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program, or that requires the other party to withdraw a complaint from the department, board, bureau, or program. A licensee in violation of these provisions would be subject to disciplinary action by the board, bureau, or program. The bill would also prohibit a board, bureau, or program from requiring its licensees in a disciplinary action that is based on a complaint or report that has been settled in a civil action to pay additional moneys to the benefit of any plaintiff in the civil action.

**SB 924** (Price D) Physical therapists: direct access to services: professional corporations.

Position:  
**Watch**

**Status:** 6/26/2012-From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 1.) (June 26). Re-referred to Com. on APPR.

**Location:** 6/26/2012-A. APPR.

2Year	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
Dead	1st House				2nd House				Conc.			

**Summary:** Existing law, the Physical Therapy Practice Act, creates the Physical Therapy Board of California and makes it responsible for the licensure and regulation of physical therapists and physical therapist assistants. The act defines the term "physical therapy" for its purposes and makes it a crime to violate any of its provisions. This bill would specify that patients may access physical therapy treatment directly, and would, in those circumstances, require a physical therapist to refer his or her patient to another specified healing arts practitioner if the physical therapist has reason to believe the patient has a condition requiring treatment or services beyond that scope of practice, and, with the patient's written authorization, to notify the patient's primary physician and surgeon, if any, that the physical therapist is treating the patient. The bill would prohibit a physical therapist from treating a patient beyond 30 business days or 12 visits, whichever occurs first, unless the physical therapist receives a specified authorization from a person with a physician and surgeon's certificate or from a person with a podiatric medicine certificate and acting within his or her scope of practice. The bill would require a physical therapist, prior to the initiation of treatment services, to provide a patient with a specified notice concerning the limitations on the direct treatment services. The bill would amend Section 13401.5 of the Corporations Code authorizing physical therapists and occupational therapist to be shareholders, officers, directors, and employees of a medical corporation or podiatric corporation, as

## Agenda Item #11

specified. This bill would add physical therapy corporations to the Moscone-Knox Professional Corporations Act permitting physicians, surgeons, doctors of podiatric medicine, acupuncturists, naturopathic doctors, occupational therapists, speech-language pathologists, audiologists, nurses, psychologists and physician assistants to be shareholders, officers, directors, or employees.

**SB 1237**

**Interim**  
Position:  
**Support**

**(Price D) Professions and vocations: regulatory boards.**

**Status:** 7/5/2012-From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.

**Location:** 7/5/2012-A. APPR.

2Year	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
Dead	1st House			2nd House			Conc.					

**Summary:** Existing law provides the Physical Therapy Board of California (Board) shall enforce the Physical Therapy Practice Act, and the Board shall sunset July 1, 2013 unless legislation is enacted to extend that date. This bill would extend the Board's sunset date until January 1, 2014. This bill contains other related provisions and other existing laws unrelated to physical therapy.

**SB 1374**

Position:  
**Oppose**

**(Harman R) Liability: good faith reliance on administrative regulation.**

**Status:** 5/11/2012-Failed Deadline pursuant to Rule 61(b)(6). (Last location was S. JUD. on 5/9/2012)

**Location:** 5/11/2012-S. DEAD

2Year	Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
Dead	1st House			2nd House			Conc.					

**Summary:** Existing law provides that every person is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. This bill would provide that any person who relies upon a written order, ruling, approval, interpretation, or enforcement policy of a state agency shall not be liable or subject to punishment for a violation of a civil statute or regulation in a judicial or administrative proceeding if the person pleads and proves to the trier of fact that, at the time the alleged act or omission occurred, the person had sought an applicable written order, ruling, approval, interpretation, or enforcement policy from the state agency charged with interpreting that area of law, and relied upon and conformed to that order, ruling, approval, interpretation, or enforcement policy. The bill would provide that these provisions apply to all actions and proceedings that have not resulted in a final judgment on or after January 1, 2013, regardless of whether the action or proceeding was commenced, or based upon, an alleged act or omission that occurred before, on, or after January 1, 2013. Additionally, the bill would state that it would not require a state agency to issue an order, ruling, approval, interpretation, or enforcement policy. This bill contains other existing laws.



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY – EDMUND G. BROWN JR., GOVERNOR

# 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



## 1 Briefing Paper

## Agenda Item 13

2 Date: 7/16/12

3 Prepared for: PTBC Members

4 Prepared by: Jason Kaiser

5 SUBJECT: BreZE Project Update

6

7 **Purpose:** Provide Board members with an update on the BreZE project as well as an  
8 approximate timeline of things to come.

9

10 **Background:** The BreZE Project will support the DCA's highest priority initiatives of Job  
11 Creation and Consumer Protection by replacing the DCA's aging legacy business systems with  
12 an integrated software solution that utilizes current technologies to facilitate increased  
13 efficiencies in the DCA boards' and bureaus' licensing and enforcement programs.

14 The DCA is working with Accenture, LLP to design, configure, and implement an integrated  
15 enterprise-wide enforcement and licensing system (BreZE). BreZE will replace the existing  
16 Consumer Affairs System (CAS), Applicant Tracking System (ATS), and multiple "workaround"  
17 systems with an integrated, industry-proven system for use by the DCA organizations.

18 BreZE will provide all DCA organizations with an enterprise system that supports all applicant  
19 tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management  
20 capabilities. BreZE will be web-enabled to allow application, renewal, and payment processing  
21 via the Internet for applicants and licensees. Furthermore, BreZE will allow the public to file  
22 complaints and lookup licensee information and complaint status through the Internet. As part of  
23 the BreZE implementation, interfaces to electronically share data with internal and external  
24 systems will be established; existing data will be converted and migrated into BreZE; user  
25 training will be conducted; and system documentation will be created.

26

27 **Analysis:** The BreZE project will be Delivered in three releases over a 24-month period;  
28 Release 1(late Summer 2012), Release 2(Spring 2013) and Release 3(Fall 2013).The PTBC is  
29 a Release 2 candidate and has already begun working with the Correspondence Workgroup to  
30 document draft templates for licensing and enforcement correspondence.

31 As of July 1, 2012, the BreEZe Project moved from a controlled freeze into a “hard freeze. “ The  
32 hard freeze impacts all DCA entities (regardless of what release they are in), and applies to the  
33 DCA Licensing and Enforcement legacy systems supported by the Office of Information  
34 Services (OIS): Applicant Tracking System (ATS), Consumer Affairs System (CAS), and Online  
35 Professional Licensing (OLPL). A hard freeze means that any changes to ATS, CAS, or OLPL  
36 (legacy systems), no matter how small, will not be performed, unless it meets specific criteria. In  
37 other words, changes to the legacy systems will not be as simple as contacting a programmer  
38 and asking for the change. The hard freeze is necessary for two reasons.

39 1. The BreEZe Project is well underway and is quickly approaching the deployment of its  
40 first Release. Any changes made to these systems now may cause real problems for  
41 BreEZe. For example: If a Status Code is changed in one of the legacy systems and  
42 BreEZe is not aware of this change, then the data converted from the legacy system into  
43 BreEZe may fail or produce unwanted results. This could result in additional costs and  
44 time for the BreEZe Project.

45 2. In addition to providing continued support of the legacy systems, OIS staff needs to  
46 prepare for the new role of providing ongoing support for BreEZe. This preparation  
47 requires numerous hours of training and knowledge transfer activities; leaving no  
48 additional resources to make legacy system changes. Legacy system changes could  
49 compromise the DCA’s ability to uphold its contractual obligations, and may put the DCA  
50 and all of the boards, bureaus, and committees at risk of financial liabilities.

51 Data conversion preparation for Release 2 and Release 3 Boards has also begun. The Data  
52 Conversion Team is getting deep into its analysis and cleanup of CAS and ATS suspect data;  
53 Accenture’s Data Conversion Plan was accepted; and, data mapping from the legacy source  
54 systems to the new unified BreEZe data model continues.

55 The Interface Team continues to conduct legacy retirement/design sessions and writing cutover  
56 design specifications. DCA-owned interface design specifications are complete and the task of  
57 building the interfaces has begun.

58 The BreEZe Team, Business Experts, and Accenture have completed Conference Room Pilot  
59 sessions for Release 1 boards/bureaus; and, test case and test script development for  
60 Cashiering, Licensing, Registration, and Enforcement transactions continue. We hope to benefit  
61 from their experiences.

62

63

---

64 **Action Requested:** None. This briefing paper is provided as background information in  
65 preparation for the BreEZe demonstration.

**Application and Licensing Services Regulations**



11/2011

Notes:

- Staff determined a complete revision of the Application and Licensing regulations is needed and will establish a task force of staff members and Legal Counsel to conduct a review of the current regulations.

**Mandatory Fingerprinting**



11/2011

2/8/2012

2/8/2012

3/23/12

5/7/12

5/10/2012

Notes:

- OAL File Number: Z2012-0313-10

**Continuing Competency**



11/2011

Notes:

- Since Continuing Competency is a new program, a full program analysis will be presented once audits have been completed for a full renewal cycle; the analysis will include regulatory change recommendations.

*Green: Current Status*

*Red: Completed*

August 1 & 2, 2012 Meeting

Last Updated 7/6/2012

Page 66 of 131



**Update PTBC Address**



11/2011

Notes:

- Section 100 change – does not require full rulemaking process.

**Cite and Fine**



11/2011

Notes:

**NPTE Passing Score**



11/2011

Notes:

**Sponsored Free Health Care Events**



Notes:

- Added to comply with AB 2699 (Bass) enacted in 2010 and effective January 1, 2011.
- OAL File Number: Z2011-0907-02
- The 1<sup>st</sup> 15-Day Notice of Modified Text was issued 1/25/2012, and the comment period ended 2/9/2012.

**2011**

**Model Guidelines for Issuing Citations and Imposing Discipline**



Notes:

- OAL File Number: Z2011-0907-01
- Staff will be presenting language addressing the supervision term of probation for Board consideration at the August meeting.



Physical Therapy Board of California

# Physical Therapy Board of California

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## Agenda Item #15

### Briefing Paper

Date: July 6, 2012

Prepared for: PTBC Members

Prepared by: Sarah Conley

Subject: Required E-mail Filing Regulatory Proposal

### **Purpose:**

To update the Board on the status of the Required E-mail Filing regulatory proposal and provide information so the Board may direct staff how to proceed

### **Background:**

At the May 2012 meeting, staff proposed Required E-mail Filing regulatory language. After discussion and consideration of recommendations by Legal Counsel, the Board adopted the language as amended at the meeting and directed staff to notice the regulatory proposal for hearing at the August 2012 meeting.

As staff prepared the Notice of Regulatory Change for filing with the Office of Administrative Law (OAL), an issue arose which prompted staff to postpone filing with OAL and the hearing.

### **Analysis:**

The adopted language did not extend the requirement to applicants; therefore, applicants would not be required to submit or maintain their e-mail address. The language being presented at this meeting includes applicants in the requirement to file and maintain an e-mail address.

### **Action Requested:**

Review the amended proposed Required E-mail Filing regulatory language, and provide direction as necessary.

1 Proposed Regulatory Change

2 The Physical Therapy Board of California proposes to amend Section 1398.6 of Division  
3 13.2 of Title 16 of the California Code of Regulations to read:

4 1398.6. Filing of Addresses.

5 ~~(a) Each licensee shall report to the board each and every change of residence address~~  
6 ~~within 30 days after each change, giving both the old and new address. A licensee may~~  
7 ~~provide the board with an alternate address in addition to a residence address to list as~~  
8 ~~the address of record. If a licensee uses a P.O. Box, the licensee must also submit his~~  
9 ~~or her residence address. In addition to the address of residence, a licensee may~~  
10 ~~provide the board with an alternate address of record. Only the address reported as the~~  
11 ~~address of record will be disclosed to the public. If an alternate address is the licensee's~~  
12 ~~address of record, he or she may request that the residence address not be disclosed to~~  
13 ~~the public.~~

14 Address of Record. Every applicant and licensee shall provide an address to the  
15 Physical Therapy Board of California (Board) which will be designated as their address  
16 of record, which will be utilized for all official and formal communications from the  
17 Board, and which will be disclosed to the public. An applicant or a licensee need not  
18 provide a residence address as the address of record, but may use an alternative  
19 address, such as a business address or a P.O. Box, as their address of record. Every  
20 applicant and licensee shall report any change of the address of record to the Board no  
21 later than thirty (30) calendar days after the address change has occurred. The report  
22 of change of address of record shall contain the old address, the new address, and the  
23 effective date of the change of address.

24 b) Residence Address. Every applicant and licensee shall provide a residence address  
25 to the Board. Only, if the applicant or licensee also provides an alternative address of  
26 record as described in subsection (a) above, shall the Board maintain the residence  
27 address as confidential. Every applicant and licensee shall report any change of their  
28 residential address to the Board no later than thirty (30) calendar days after the address  
29 change has occurred. The report of change of residential address shall contain the old  
30 address, the new address, and the effective date of the change of address.

31 ~~(b)~~ (c) Name Change. Each applicant and licensee shall report to the Board each and  
32 every change of name within thirty (30) calendar days after each change, giving both  
33 the old and new names.

34 (d) E-mail Address. Every applicant and licensee shall file a current e-mail address with  
35 the Board and shall notify the Board of any and all changes of the e-mail address within  
36 thirty (30) calendar days of the change, giving both the old e-mail address and the new

1 e-mail address. E-mail addresses are confidential information and shall not be made  
2 available to the public.

3 ~~(e)~~(e) Licensee. For purposes of this section, "licensee" includes any holder of an  
4 active, inactive, delinquent, suspended or expired license, ~~approval~~, certification or  
5 other authorization issued by the ~~h~~Board to practice physical therapy or  
6 electromyography which is not canceled or revoked.

7 Failure to comply with this section constitutes unprofessional conduct.

8 Authority cited: Sections 136, 2615, 2602.1 and 2680, Business and Professions Code.

9 Reference: Sections ~~2655.12~~, 2683 and 2685, Business and Professions Code.



1 communications would be sent electronically.  
2  
3

4 **FACTUAL BASIS/RATIONALE**  
5

6 Factual basis for determination that each proposed change is reasonably necessary to  
7 address the problem for which it is proposed:  
8

9 Part of meeting the Board's public protection mandate is ensuring licensees are  
10 informed of current laws and regulations as well as other information pertaining to the  
11 practice of physical therapy. Often times licensees contact the Board explaining they  
12 were not aware of a new law or regulation until they happen to come across it. The  
13 Board would be able to disseminate important information via e-mail, providing mass  
14 distribution at no cost.  
15

16 Again, meeting its public protection mandate, the Board investigates complaints  
17 submitted from various sources, including the public. If a licensee who is the subject or  
18 a witness of a complaint has not updated his or her address, the Board will not be able  
19 to contact and/or physically locate that licensee to investigate the complaint. Clarifying  
20 the address reporting requirements will potentially increase compliance with the  
21 regulation allowing the Board to contact licensees when necessary, such as for mailing  
22 the license renewal form; and, to physically locate licensees should it be necessary for  
23 enforcement matters.  
24

25 **UNDERLYING DATA**  
26

- 27 1. BreZE capabilities provided by the Department of Consumer Affairs.
- 28 2. The number of citations issued due to licensees failing to report a current  
29 address.  
30

31 **BUSINESS IMPACT**  
32

33 This regulation will not have a significant adverse economic impact on businesses. This  
34 initial determination is based on the following facts or evidence/documents/testimony:  
35

36 The proposed regulation would apply to licensees, not licensees' place of business.  
37

38 **ECONOMIC IMPACT ASSESSMENT**  
39

40 This regulatory proposal will have the following effects:  
41

- 42 • It will not create or eliminate jobs within the State of California because it does  
43 not impose any requirements affecting employment.  
44
- 45 • It will not create new business or eliminate existing businesses within the State  
46 of California because it does not impose any requirements affecting business  
47 operations.

- 1
- 2 • It will not affect the expansion of businesses currently doing business within the
- 3 State of California because it does not impose any requirements affecting
- 4 business operations.
- 5
- 6 • This regulatory proposal benefits the health and welfare of California residents
- 7 because licensees will potentially be more informed of laws and regulations,
- 8 which are in place to provide public protection; and, the Board will have the
- 9 information necessary to contact and/or locate licensees who may be the
- 10 subject of a complaint, which will assist investigations.
- 11
- 12 • This regulatory proposal does not affect worker safety because it does not
- 13 impose any requirements affecting working environments.
- 14
- 15 • This regulatory proposal does not affect the State's environment because it
- 16 does not impose requirements on the operations of the State.
- 17

### 18 **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

19  
20 This regulation mandates the use of specific technologies or equipment. Such  
21 mandates or prescriptive standards are required for the following reasons:

22  
23 The proposed amendment requiring e-mail filing would require a licensee who does not  
24 have an e-mail address to obtain one. Most licensees have an e-mail address, and  
25 those that do not, may obtain a free e-mail address from a number of different  
26 providers. Additionally, those licensees who may not have a computer and/or Internet  
27 may have access to a computer and Internet by visiting a local library at no cost.

### 28 29 **CONSIDERATION OF ALTERNATIVES**

30  
31 No reasonable alternative to the regulatory proposal would be either more effective in  
32 carrying out the purpose for which the action is proposed or would be as effective or  
33 less burdensome to affected private persons and equally effective in achieving the  
34 purposes of the regulation in a manner that ensures full compliance with the law being  
35 implemented or made specific.

36  
37 Set forth below are the alternatives which were considered and the reasons each  
38 alternative was rejected:

- 39
- 40 1. The Board has published a newsletter; however, the newsletter is only published
- 41 quarterly. Additionally, due to the high cost of printing and mailing, the Board
- 42 posts its newsletter on-line, so only those who access the Board's Web site will
- 43 be aware of Board news.
- 44
- 45 2. The Board maintains a voluntary e-mail address list; however, only a fraction of
- 46 licensees sign-up. The Board needs a method to disseminate important
- 47 information to all licensees.

1 TITLE 16. PHYSICAL THERAPY BOARD OF CALIFORNIA

2  
3 NOTICE IS HEREBY GIVEN that the Physical Therapy Board of California (Board) is  
4 proposing to take the action described in the Informative Digest. Any person interested  
5 may present statements or arguments orally or in writing relevant to the action proposed  
6 at a hearing to be held at:

7  
8 Location  
9 Location Address 1  
10 Location Address 2

11  
12 Date

13  
14 Time

15  
16 Written comments, including those sent by mail, facsimile, or e-mail to the addresses  
17 listed under Contact Person in this Notice, must be received by the Board at its office  
18 not later than **Time** on **Date** or must be received by the Board at the hearing. The  
19 Board, upon its own motion or at the instance of any interested party, may thereafter  
20 adopt the proposals substantially as described below or may modify such proposals if  
21 such modifications are sufficiently related to the original text. With the exception of  
22 technical or grammatical changes, the full text of any modified proposal will be available  
23 for 15 days prior to its adoption from the person designated in this Notice as contact  
24 person and will be mailed to those persons who submit written or oral testimony related  
25 to this proposal or who have requested notification of any changes to the proposal.

26  
27 Authority and Reference: Pursuant to the authority vested by Sections 2615 of the  
28 Business and Professions Code, and to implement, interpret or make specific Section  
29 136 of said Code, the Board is considering changes to Division 13.2 of Title 16 of the  
30 California Code of Regulations as follows:

31  
32  
33 **INFORMATIVE DIGEST**

34  
35 A. Informative Digest/Policy Statement Overview

36  
37 Existing law, Business and Professions Code (B&P) section 2680, requires the Board to  
38 maintain a register of all licensees, which shall include a residential address; and,  
39 existing B&P section 136 requires each licensee to change his or her mailing address  
40 within thirty (30) days. Existing regulation, California Code of Regulations section  
41 1398.6, requires every licensee to report every change of residence address within  
42 thirty (30) days after each change as specified. CCR section 1398.6 permits a licensee  
43 to provide an alternate address as an address of record in addition to the residential  
44 address and provides that if an alternate address is provided, the residential address  
45 shall be confidential. CCR section 1398.6 defines a "licensee" as any holder of an  
46 active, delinquent, suspended or expired license, approval, certification or other  
47 authorization issued by the board.

48  
49 The proposed amendments to CCR section 1398.6 would further clarify address

1 reporting requirements and add an e-mail filing requirement for licensees.  
2 Specifically, the proposed amendment would do the following:

- 3
- 4 1. Clarify "address of record."
- 5 2. Establish the purpose for the Board requiring a residence address, if the
- 6 residence address is not the address of record.
- 7 3. Provide examples of what may constitute an "alternate address."
- 8 4. Clarify "residence address."
- 9 5. Explain a residence address will be kept confidential should a licensee also
- 10 provide an alternate address of record, as defined.
- 11 6. Add a requirement that a licensee must provide a current e-mail address and
- 12 update his or her e-mail address, as specified.
- 13 7. Add e-mail addresses are not public information and shall be kept confidential.
- 14 8. Add "inactive" to the license statuses which define "licensee" for the purposes of
- 15 the section.

16

17 **B. Anticipated Benefits of Proposal**

18

19 The Board anticipates increased compliance with CCR 1398.6 with the  
20 clarification of what is expected from the licensees when reporting addresses.  
21 This compliance is important should the Board need to contact and/or physically  
22 locate a licensee for investigative purposes.

23

24 The Board anticipates improved communications with its licensees through e-  
25 mail. Moreover, with the future implementation of BreEZe, the Department of  
26 Consumer Affairs (DCA) automated licensing system, there is potential for the  
27 license application process to be fully automated; therefore, all Board  
28 communications would be sent electronically.

29

30 **C. Consistency and Compatibility with Existing State Regulations**

31

32 The Board has evaluated this regulatory proposal and it is not inconsistent or  
33 incompatible with existing State regulations.

34

35 **FISCAL IMPACT ESTIMATES**

36

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

39

40 Nondiscretionary Costs/Savings to Local Agencies: None.

41

42 Local Mandate: None.

43

44 Cost to Any Local Agency or School District for Which Government Code  
45 Sections 17500 - 17630 Require Reimbursement: None.

46

47 Business Impact:

48

49 The board has made an initial determination that the proposed regulatory action

1 would have no significant statewide adverse economic impact directly affecting  
2 business, including the ability of California businesses to compete with  
3 businesses in other states.

4  
5 **AND**

6  
7 The following studies/relevant data were relied upon in making the above  
8 determination: None.

9  
10 **Cost Impact on Representative Private Person or Business:**

11  
12 The Board is not aware of any cost impacts that a representative private person  
13 or business would necessarily incur in reasonable compliance with the proposed  
14 action.

15  
16 **Effect on Housing Costs:** None

17  
18 **EFFECT ON SMALL BUSINESS**

19  
20 The Board has determined that the proposed regulations would not affect small  
21 businesses because the requirements put forth are specifically for licensees and do not  
22 impose any requirements on licensees' place of employment.

23  
24 **RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

25  
26 **Impact on Jobs/Businesses:**

27  
28 The Board has determined that this regulatory proposal will not have any impact on the  
29 creation of jobs or new businesses or the elimination of jobs or existing businesses or  
30 the expansion of businesses in the State of California.

31  
32 **Benefits of Regulation:**

33  
34 The Board has determined that this regulatory proposal will have the following benefits  
35 to health and welfare of California residents, worker safety, and State's environment:

36  
37 The proposed amendment requiring licensees to submit an e-mail address would  
38 potentially increase the Board's communication with its licensees allowing licensees to  
39 be more informed of laws, regulations and other important information.

40  
41 The proposed amendments clarifying address reporting requirements would allow the  
42 Board to contact and/or physically locate a licensee should the licensee be the subject  
43 of a complaint for other enforcement purposes.

44  
45 Both of the above mentioned results of the proposed amendments would increase  
46 public protection.

1 **CONSIDERATION OF ALTERNATIVES**

2  
3 The Board has determined that no reasonable alternative it considered to the regulation  
4 or that has otherwise been identified and brought to its attention would be more  
5 effective in carrying out the purpose for which the action is proposed, would be as  
6 effective and less burdensome to affected private persons than the proposal described  
7 in this Notice, or would be more cost-effective to affected private persons and equally  
8 effective in implementing the statutory policy or other provision of law.

9  
10 Any interested person may present statements or arguments orally or in writing relevant  
11 to the above determinations at the above-mentioned hearing.

12  
13 **INITIAL STATEMENT OF REASONS AND INFORMATION**

14  
15 The Board has prepared an initial statement of the reasons for the proposed action and  
16 has available all the information upon which the proposal is based.

17  
18 **TEXT OF PROPOSAL**

19  
20 Copies of the exact language of the proposed regulations, and any document  
21 incorporated by reference, and of the initial statement of reasons, and all of the  
22 information upon which the proposal is based, may be obtained at the hearing or prior to  
23 the hearing upon request from the person designated in this Notice under Contact  
24 Person at or by accessing the Board's Web site at:  
25 [http://www.ptbc.ca.gov/laws\\_regs/prop\\_regs/index.shtml](http://www.ptbc.ca.gov/laws_regs/prop_regs/index.shtml).

26  
27 **AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND**  
28 **RULEMAKING FILE**

29  
30 All the information upon which the proposed regulations are based is contained in the  
31 rulemaking file which is available for public inspection by contacting the person named  
32 below.

33  
34 You may obtain a copy of the final statement of reasons once it has been prepared, by  
35 making a written request to the contact person named below, or by accessing the  
36 Board's Web site at: [http://www.ptbc.ca.gov/laws\\_regs/prop\\_regs/index.shtml](http://www.ptbc.ca.gov/laws_regs/prop_regs/index.shtml).

37  
38 **CONTACT PERSON**

39  
40 Inquiries or comments concerning the proposed rulemaking action may be addressed  
41 to:

42  
43 Name: Sarah Conley  
44 Address: Physical Therapy Board of California  
45 2005 Evergreen Street, Suite 1350  
46 Sacramento, CA 95815  
47 Telephone: 916-561-8210  
48 Fax: 916-263-2560  
49 E-Mail Address: Sarah.Conley@dca.ca.gov

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The backup contact person is:

Name: Rebecca Marco  
Address: Physical Therapy Board of California  
2005 Evergreen Street, Suite 1350  
Sacramento, CA 95815  
Telephone: 916-561-8260  
Fax: 916-263-2560  
E-Mail Address: Rebecca.Marco@dca.ca.gov

Web site Access

Materials regarding this proposal can be found at  
[http://www.ptbc.ca.gov/laws\\_regs/prop\\_regs/index.shtml](http://www.ptbc.ca.gov/laws_regs/prop_regs/index.shtml).



Physical Therapy Board of California

# Physical Therapy Board of California

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## AGENDA ITEM 16

### Briefing Paper

Date: July 17, 2012  
 Prepared for: PTBC Members  
 Prepared by: Elsa Ybarra  
 SUBJECT: Proposed revisions to the language in Conditions "A" and "F" of the Model Guidelines for Issuing Citations and Imposing Discipline included by reference in 1399.15 of Division 13.2, Title 16 of the California Code of Regulations

#### Purpose:

To reconsider amendments specific to Condition "A" Restriction of Practice – Supervision Required and "F" Restriction of Practice – Practice Monitor Required

The Model Guidelines for Issuing Citations and Imposing Discipline (Guidelines), incorporated by reference into Division 13.2 of Title 16 of the California Code of Regulation section 1399.15, was heard on November 3, 2011. Since that time the board has made several amendments to the originally proposed language.

#### Analysis:

After the May 30, 2012 teleconference, staff revisited the supervision conditions and determined the previous proposed language was too broad and lacked clarity. This issue was discussed with the Board President and it was decided to propose modified language for reconsideration by the Board. With the assistance of the Board President and Vice President, staff modified the language to ensure clarity of the supervision requirements and to provide adequate instruction.

Since the Guidelines themselves have already been approved by the Board, and this proposal is focused solely on conditions "A" and "F", you will find only the proposed language to these two specific conditions attached. The proposed language is without strikeout and/or underline for ease of reading, and the language presented at the May 30th teleconference includes marked changes.

The proposed revisions are as follows:

#### Condition A Restriction of Practice – Supervision Required

- The proposed revisions in Condition "A" will afford flexibility in the degree of supervision.

*For instance, in cases regarding aiding and abetting or unlicensed practice, the levels of supervision will vary; however, the different levels of supervision can be determined depending on the severity of the violation(s). With the proposed language, the Board will be able to apply the appropriate level to ensure the probationer is monitored accordingly.*

*Also, in cases of substance/alcohol abuse, reviewing the probationer's patient documentation is not necessary; however, the proposed language will allow for the presence of a supervising P.T. at all times to ensure probationer is not practicing under the influence.*

- Discretionary was added to allow the EO to reduce the level of supervision as the Respondent progresses in probation.

- The expectations of the supervisor were defined.

#### Condition F Restriction of Practice – Practice Monitor Required

- For structural purposes, condition “F” will be moved to “B” and will re- letter all remaining conditions accordingly throughout the Guidelines.
- Added “Note” will identify who this condition applies to. It is now clear this condition shall only be applied if Respondent holds a vested interest in the physical therapy practice. Prior language was not specific and would sometimes be included with Term A, which caused redundancy and confusion.

#### Additional factors to consider:

- The Guidelines still include conditions restricting Solo Practice and Prohibition of Self-Employment or Ownership.
- In cases where the Respondent is placed on probation due to substance/alcohol issues, a Worksite Monitor will be assigned as a condition of participation in the Board’s recovery program, Maximus.
- The probationary conditions are “Probationary Terms and Conditions” are referenced as “Conditions”, “Terms”. For consistency, the Guidelines will be revised to refer to probationary “Conditions” throughout.

**Action Requested:** Consider amendments to Conditions “A” and “F” as proposed. If the Board votes to adopt the proposed language, direct staff to include these changes into the proposed Model Guidelines and proceed with the 15 Day Notice to allow for comments. If no adverse comments are received during the 15 Day comment period, authorize the EO to make non-substantive changes to the proposed regulation and adopt Title 16, CCR section 1399.15 of the proposed regulation.

1 **Proposed Language - Guidelines/Probationary Conditions**

2  
3 **A. Restriction of Practice - Supervision Required**

4  
5 *Note: The purpose of this condition would allow Respondent (physical therapist or physical*  
6 *therapist assistant) to practice with a level of supervision which ensures Respondent is in*  
7 *compliance with the Physical Therapy Practice Act as well as the probationary conditions. If*  
8 *Respondent works with another physical therapist that is eligible and available to function as*  
9 *Respondent's supervisor, the "Supervision Required" (Condition A) should be used in lieu of*  
10 *Condition F. Condition A is commonly used, but not limited to: sexual misconduct, aiding and*  
11 *abetting, documentation cases, behavioral issues and where Respondent is not a sole*  
12 *proprietor. This condition should never be used in conjunction with "B" "Practice Monitor*  
13 *Required".*

14 Choose level of supervision:

15 1) Full Presence/Documentation Review

16 *The level of supervision shall be direct and require 1) the physical presence of the*  
17 *supervising physical therapist while physical therapy is performed by Respondent; and may*  
18 *require, 2) review patient records and any pertinent documents necessary to determine*  
19 *compliance with Respondent's Decision and Order. Direct and physical presence means,*  
20 *the supervising physical therapist shall be near or close enough to observe the Respondent*  
21 *instantly. While this may not require sharing the same treatment room with Respondent, it*  
22 *does require the supervising physical therapist to be within an audible range that would*  
23 *ensure the instant presence of the supervising physical therapist.*

24 2) Limited Presence/ Documentation Review

25 *The level of supervision shall not require the physical presence of the supervising physical*  
26 *therapist at all times while physical therapy is performed by Respondent. However,*  
27 *Respondent shall be physically observed at least once per shift and may require review of*  
28 *patient records and any pertinent documents necessary to determine compliance with*  
29 *Respondent's Decision and Order at least once during Respondent's work day by the*  
30 *supervising physical therapist.*

31 3) No Presence/Documentation Review As Determined

32 *The level of supervision shall not require the physical presence of the supervising physical*  
33 *therapist while physical therapy is performed; however, will require review of patient records*  
34 *and any pertinent documents necessary to determine compliance with Respondent's*  
35 *Decision and Order on a time base as agreed upon by the Board.*

36  
37 Note: The level of supervision can be combined and identified in the conditions commencing with a  
38 higher level of supervision and shifting to a lower level of supervision. The shifting of level of  
39 supervision shall be determined by the Executive Officer when deemed appropriate or can be written  
40 in to the Decision and Order.  
41

1 Within fifteen (15) business days of the effective date of this Decision and Order, Respondent shall  
2 submit to the Board in writing for its prior approval, the name, qualifications of one or more proposed  
3 supervisor(s), and an outline of the plan by which Respondent's practice will be supervised.  
4

5 Each proposed supervisor shall hold a valid California physical therapist license and shall have been  
6 licensed in California for at least five (5) years and never been subject to any disciplinary action by  
7 the Board. An administrative citation and fine does not constitute discipline; and therefore, in and of  
8 itself is not a reason to deny approval of an individual as a supervisor. The supervisor shall not be an  
9 employee of Respondent, have a relationship which is financial or personal in nature with  
10 Respondent or any other type of relationship that could reasonably be expected to compromise the  
11 ability of the supervisor to render impartial and unbiased reports to the Board. The supervisor shall  
12 also not be a family member of Respondent. If the supervisor terminates or is otherwise no longer  
13 available, Respondent shall not practice until a new supervisor has been approved by the Board.  
14

15 Upon approval of the supervisor and outline of supervision, the supervisor shall sign an agreement  
16 that he or she has reviewed the conditions of the licensee's disciplinary order and/or contract and  
17 agrees to supervise the licensee as set forth by the Board. Respondent shall submit the signed  
18 agreement to the Board. The supervisor shall have full and random access to Respondent's patient  
19 records and may evaluate all aspects of Respondent's practice. The supervisor shall complete and  
20 submit a written report, on a basis determined by the Board, verifying supervision has taken place as  
21 approved by the Board. It shall be Respondent's responsibility to ensure the supervisor submits the  
22 reports to the Board in a timely manner.  
23

24 The supervisor's report shall include:

- 25 1. Respondent's name and license number
- 26 2. Supervisor's name, license number and signature
- 27 3. Worksite location(s)
- 28 4. Evaluation of Respondent's compliance with his or her probationary conditions and existing  
29 laws and regulations governing the practice of physical therapy
- 30 5. Assessment of Respondent's progress in regards to the specific issues, deficiencies or  
31 concerns resulting from the violations identified in the Decision and Order by the Board
- 32 6. Summary of the supervisor's conclusions and opinions concerning the issues described above  
33 and the basis for his or her conclusions and opinions  
34

35 Supervisor shall keep any information used to write his or her report (e.g. record of patient records  
36 reviewed) in case Board requests said information. This information does not need to be submitted to  
37 the Board unless the Board or its representative requests it or if supervisor feels the information is  
38 pertinent to include in report.  
39

#### 40 **FB. Restriction of Practice – Practice Monitor Required**

41

42 *Note: This probation condition shall only be applied if the Respondent holds a vested interest in*  
43 *the physical therapy practice (i.e. officer, partner, shareholder, sole proprietor). This condition*  
44 *does not require the physical presence of another licensed physical therapist; however, does*  
45 *require arranged visits by a Practice Monitor approved by the Board for documentation review*  
46 *only. This condition should never be used with condition A.*  
47

1 Within fifteen (15) business days of the effective date of this Decision and Order, Respondent  
2 shall submit to the Board in writing, for its prior approval, the name and qualifications of one or  
3 more proposed licensed physical therapist(s) to serve as Practice Monitor(s). Each Practice  
4 Monitor shall be a California licensed physical therapist and shall have been licensed for at least  
5 five (5) years and have never been subject to any disciplinary action by the Board. An  
6 administrative citation and fine does not constitute discipline and therefore, in and of itself, is not  
7 a reason to deny approval of an individual as a Practice Monitor. The monitor shall not be an  
8 employee of the Respondent, have a relationship which is financial or personal in nature with  
9 Respondent or any other type of relationship that could reasonably be expected to compromise the  
10 ability of the Practice Monitor to render impartial and unbiased reports to the Board. The Practice  
11 Monitor shall also not be a family member of Respondent. If the Practice Monitor terminates or is  
12 otherwise no longer available, Respondent shall not practice until a new Practice Monitor has  
13 been approved by the Board. All costs associated with the Practice Monitor shall be paid by  
14 Respondent.

15  
16 Respondent shall not practice until receiving written approval from the Board regarding  
17 Respondent's choice of a Practice Monitor.

18  
19 Upon approval of the Practice Monitor by the Board, the Practice Monitor in conference with the  
20 Board's probation monitor will establish the schedule upon which visits will be made to  
21 Respondent's place of employment to review Respondent's current practice and adherence to the  
22 conditions of probation. The Practice Monitor shall have full and random access to all of  
23 Respondent's patient records at all times. The Practice Monitor shall evaluate all aspects of  
24 Respondent's practice.

25  
26 The Practice Monitor shall report on Respondent's current practice and compliance with the  
27 conditions of Respondent's probation to the Board's probation monitor after each visit. Frequency  
28 of the visits by the Practice Monitor shall be determined by the Board. It shall be Respondent's  
29 responsibility to ensure the Practice Monitor submits the reports to the Board within fourteen (14)  
30 days of the visit.

31  
32 The Practice Monitor's report shall include:

- 33 1. Respondent's name and license number
  - 34 2. Practice Monitor's, license number and signature
  - 35 3. Worksite location(s)
  - 36 4. Evaluation of Respondent's compliance with his or her probationary conditions and existing  
37 laws and regulations governing the practice of physical therapy
  - 38 5. Assessment of Respondent's progress in regards to the correction of specific issues,  
39 deficiencies or concerns resulting from the violations identified in the Decision and Order by  
40 the Board
  - 41 6. Summary of the Practice Monitor's conclusions and opinions concerning the issues  
42 described above and the basis for his or her conclusions and opinions
  - 43 7. Maintain and submit with his or her reports a log of the patient charts reviewed, the date(s)  
44 of service reviewed, and the date upon which the review occurred.
- 45

46 **PREVIOUS PROPOSED LANGAUGE**

1 **A. Restriction of Practice - ~~Supervision Required~~ Presence of Physical Therapist**

2  
3 Respondent shall ~~only practice physical therapy under the supervision of a physical~~  
4 ~~therapist who holds a valid unrestricted license, and who is responsible for the care~~  
5 ~~rendered.~~

6  
7 ~~(This condition applies only to a physical therapist since a physical therapist assistant~~  
8 ~~may not perform physical therapy without supervision.~~

9  
10 **(Optional)**

11 After one ~~(1)~~ year of full compliance of probation, respondent may request in writing for  
12 the approval by the Board or its designee, to remove this condition entirely or modify the  
13 requirement.

14  
15 Within thirty (30) calendar days of the effective date of this ~~D~~ecision and Order,  
16 Respondent shall submit to the Board, for its prior approval, the name and qualifications of  
17 one or more proposed supervisors and a plan for each such supervisor by which  
18 Respondent's practice would be supervised. The Board will advise Respondent within  
19 fourteen (14) business days whether or not the proposed supervisor and plan of  
20 supervision are approved. Respondent shall not practice until receiving notification of Board  
21 approval of Respondent's choice of a supervisor and plan of supervision. Respondent shall  
22 complete any required consent forms and sign an agreement with the supervisor and the  
23 Board regarding Respondent and the supervisor's requirements and reporting  
24 responsibilities.

25  
26  
27 The plan of supervision shall be:

28  
29 1) ~~(direct and require the physical presence of the supervising physical therapist in the~~  
30 ~~physical therapy office during the time physical therapy is performed.)~~

31  
32  
33 Or

34  
35 2) ~~(general and does not require the physical presence of the supervising physical~~  
36 ~~therapist during the time physical therapy is performed but does require an occasional~~  
37 ~~random check, of the work performed on the patient of the patient care, at least once~~  
38 ~~quarterly as well as in addition to quarterly monitoring visits at the office or place of~~  
39 ~~practice).~~

40  
41  
42 Additionally, the supervisor shall have full and random access to all patient records of  
43 Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless  
44 of Respondent's areas of deficiencies.

45  
46 Each proposed supervisor shall be a California licensed physical therapist who shall submit  
47 written reports to the Board upon request, ~~on a quarterly basis~~ verifying that supervision  
48 has taken place as required and include an evaluation of Respondent's performance. It

1 shall be Respondent's responsibility to assure that the required reports are filed in a timely  
2 manner. Each supervisor shall have been licensed in California for at least five (5) years  
3 and ~~not~~ have never been subject to any disciplinary action by the Board. An administrative  
4 citation and fine does not constitute discipline; and therefore, in and of itself is not a reason  
5 to deny approval of an individual as a supervisor.

6  
7 The supervisor shall ~~be independent, with have no prior business or professional~~  
8 ~~relationship with Respondent and the supervisor shall not be in a familial or personal~~  
9 ~~relationship with or be an employee, partner or associate of Respondent. If the supervisor~~  
10 ~~terminates or is otherwise no longer available, Respondent shall not practice until a new~~  
11 ~~supervisor has been approved by the Board. All costs of the supervision shall be borne by~~  
12 ~~Respondent.~~

13  
14 If Respondent is placed on probation due to substance or alcohol abuse, then the  
15 supervisor shall meet the following additional requirements:

16  
17 The supervisor shall sign an affirmation that he or she has reviewed the terms and  
18 conditions of the licensee's disciplinary order and agrees to supervise the licensee as set  
19 forth ~~in the manner directed by the Board. The supervisor shall have face-to-face contact~~  
20 with the licensee in the work environment on a frequent basis as determined by the Board,  
21 but at least once per week. The supervisor shall interview other staff in the office regarding  
22 the licensee's behavior, if applicable. The supervisor shall review the licensee's work  
23 attendance and behavior.

24  
25 The supervisor shall orally report any suspected substance or alcohol abuse to the Board  
26 and the licensee's employer within one (1) business day of occurrence. If occurrence is not  
27 during the Board's normal business hours the oral report must be within one (1) hour of the  
28 next business day. The supervisor shall submit a written report to the Board within 48 hours  
29 of occurrence.

30  
31 The supervisor shall complete and submit a written report monthly or as directed by the  
32 Board. The report shall include: the licensee's name; ~~and~~ license number; ~~the supervisor's~~  
33 ~~name, and signature; supervisor's~~ license number ~~and signature;~~ worksite location(s);  
34 dates licensee had face-to-face contact with supervisor; worksite staff interviewed, if  
35 applicable; attendance report; any change in behavior and/or personal habits; ~~and~~ any  
36 indicators that can lead to suspected substance abuse.

#### 37 38 39 **FH. Restriction of Practice - Monitoring**

40  
41 Within thirty (30) days of the effective date of this decision, the respondent shall select a  
42 licensed physical therapist to serve as the professional practice monitor during the period  
43 of probation and submit the name of the licensed physical therapist selected for approval  
44 by the Board or its designee. The professional practice monitor shall be selected from an  
45 established pool of physical therapists licensed to practice in the State of California who  
46 are currently serving as trained expert consultants to the Board. If there is no practice  
47 monitor available from the pool of physical therapists, the respondent may provide the

1 probation monitor with the name and license number of a physical therapist for approval if  
2 deemed appropriate.

3  
4 Within fifteen (15) calendar days of the effective date of this Decision and Order,  
5 Respondent shall submit to the Board, for its prior approval, the name and qualifications  
6 of one or more proposed licensed physical therapist(s) to serve as a practice monitor(s)  
7 by which Respondent's practice would be monitored. The Board will advise Respondent  
8 within fourteen (14) business days whether or not the proposed practice monitor and plan  
9 of monitoring are approved. Respondent shall not practice until receiving notification of  
10 Board approval of Respondent's choice of a practice monitor. The professional practice  
11 monitor shall not be someone with a conflict of interest in reviewing the licensee's  
12 practice. A conflict of interest is one that may interfere with the ability to fairly assess the  
13 licensee's Respondent's practice and provide the probation monitor with a non-biased  
14 report. This includes, but is not limited to, a business partner or family member of the  
15 licensee Respondent. The practice monitor shall be independent, with no prior business  
16 or personal relationship with Respondent and the practice monitor shall not be in a  
17 familial relationship with or be an employee, partner or associate of Respondent.

18  
19  
20 After the practice monitor has been approved by the Board, the professional practice  
21 monitor in conference with the Board's probation monitor will establish the schedule upon  
22 which clinical visits will be made to Respondent's place of employment to review  
23 Respondent's current practice and Respondent's adherence to the terms of probation.  
24 The professional practice monitor shall report to the Board's probation monitor on  
25 compliance with the terms and conditions of the Respondent's probation after each clinical  
26 visit. The practice monitor shall have full and random access to all patient records of  
27 Respondent at all times, or for copying on premises, and shall retain all records for the  
28 entire term of probation. The practice monitor may evaluate all aspects of Respondent's  
29 practice regardless of Respondent's areas of deficiencies.

30  
31 The report shall indicate whether Respondent's practices are within the standards of  
32 practice of physical therapy and/or billing, and whether respondent is practicing physical  
33 therapy safely, and/or billing appropriately.

34  
35 Each practice monitor shall have been licensed in California for at least five (5) years and  
36 not have never been subject to any disciplinary action by the Board. An administrative  
37 citation and fine does not constitute discipline and therefore, in and of itself, is not a reason  
38 to deny approval of an individual as a practice monitor. The proposed practice monitor  
39 shall submit written reports to the Board on a quarterly basis, or another time basis as  
40 agreed upon by the probation monitor. All reports shall verify that he/ or she has  
41 monitored Respondent as required and include an evaluation of Respondent's  
42 performance. It shall be Respondent's responsibility to assure that the required reports are  
43 filed in a timely manner.

44  
45 ~~The practice monitor shall be independent, with no prior business or relationship with~~  
46 ~~Respondent and the practice monitor shall not be in a familial relationship with or be an~~  
47 ~~employee, partner or associate of Respondent. If the practice monitor terminates or is~~  
48 ~~otherwise no longer available, Respondent shall not practice until a new practice monitor~~

1 has been approved by the Board. All costs associated with the practice monitor shall be  
2 paid by the Respondent.

3  
4  
5 If Respondent is placed on probation due to substance or alcohol abuse, then the practice  
6 monitor shall meet the following additional requirements:

7  
8 The practice monitor shall sign an affirmation that he or she has reviewed the terms and  
9 conditions of the licensee's disciplinary order and agrees to monitor the licensee as set  
10 forth in the manner directed by the Board. The practice monitor shall have face to face  
11 contact with the licensee in the work environment as determined by the Board, but at least  
12 once per week. The practice monitor shall interview other staff in the office regarding the  
13 licensee's behavior, if applicable. The practice monitor shall review the licensee's work  
14 attendance and behavior.

15  
16 The practice monitor shall orally report any suspected substance abuse to the Board and  
17 the licensee's employer within one (1) business day of occurrence. If occurrence is not  
18 during the Board's normal business hours the oral report must be within one (1) hour of the  
19 next business day. The practice monitor shall submit a written report to the Board within 48  
20 hours of occurrence.

21  
22 The practice monitor shall complete and submit a written report monthly or as directed by the  
23 Board. The report shall include: the licensee's name; and license number; practice monitor's  
24 name, and signature; practice monitor's, and license number; worksite location(s); dates  
25 licensee had face to face contact with practice monitor; worksite staff interviewed, if applicable;  
26 attendance report; any change in behavior and/or personal habits; any indicators that can lead  
27 to suspected substance abuse.  
28  
29



Physical Therapy Board of California

# Physical Therapy Board of California

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## 1 Briefing Paper

Agenda Item #17

2 Date: 7/16/12

3 Prepared for: PTBC Members

4 Prepared by: Jason Kaiser

5 SUBJECT: Uniform Standards for Substance-Abusing Licensees

---

6 **Purpose:** To provide information regarding options of proposed regulatory language to be  
7 included in the adoption of the Uniform Standards.

---

8  
9 **Background:** The Legal Affairs Division of the Department of Consumer Affairs identified three  
10 possible methods for determining whether a licensee is a substance-abusing licensee, which in  
11 turn would trigger the application of all of the Uniform Standards.

12 Option 1: Using a rebuttable presumption. If the charge involves alcohol or drugs, it will be  
13 assumed that the licensee is in fact a substance abusing licensee and he then bears the burden  
14 of proving that he is NOT a substance-abusing licensee at the hearing.

15 Option 2: Imposing probationary terms that include the Uniform Standards when the charges  
16 involve drugs and or alcohol, but making them contingent on the outcome of an ordered clinical  
17 diagnostic evaluation to determine whether or not the individual is a substance-abusing  
18 licensee.

19 Option 3: The Board bears the burden of proving (via facts, layperson and expert testimony,  
20 etc.) at a hearing that the individual is a substance abusing licensee.

---

21  
22 **Analysis:** A DCA Legal opinion referenced both a Legislative Counsel opinion and an Attorney  
23 General opinion stating the healing arts boards do not have the discretion to modify the content  
24 of the specific terms of conditions of probation that make up the Uniform Standards and as such  
25 must adopt them in their entirety. Neither the DCA Executive Staff nor the Senate B&P  
26 Committee have a preference on either of the three methods mentioned above, and are  
27 therefore leaving the selection to the individual Boards.

---

28  
29 **Action Requested:** It is requested the Board consider adopting 1 of the 3 options and to direct  
30 staff to take all steps necessary to proceed with the rulemaking process.

## Determining when SB 1441 Uniform Standards Apply

### Option 1: Using a Rebuttable Presumption

Section 2524 of Division 25 of Title 16, Article 4 of the California Code of Regulations is amended to read:

Article 4.  
Licenses

#### Section 2524. Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall ~~consider~~ utilize the disciplinary guidelines entitled "Disciplinary Guidelines", (~~Rev. 6/19/07~~) (Rev. 6/20/11), which are hereby incorporated by reference.

- (a) ~~Deviation from the these guidelines~~ Deviation from the Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation – for example: presence of mitigating or aggravating factors; the age of the case; evidentiary problems.
- (b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance Abuse provided in Section 2524.01, without deviation, for each individual determined to be a substance-abusing licensee.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 729, 2875, 2876 and 2878, Business and Professions Code; and Section 44010 Education Code; and Sections 11400.20, 11425.50(e) and 11500, Government Code.

Add Section 2524.01 to Division 25 of Title 16, Article 4 of the California Code of Regulations to read:

#### Section 2524.01. Uniform Standards for Substance Abuse

- (a) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for the purposes of Section 315 of the Business and Professions Code. If the licensee does not rebut that presumption, then the terms and conditions contained in the document entitled "Uniform Standards for Substance-Abusing Licensees", new June 20, 2011, which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

- (b) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 729, 2875, 2876 and 2878, Business and Professions Code; and Section 44010 Education Code; and Sections 11400.20, 11425.50(e) and 11500, Government Code.

## Determining when SB 1441 Uniform Standards Apply

### Option 2: Contingent Upon Post-Hearing Clinical Evaluation

Section 2524 of Division 25 of Title 16, Article 4 of the California Code of Regulations is amended to read:

#### Article 4. Licenses

##### Section 2524. Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall ~~consider~~ utilize the disciplinary guidelines entitled "Disciplinary Guidelines", (~~Rev. 6/19/07~~) (Rev. 6/20/11), which are hereby incorporated by reference.

- (a) ~~Deviation from the these guidelines~~ Deviation from the Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation – for example: presence of mitigating or aggravating factors; the age of the case; evidentiary problems.
- (b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance Abuse provided in Section 2524.01, without deviation, for each individual determined to be a substance-abusing licensee.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 729, 2875, 2876 and 2878, Business and Professions Code; and Section 44010 Education Code; and Sections 11400.20, 11425.50(e) and 11500, Government Code.

Add Section 2524.01 to Division 25 of Title 16, Article 4 of the California Code of Regulations to read:

##### Section 2524.01. Uniform Standards for Substance Abuse

- (a) If the conduct found to be a violation involves drugs and/or alcohol, a clinical diagnostic evaluation shall be ordered and the remaining provisions of the Uniform Standards may be ordered contingent upon the clinical diagnostic evaluator's finding that the individual is a substance abusing licensee. The clinical diagnostic evaluator's report shall be submitted in its entirety to the Board.

- (b) If a licensee has been identified as a substance-abusing licensee as provided in subsection (a), then the terms and conditions contained in the document entitled “Uniform Standards for Substance-Abusing Licensees”, new June 20, 2011, which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee
- (c) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 729, 2875, 2876 and 2878, Business and Professions Code; and Section 44010 Education Code; and Sections 11400.20, 11425.50(e) and 11500, Government Code.

## Determining when SB 1441 Uniform Standards Apply

### Option 3: Carrying the Burden of Proof

Section 2524 of Division 25 of Title 16, Article 4 of the California Code of Regulations is amended to read:

Article 4.  
Licenses

#### Section 2524. Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall ~~consider~~ utilize the disciplinary guidelines entitled “Disciplinary Guidelines”, (~~Rev. 6/19/07~~) (Rev. 6/20/11), which are hereby incorporated by reference.

- (a) Deviation from ~~the these guidelines~~ Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation – for example: presence of mitigating or aggravating factors; the age of the case; evidentiary problems.
- (b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance Abuse provided in Section 2524.01, without deviation, for each individual determined to be a substance-abusing licensee.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 729, 2875, 2876 and 2878, Business and Professions Code; and Section 44010 Education Code; and Sections 11400.20, 11425.50(e) and 11500, Government Code.

Add Section 2524.01 to Division 25 of Title 16, Article 4 of the California Code of Regulations to read:

#### Section 2524.01. Uniform Standards for Substance Abuse

- (a) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the evidence establishes that the individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled “Uniform Standards for Substance-Abusing Licensees”, new June 20, 2011, which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 729, 2875, 2876 and 2878, Business and Professions Code; and Section 44010 Education Code; and Sections 11400.20, 11425.50(e) and 11500, Government Code.



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 #18

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### Briefing Paper

Date: July 6, 2012

Prepared for: PTBC Members

Prepared by: Sarah Conley

Subject: Notice to Consumers Regulatory Proposal

### **Purpose:**

To update the Board on the status of the Notice to Consumers regulatory proposal and provide information so the Board may direct staff how to proceed

### **Background:**

At the May 2012 meeting, staff proposed Notice to Consumers regulatory language. After discussion and consideration of recommendations by Legal Counsel, the Board adopted the language as amended at the meeting and directed staff to notice the regulatory proposal for hearing at the August 2012 meeting.

As staff prepared the Notice of Regulatory Change for filing with the Office of Administrative Law (OAL), a few issues arose which prompted staff to postpone filing with OAL and the hearing.

### **Analysis:**

Staff is bringing the Notice to Consumers regulatory proposal back to the Board for the following reasons:

1. The adopted language would have prescribed the notice and provided specifications for how to format the notice. If the notice is prescribed, the specifications do not need to be included.

The Board determined at the last meeting it wished to prescribe the notice; however, the language offering specifications was not struck. If the Board's intent

1 is still to prescribe the notice, the language offering specifications must be struck.  
2 The language being presented at this meeting incorporates this change.  
3

- 4 2. At the last meeting the Board considered a written request from the public  
5 regarding patient notification and found merit in the request; therefore, the Board  
6 directed staff to add the request to the August meeting agenda for further  
7 discussion. The Board may wish to concurrently consider the request from the  
8 public regarding patient notification (agenda item #17) with the Notice to  
9 Consumers regulatory proposal because this proposal would be an appropriate  
10 place to address the concerns identified in the request should the Board choose  
11 to do so through regulation.  
12
- 

13  
14 **Action Requested:**

15  
16 Review the amended proposed Notice to Consumers regulatory language and  
17 consider agenda time #17, then provide direction as necessary.  
18  
19  
20

1 Proposed Regulatory Change

2 The Physical Therapy Board of California proposes to add Section 1398.14 to Division  
3 13.2 of Title 16 of the California Code of Regulations to read:

4 1398.14. Notice to Consumers.

5 (a) A licensed physical therapist engaged in the practice of physical therapy shall  
6 provide notice to each patient of the fact that physical therapists and physical  
7 therapist assistants are licensed and regulated by the Physical Therapy Board of  
8 California (Board).

9  
10 (b) The notice required by this section shall be provided by one of the following  
11 methods:

12  
13 (1) Prominently posting the notice prescribed by the Board in an area visible to  
14 patients on the premises where the licensee provides the licensed services.

15  
16 (2) Providing the patient or the patient's representative with a copy of the notice  
17 prescribed by the Board. An acknowledgement signed and dated by the patient  
18 or the patient's representative shall be retained in that patient's medical records  
19 demonstrating receipt.

20  
21 (c) Failure to comply with this section constitutes unprofessional conduct.

22 NOTE: Authority cited: Sections 138 and 2615, Business and Professions Code.

# NOTICE TO CONSUMERS

Physical Therapists and Physical Therapist Assistants are licensed and regulated by the Physical Therapy Board of California.

If you have questions or complaints, you may contact the Board via:

- Internet at [www.ptbc.ca.gov](http://www.ptbc.ca.gov)
- Phone at 1-800-832-2251
- Writing to the following address:

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



Physical Therapy Board of California



1  
2 **PHYSICAL THERAPY BOARD OF CALIFORNIA**  
3 **INITIAL STATEMENT OF REASONS**  
4  
5

6 **HEARING DATE:** TBD  
7

8 **SUBJECT MATTER OF PROPOSED REGULATIONS:** Notice to Consumers by  
9 Physical Therapists  
10

11 **SECTION(S) AFFECTED:** California Code of Regulations (CCR) Title 16, Division  
12 13.2, Section 1398.14  
13

14 **SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:**  
15

16 1. Problem being addressed:  
17

18 Currently, there is no effective method of public notification of the existence of  
19 the Physical Therapy Board of California (Board) and the Board's role in  
20 regulating physical therapists and physical therapist assistants. Moreover, the  
21 Board must comply with Business and Professions Code (B&P) section 138  
22 which mandates, by June 30, 1999, each board, as defined in B&P section 22,  
23 shall adopt regulations requiring its licentiates to provide notice to their  
24 customers that the practitioner is licensed by the State.  
25

26 This proposed regulation would make consumers aware that physical therapists  
27 and physical therapist assistants are licensed and regulated by the Board and  
28 how to contact the Board should patients need assistance.  
29

30 Specifically, this proposed regulation will require physical therapists to notify their  
31 patients that they, as well as physical therapist assistants, are licensed and  
32 regulated by Board. Physical therapists may provide the notice in one of the two  
33 ways: 1) prominently posting a notice prescribed by the Board, or 2) providing the  
34 notice prescribed by the Board to the patient and having the patient sign an  
35 acknowledgement of receipt of the notice to be maintained in the patient's record.  
36

37 This proposed regulation will provide notice of the Board and its contact  
38 information prior to, during, or after the provision of physical therapy care. By law,  
39 public protection is the highest priority of the Board, and public protection is  
40 enhanced when patients and other interested parties are aware of the Board's  
41 existence at a time close to when physical therapy services are provided.  
42

43 2. Anticipated benefits from this regulatory action:  
44

45 This proposal would potentially increase public protection by informing the public  
46 of the existence of the Board and by providing the contact information for the  
47 Board. The notices will increase consumer awareness and provide immediate  
48 access to contact information for the Board.  
49

1 **FACTUAL BASIS/RATIONALE**

2  
3 Factual basis for determination that each proposed change is necessary:

4  
5 As stated above, public protection is the highest priority of the Board whenever it  
6 exercises its regulatory authority, and this proposal is consistent with that objective, as  
7 an informed consumer is in a better position to make reasoned choices for himself or  
8 herself and also to assist the Board in regulating physical therapists and physical  
9 therapist assistants via the Board's complaint process, should a problem arise. It has  
10 been suggested by concerned citizens and other interested parties that too few  
11 Californians are aware of the existence and role of the Board or the public services it  
12 offers, e.g., the information available about physical therapists and physical therapist  
13 assistants, physical therapy services, laws and regulations, and the complaint process.  
14 Anecdotally, oftentimes the Board's investigators will discover during their investigations  
15 civil lawsuits filed by patients who were unaware of the Board's existence. If the public  
16 does not know whom to contact when an issue with a physical therapist, or physical  
17 therapist assistant arises or where to seek information about a physical therapist or  
18 physical therapist assistant, the Board's effectiveness is hampered and its public  
19 protection mission is compromised. With the adoption of this proposal, patients will be  
20 provided with a tangible document with the Board's information or will have the  
21 opportunity to see a sign with the Board's information.

22  
23 This proposed regulation also comports with the provisions of Section 138 of the  
24 Business and Professions Code, which requires boards, as defined in Business and  
25 Professions Code section 22, to promulgate regulations regarding notice that a  
26 practitioner is licensed by the State; the Physical Therapy Board is one of these boards.

27  
28 **UNDERLYING DATA**

29  
30 None.

31  
32 **BUSINESS IMPACT**

33  
34 This regulation will not have a significant adverse economic impact on businesses. This  
35 initial determination is based on the following facts or evidence/documents/testimony:

36  
37 Although many businesses will be required to comply, the economic impact will be  
38 minor. Physical therapists would only be required to prominently post a sign, which will  
39 be available on the Board's Web site, or provide the notice to each patient and have the  
40 patient sign an acknowledgement that he or she received the notice which shall be  
41 maintained in the patient's record. The proposed regulation permits the physical  
42 therapist to choose how he or she will comply with the notice requirements.

43  
44 **ECONOMIC IMPACT ASSESSMENT**

45  
46 This regulatory proposal will have the following effects:

- 47  
48 • It will not create or eliminate jobs within the State of California because it does  
49 not impose any requirements affecting employment.

- 1
- 2 • It will not create new business or eliminate existing businesses within the State
- 3 of California because it does not impose significant requirements affecting
- 4 business operations.
- 5
- 6 • It will not affect the expansion of businesses currently doing business within the
- 7 State of California because it does not impose significant requirements affecting
- 8 business operations
- 9
- 10 • This regulatory proposal benefits the health and welfare of California residents
- 11 because it will notify California physical therapy consumers that the Board is the
- 12 oversight agency for the practice of physical therapy and provide information on
- 13 how to contact the Board with questions and/or complaints. In addition to
- 14 contacting the Board via phone or e-mail, consumers will also be provided the
- 15 Board's Web site address, which has information that will inform consumers as
- 16 to what care they are entitled to, and, if necessary, how to report a complaint.
- 17 This will create more informed consumers who are in a better position to make
- 18 reasoned choices for regarding their care, and also to assist the Board in
- 19 regulating physical therapists and physical therapist assistants via the Board's
- 20 complaint process, should a problem arise
- 21
- 22 • This regulatory proposal does not affect worker safety because it does not
- 23 impose any requirements affecting working environments.
- 24
- 25 • This regulatory proposal benefits the State's environment because it will
- 26 potentially increase the standard of physical therapy care. Consumers are
- 27 where the Board cannot always be; therefore, if consumers are informed, they
- 28 can identify possible deviations from what "should be." Additionally, once
- 29 identified, consumers will know who to contact – the Board – to assist with their
- 30 concerns.
- 31

### SPECIFIC TECHNOLOGIES OR EQUIPMENT

32

33

34 This regulation does not mandate the use of specific technologies or equipment.

35

### CONSIDERATION OF ALTERNATIVES

36

37

38 No reasonable alternative to the regulation would be either more effective in carrying

39 out the purpose for which the action is proposed or would be as effective and less

40 burdensome to affected private persons than the proposed regulation.

41

42 Set forth below are the alternatives which were considered and the reasons each

43 alternative was rejected:

44

45 The Physical Therapy Board has used traditional methods to try to inform the public of

46 its existence and how to contact it, such as outreach at conferences, which is now

47 prohibited due to Budget Letter 12-05 and it is unknown when the restriction will be

48 lifted; newsletters; a comprehensive Web site; and, written materials (e.g., pamphlets).

1  
2 Compliance with Business and Professions Code section 138 would be much more  
3 effective than all of these activities combined. While the Board endeavors to inform the  
4 public of its roles and functions via various mass marketing methodologies, the  
5 proposed regulation would enhance awareness within the point-of-service area. This is  
6 a more effective means of educating patients.

1 TITLE 16. PHYSICAL THERAPY BOARD OF CALIFORNIA

2  
3 NOTICE IS HEREBY GIVEN that the Physical Therapy Board of California (Board) is  
4 proposing to take the action described in the Informative Digest. Any person interested  
5 may present statements or arguments orally or in writing relevant to the action proposed at  
6 a hearing to be held at:

7  
8 Location  
9 Location Address 1  
10 Location Address 2

11  
12 Date

13  
14 Time  
15

16 Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed  
17 under Contact Person in this Notice, must be received by the Board at its office not later  
18 than **Time on Date**, or must be received at the hearing. The Board, upon its own motion or  
19 at the instance of any interested party, may thereafter adopt the proposals substantially as  
20 described below or may modify such proposals if such modifications are sufficiently related  
21 to the original text. With the exception of technical or grammatical changes, the full text of  
22 any modified proposal will be available for fifteen (15) days prior to its adoption from the  
23 person designated in this Notice as contact person and will be mailed to those persons  
24 who submit written or oral testimony related to this proposal or who have requested  
25 notification of any changes to the proposal.

26  
27 Authority and Reference: Pursuant to the authority vested by Section 2015 of the Business  
28 and Professions Code (B&P Code), and to implement, interpret or make specific Section  
29 138 of the B&P Code, the Board is considering changes to Division 13.2 of Title 16 of the  
30 California Code of Regulations as follows:

31  
32 **INFORMATIVE DIGEST**

33  
34 A. Informative Digest

35  
36 Adopt California Code of Regulation section 1398.14.

37  
38 Existing law, Business and Professions Code section 138, requires every board, as  
39 defined in Business and Professions Code section 22, to adopt regulations to require its  
40 licentiates to provide notice to their customers that the practitioner is licensed by the State.

41  
42 This proposal would implement section 138 by mandating notification to consumers by  
43 physical therapists of the fact that physical therapists and physical therapist assistants are  
44 licensed by the Physical Therapy Board of California, also providing the Board's toll-free  
45 phone number and its Web site address.

46  
47 B. Policy Statement Overview/Anticipated Benefits of Proposal

1  
2 This proposal would potentially increase public protection by informing the public of the  
3 existence of the Physical Therapy Board of California (Board) and by providing the contact  
4 information for the Board. The general public may not be aware that 1) the Board exists, 2)  
5 physical therapists and physical therapist assistants are licensed and regulated by the  
6 Board; and; 3) the Board's primary mandate is consumer protection. The notices will  
7 increase consumer awareness and provide immediate access to contact information for the  
8 Board, the primary entity ensuring physical therapy consumers have fair and safe access to  
9 quality physical therapy care.

10  
11 This proposal would add Section 1398.14. Notice to Consumers, requiring physical  
12 therapists to either 1) post a notice prescribed by the Board; or, 2) provide a copy of a  
13 notice prescribed by the Board to the patient. If a physical therapist chooses to provide a  
14 copy of notice to each patient rather than posting the notice, an acknowledgement of  
15 receipt of the notice shall be signed by the patient and maintained in the patient's record.

16  
17 **C. Consistency and Compatibility with Existing State Regulations**

18  
19 This proposal is consistent and compatible with existing State regulations in that it  
20 implements Business and Professions Code section 138, which is required by all boards as  
21 defined in Business and Professions Code section 22, and the Board has found this  
22 proposal to be consistent with similar regulations implementing Business and Professions  
23 Code section 138 such as the regulation adopted by the Medical Board of California.  
24 Additionally, the Board identified this proposal to be similar to the Business and Professions  
25 Code section 2936 which statutorily requires licensees of the Board of Psychology to  
26 provide a notice to consumers informing consumers how to contact the Board of  
27 Psychology.

28  
29 **INCORPORATED BY REFERENCE (if applicable)**

- 30  
31 1. Notice to Consumers, (PUBLICATION DATE)

32  
33 **FISCAL IMPACT ESTIMATES**

- 34  
35 A. **Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or**  
36 **Costs/Savings in Federal Funding to the State:**

37  
38 The Board has identified a potential increase in cost to the Board. The notice to  
39 consumers, as mentioned above, informs the public of the existence of the Board and  
40 provides immediate access to the Board's contact information. This increase in consumer  
41 awareness of the Board's existence and purpose may result in an increase of 1) consumer  
42 communication with the Board, and 2) complaints filed with the Board. To handle the  
43 increased work load, the Board would need additional staff. Since this is a new proposal  
44 for the Board, it is unknown the full impact to workload; thus, the amount of additional staff  
45 the Board may need is unknown.

- 46  
47 B. **Nondiscretionary Costs/Savings to Local Agencies:** None.  
48

1 C. Local Mandate: None.

2  
3 D. Cost to Any Local Agency or School District for Which Government Code Sections  
4 17500 – 17630 Require Reimbursement: None.

5  
6 E. Business Impact:

7  
8 The Board has made an initial determination that the proposed regulatory action would  
9 have no significant statewide adverse economic impact directly affecting business,  
10 including the ability of California businesses to compete with businesses in other states.

11  
12 **AND**

13  
14 The following studies/relevant data were relied upon in making the above determination:  
15 None.

16 F. Cost Impact on Representative Private Person or Business:

17  
18 The Board is not aware of any cost impacts that a representative private person or  
19 business would necessarily incur in reasonable compliance with the proposed action.

20  
21 Effect on Housing Costs: None

22  
23 **EFFECT ON SMALL BUSINESS**

24  
25 The Board has determined that the proposed regulations would affect small businesses,  
26 since some licensees work in a small-business practice setting.

27  
28 The proposed regulation would require physical therapists to determine which of the two  
29 notification options provided would be most appropriate for their practices, and then either  
30 post a sign where their patients may see it, or provide a copy of the notice to the patient  
31 and have the patient sign an acknowledgment that he or she received the notice which  
32 shall then be maintained in the patient's record.

33  
34 Although the regulation may have a minimal printing and paper supply cost, the Board  
35 anticipates most physical therapists will choose to post the notice rather than printing a  
36 copy for each patient.

37  
38 **RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

39 A. Impact on Jobs/New Businesses:

40  
41 The Board has determined that this regulatory proposal will not have any impact on the  
42 creation of jobs or new businesses or the elimination of jobs or existing businesses or the  
43 expansion of businesses in the State of California.

44  
45 B. Benefits of Regulation

1 The Board has determined that this regulatory proposal will have the following benefits to  
2 the health and welfare of California residents, worker safety, and the state's environment:  
3

4 This proposal would potentially increase public protection by informing the public of the  
5 existence of the Physical Therapy Board of California (Board) and by providing the contact  
6 information for the Board. The notices will increase consumer awareness and provide  
7 immediate access to contact information for the Board.  
8

### 9 **CONSIDERATION OF ALTERNATIVES**

10  
11 The Board determined that no reasonable alternative it considered to the regulation or that  
12 has otherwise been identified and brought to its attention would either be more effective in  
13 carrying out the purpose for which the action is proposed or would be as effective and less  
14 burdensome to affected private persons than the proposal described in this Notice, or  
15 would be more cost-effective to affected private persons and equally effective in  
16 implementing the statutory policy or other provision of law.  
17

18 Any interested person may present statements or arguments orally or in writing relevant to  
19 the above determinations at the above-mentioned hearing.  
20

### 21 **INITIAL STATEMENT OF REASONS AND INFORMATION**

22  
23 The Board has prepared an initial statement of the reasons for the proposed action and  
24 has available all the information upon which the proposal is based.  
25

### 26 **TEXT OF PROPOSAL**

27  
28 Copies of the exact language of the proposed regulations and of the initial statement of  
29 reasons, and all of the information upon which the proposal is based, may be obtained at  
30 the hearing or prior to the hearing upon request from the person designated in this Notice  
31 under Contact Person or by accessing the Board's Web site:  
32 [http://www.ptbc.ca.gov/laws\\_regs/prop\\_regs/index.shtml](http://www.ptbc.ca.gov/laws_regs/prop_regs/index.shtml).  
33

### 34 **AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND** 35 **RULEMAKING FILE**

36  
37 All the information upon which the proposed regulations are based is contained in the  
38 rulemaking file which is available for public inspection by contacting the person named  
39 below.  
40

41 You may obtain a copy of the final statement of reasons once it has been prepared, by  
42 making a written request to the contact person named below, or by accessing the Board's  
43 Web site: [http://www.ptbc.ca.gov/laws\\_regs/prop\\_regs/index.shtml](http://www.ptbc.ca.gov/laws_regs/prop_regs/index.shtml).  
44

### 45 **CONTACT PERSON**

46  
47 Inquiries or comments concerning the proposed rulemaking action may be addressed to:  
48

1 Name: Sarah Conley  
2 Address: Physical Therapy Board of California  
3 2005 Evergreen St., Ste. 1350  
4 Sacramento, CA 95815  
5 Telephone: (916) 561-8210  
6 Fax: (916) 263-2560  
7 E-Mail Address: Sarah.Conley@dca.ca.gov

8 The backup contact person is:

9 Name: Rebecca Marco  
10 Address: Physical Therapy Board of California  
11 2005 Evergreen St., Ste. 1350  
12 Sacramento, CA 95815  
13 Telephone: (916) 561-8260  
14 Fax: (916) 263-2560  
15 E-Mail Address: Rebecca.Marco@dca.ca.gov  
16

17 Web Site Access

18  
19 Materials regarding this proposal can be found at.  
20 [http://www.ptbc.ca.gov/laws\\_regs/prop\\_regs/index.shtml](http://www.ptbc.ca.gov/laws_regs/prop_regs/index.shtml).



April 3, 2012

Dr. Sara Takii, PT, DPT, MPA  
Board President  
Physical Therapy Board of California  
2005 Evergreen Street, Suite 1350  
Sacramento, CA 95815

Re: Suggestion for future legislation

Dear Dr. Takii:

Recently I ended 11 months of physical therapy, which was an unqualified disaster.

[REDACTED]

I am a disabled person. I am a very experienced patient and am astounded at how I was completely misled at [REDACTED]. I can see reading discipline actions on the PTBC website this occurs frequently. I have a suggestion as to how these wrongdoings can be prevented. You see, I've never been confused at the doctor's office or hospital as to who is the doctor and who the nurse, what everyone's basic job is, and what duties are owed to me, the patient. In physical therapy it was all a mystery!

If a physical therapy patient were required by law to sign off on, as part of their consent for treatment, an additional statement acknowledging:

- 1) Who at the clinic is a PT, a PTA, or an aide, with an explanation of these titles
- 2) Who the PT supervising their treatment is
- 3) That all PT aides must be directly supervised, with an explanation of this
- 4) The role of the PTA
- 5) How to ask for another evaluation if treatment is not going well
- 6) An explanation of proper boundaries between the therapist and patient and what sexual misconduct is

Also

7) If a patient had to sign off an acknowledgement of the treatment received at that visit, much insurance fraud could be prevented.

Item 7 might be better implemented by insurance regulators or legislated for the entire medical industry in California. I would love to agree on the services rendered on the day of my treatment and not have to argue about it later. In this day and age of computers, it should be very easy to do this.

As a disabled person, I believe strongly in patient empowerment. The PTBC website was incredibly helpful. I regret not reading it the day I started physical therapy. I imagine that greater patient understanding of what correct delivery of physical therapy is would improve quality of care and cut down on the number of complaints to the PTBC.

Thank you for taking the time to read this.

Sincerely,

A large black rectangular redaction box covers the signature and name of the sender.

## **Agenda Item #20**

At the May 9 & 10, 2012 meeting, Jason Tonley, PT, DPT, OCS, from the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE), the credentialing body for the American Physical Therapy Association, requested the Board consider adding an alternate pathway to obtain continuing competency credit, which would be participation in post-graduate physical therapy residency or fellowship programs whether as a student, or as a credentialed instructor who acts as a mentor in the programs.

Dr. Tonley provided some information on the residency and fellowship programs explaining that the programs undergo an extensive review by the ABPTRFE, which evaluates the following: 1) the program itself, 2) the faculty, 3) the curriculum and 4) how the program evaluates its participants. The programs have minimum didactic and hands-on requirements set by the ABPTRFE and the ABPTRFE conducts on-site visits and reviews the programs every five years with additional reports required annually to ensure the programs are meeting the requirements.

The Board considered Dr. Tonley's request and motioned to discuss the request further at the August 2012 meeting; therefore, Dr. Tonley will be in attendance at this meeting to provide additional information.



Physical Therapy Board of California

# Physical Therapy Board of California

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## Agenda Item #21

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### Briefing Paper

Date: July 20, 2012  
Prepared for: PTBC Members  
Prepared by: Sarah Conley  
Subject: Precedential Decisions

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### **Purpose:**

To provide the purpose and process of adopting a precedential decision.

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### **Background:**

A precedential decision is a Disciplinary Decision and Order adopted by the Board and filed with the Office of Administration Law to establish a specific standard that has the same effect as law when imposing disciplinary action.

Government Code section 11425.60 provides “an agency may designate as a precedential decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur.”

If a Disciplinary Decision and Order captures the Board’s intent when imposing discipline for specific violations that may be common violations for applicants or licensees, the Board may adopt this Disciplinary Decision and Order, or parts of the Disciplinary Decision and Order. Once a Disciplinary Decision and Order is adopted as a presidential decision, the Board may rely on it, and parties may cite to it in their argument to the Board and the courts.

Government Code section 11425.60 subsection (c) requires the Board to maintain an index of significant legal and policy determinations made in precedential decisions. The index must be updated as least once per year and published in the California Regulatory Notice Register.

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**Analysis:**

Staff identified the Disciplinary Decision and Order imposed on Ernest Sluder, PT in case number(s) 1D 2008 66674 and 1D 2010 68256 clearly explains how a conviction of a crime constitutes highly irresponsible conduct and substantially demonstrates a present or potential unfitness to practice physical therapy and, in addition, is unbecoming of a member of the physical therapy profession.

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**Action Requested:**

Adopt the Disciplinary Decision and Order for PTBC case number(s) 1D 2008 66674 and 1D 2010 68256 imposed on Ernest Sluder, PT, as a precedential decision and direct staff to proceed with the precedential decision notice and filing process.

BEFORE THE PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**ERNEST SLUDER, PT**

Physical Therapy License  
No. 20795,

Respondent.

PTBC Case Nos.

1D 2008 66674 and

1D 2010-68256

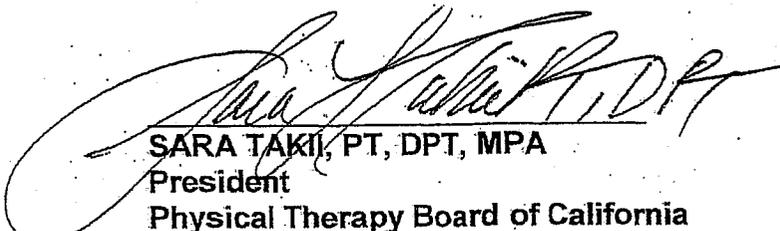
OAH No. 2010060591

**DECISION and ORDER**

Pursuant to Government Code section 11517 (c)(2)(B), the attached Proposed Decision of the Administrative Law Judge, with the reduction in penalty noted, is hereby adopted by the Physical Therapy Board of California as its Decision in the above-entitled matter. Specifically, the Order is modified to remove term and condition of probation number 26, regarding direct billing.

This decision shall become effective on March 10<sup>th</sup>, 2011.

IT IS SO ORDERED this 8<sup>th</sup> day of February, 2011.

  
SARA TAKII, PT, DPT, MPA  
President  
Physical Therapy Board of California

BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ERNEST SLUDER, P.T.,

Respondent.

Case No. 1D-2008-66674 and  
1D-2010-68256

OAH No. 2010060591

**PROPOSED DECISION**

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 19, 2010, in San Diego, California.

Beth Faber Jacobs, Deputy Attorney General, represented complainant Steven K. Hartzell, Executive Officer, Physical Therapy Board of California, Department of Consumer Affairs.

Respondent Ernest Sluder represented himself and was present throughout the hearing.

The matter was submitted on October 19, 2010.

**FACTUAL FINDINGS**

1. On May 10, 2010, complainant Steven K. Hartzell, Executive Officer, Physical Therapy Board of California, signed the first amended accusation in his official capacity. On the same date, the first amended accusation and other required jurisdictional documents were served on respondent by certified mail. On August 30, 2010, a notice of hearing was served on respondent.<sup>1</sup>

2. On October 19, 2010, the administrative record was opened, jurisdictional documents were received, sworn testimony was given, documentary

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<sup>1</sup> Previously, on April 17, 2010, respondent had signed and thereafter submitted a Notice of Defense in response to the original accusation in this matter.

evidence was introduced, closing arguments were presented, the record was closed, and the matter was submitted.

3. On June 1, 1995, the board issued to respondent physical therapist license PT 20795.

4. On April 6, 2007, while driving his vehicle, respondent rear-ended another vehicle and fled the scene. Respondent's 10-year-old daughter was in his car at the time. Police officers were subsequently able to determine that it was respondent who was involved in this incident. On November 28, 2007, Costa Mesa Police Department officers went to respondent's home. Respondent admitted that he had rear-ended the other vehicle and fled the scene because he did not have a driver's license. Respondent was arrested.

On March 7, 2008, a complaint was filed against respondent in connection with the April 6, 2007, incident, an arraignment was calendared for April 2, 2008, and an arraignment letter was sent to respondent. Respondent failed to appear at the April 2, 2008, arraignment. On April 3, 2008, a hearing was held on respondent's failure to appear, with respondent appearing in pro per. A new arraignment date was set for May 15, 2008. Respondent was ordered to appear on the new date and was released on his own recognizance. At the May 15, 2008, arraignment, respondent again failed to appear; six days later a warrant was issued. The warrant was served on respondent on July 9, 2008, and respondent was arrested at that time. The arraignment was reset for August 21, 2008. Respondent was present at the arraignment and pled not guilty to all counts. The matter was set for pretrial on September 5, 2008.

On September 5, 2008, respondent pled guilty and was convicted of one count each of violating Vehicle Code section 2002, subdivision (a) (hit and run driving with property damage) and Vehicle Code section 12500, subdivision (a) (driving without a valid driver's license), both misdemeanors. Respondent was placed on informal probation for three years. The terms of probation included 20 days in jail (to be served by completing 20 days Cal Trans community service), various fines and penalties, and restitution to the victim.

On May 19, 2009, respondent's probation was revoked based on his failure to complete his community service, and a warrant was issued.

5. On July 11, 2008, respondent was stopped by a peace officer while driving his vehicle. The officer ran a records check on the vehicle and determined that the registration had expired in 2007, even though the vehicle displayed a 2009 registration expiration date. Respondent told the officer that he had taken the sticker from his other vehicle and placed it on the vehicle he was then driving, i.e., the vehicle with the expired registration. It was also determined that respondent had an outstanding warrant, so he was arrested and issued a citation for unlawful display of registration in violation of Vehicle Code section 4462.5.

During a follow up investigation, the police department determined that the 2009 registration tab found on respondent's vehicle actually came from a vehicle that was registered not to respondent but to a third party. The third party stated that she did not know respondent and did not give him permission to use her registration tab.

On August 25, 2008, a criminal complaint was filed against respondent in connection with these matters. Arraignment was calendared for October 16, 2008, and an arraignment letter was sent to respondent. Respondent failed to appear at the arraignment. On December 31, 2008, a warrant was issued. On January 17, 2009, a peace officer stopped respondent for making an unsafe lane change. Respondent was arrested on the warrant, cited and released. On January 27, 2009, an arraignment date was set for March 4, 2009, with regard to the October 16, 2008, failure to appear, and a letter was subsequently mailed to respondent to indicate the corrected court date. That letter was later returned as undeliverable. Respondent failed to appear at the March 4, 2009, arraignment, and another bench warrant was issued. The bench warrant was served on respondent on January 14, 2010. Respondent was cited and released on his own recognizance on January 25, 2010, with a notice to appear on March 3, 2010. Respondent again failed to appear on March 3, 2010 and another bench warrant was issued.

6. On October 15, 2010, respondent went to court and took care of all outstanding citations and failures to appear. All warrants were recalled. The court found respondent not to be in violation of his probation. His probation was modified. He was assessed fines in the collective amount of about \$3,500, and was ordered to serve 20 days in jail, to be served on weekends.

7. Respondent testified that he works on Catalina Island. For the past six months, he has worked at the Catalina Island Medical Center. His employment has been through a registry.

Respondent testified that he sees between three and ten patients per day.

8. Respondent testified that he has been married for three years. He has two children, 11 and 12 years of age. The former is a step-child. The latter, respondent's natural child, lives with her mother. Respondent lives on Lido Island with his wife and step-daughter. He goes to Catalina for the (four-day) work week. Respondent's long-term goal is to remain in Catalina, where his wife and step-daughter will join him at the end of the present school year.

9. Respondent testified that Catalina is a small, underserved, largely impoverished community, and is a good fit for him. Most of its residents are Spanish speaking, and respondent is fluent in that language. The only other physical therapist on Catalina is 75 years old and retired; she cannot provide care at this time.

10. Respondent was asked on cross examination why he continued to drive without a license. He stated that he tries to avoid driving, but on a few occasions, he felt he needed to drive for safety reasons, e.g., another individual was tired or had been drinking. Since he bikes to work while in Catalina, he does not need to drive on a regular basis. He drives only when there appear to him to be "major safety issues." He last drove a car about a year before the hearing.

11. Respondent testified that he volunteers at the SPCA. He also tries to find something appropriate to give (out of his own pocket) to each of his patients to help them with their recovery, e.g., a balance board, a basketball, a Swiss ball. He makes the balance boards himself, and sometimes paints them with a theme that relates to the patient in some personal way.

12. Respondent testified concerning his failures to appear, explaining that he had moved to Yosemite, had some personal issues to deal with, and that his inability to drive and the remoteness of his residence "insulated" him from his responsibility to appear in court on these several occasions. He added that due to the isolation of his location and his inability to get mail, he had very limited means of communication. He did not notify anyone that he would not appear in court on the dates in question.

13. During his closing argument, respondent apologized for his actions. He stated that he was 100% certain that he would abide by any terms of probation that were imposed on him, and that he is very motivated to comply. He did concede during his testimony that due to the location of his practice he could not comply with a condition of probation that required another physical therapist to supervise him. His direct supervisor is the director of all clinical services at the hospital.

14. In an October 18, 2010, letter, Nancy Mattis, RN, Chief of Patient Care Services, Catalina Island Medical Center, wrote that respondent had been working for the center for the past six months as a temporary contractor, and that he "has made such a significant contribution we have asked him to stay permanently." She described him as a "compassionate, caring individual, who has become very popular with patients and staff alike." She noted further, "He provides excellent physical therapy services, inspiring his patients to maintain their therapy program while they complete their healing. On his time off, he also volunteers in the community, and makes extra gifts for his patients." In conclusion, "We feel very fortunate to have Ernest as part of our staff. He is an asset to the medical center and to our community."

Respondent testified that Mattis is director of all clinical services at the facility and is his direct supervisor.

15. Complainant's counsel submitted a declaration in support of a request for cost recovery. The declaration stated, and it is found, that total charges billed by

the Department of Justice to the board were in the amount of \$4,947.50, representing 29.75 hours of attorney work at \$170 per hour and 4.75 hours of legal analyst work at \$120 per hour. Complainant's counsel was well prepared, litigated this matter with skill and effectiveness, and conducted herself in a thoroughly professional manner. Complainant's claimed expenses were reasonably incurred.

## LEGAL CONCLUSIONS

1. "The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. ~~Absent a statute to the contrary, the burden of proof in disciplinary~~ administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code § 115.) The burden of proof in this proceeding is thus on complainant.

3. The standard of proof to be applied in disciplinary proceedings against professional licenses is "clear and convincing evidence standard to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 139 Cal.App.3d 853, 856-857; *Furman v. State Bar* (1938) 12 Cal.2d 212, 229; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.)

4. "The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence." (*People v. Mabini* (2001) 92 Cal. App. 4th 654, 662.)

5. Business and Professions Code section 2660 provides that the board may impose discipline against a license on the basis of unprofessional conduct. Unprofessional conduct includes, but is not limited to:

a. the conviction of a crime that is substantially related to the qualifications, functions, and duties of a physical therapist. (Bus. & Prof. Code, § 2660, subd. (d).) California Code of Regulations title 16, section 1399.20 defines a substantially-related crime or act<sup>2</sup> as one that to a substantial degree evidences present or potential unfitness of a person to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.

<sup>2</sup> The precise relationship between the statute, which references only the conviction of a crime, and the regulation, which references both a crime and an act, is not clear.

b. the violation or attempted violation of any provision of the Physical Therapy Practice Act or the Medical Practice Act (Bus. & Prof. Code, § 2660, subd. (h).) General unprofessional conduct under section 2660 is thus necessarily also a violation more specifically of subdivision (h).

c. the commission of a fraudulent, dishonest or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist. (Bus. & Prof. Code, § 2660, subd. (k).)

6. The board has issued disciplinary guidelines, which, *inter alia*, set forth recommended disciplinary actions for particular violations. For conviction of a substantially-related crime, the guidelines prescribe a minimum discipline of a public reproof and a maximum discipline of revocation. For general unprofessional conduct pursuant to section 2600, and subdivision (h),<sup>3</sup> the guidelines do not appear to provide recommended levels of discipline. For fraudulent and dishonest acts, the guidelines prescribe a minimum discipline of revocation, stayed, five days suspension, and three years probation, and a maximum discipline of revocation.<sup>4</sup>

7. By reason of Factual Findings 1 through 15, and Legal Conclusions 1 through 6, legal grounds exist to impose discipline on respondent's license as follows:

a. Respondent was convicted of a crime that was substantially related to the qualifications, functions, and duties of a physical therapist, so that discipline may be imposed on respondent's license pursuant to Business and Professions Code section 2660, subdivision (d). Respondent's Vehicle Code sections 20002 and 4462.5 convictions both involved substantial dishonesty and reflect a lack of integrity on respondent's part. They thus substantially evidence a present or potential unfitness to practice physical therapy. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4<sup>th</sup> 757, 771-772.)

b. Respondent engaged in general unprofessional conduct, so that discipline may be imposed on respondent's license pursuant to Business and Professions Code section 2660 and subdivision (h) thereof. Respondent's leaving the scene of a traffic accident and his repeated failures to appear in court collectively constituted highly irresponsible conduct that substantially evidences a present or potential unfitness to practice physical therapy and, in addition, are unbecoming of a

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<sup>3</sup> Particular discipline is prescribed for certain specific kinds of subdivision (h) conduct (e.g., aiding and abetting unlicensed practice), but not for the kind of conduct involved here.

<sup>4</sup> In citation cases, the discipline to be imposed is limited to fines. The present matter is not a citation, and the misconduct at issue here could not adequately be addressed by a mere fine.

member of his profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

c. Respondent committed fraudulent and dishonest acts that are substantially related to the qualifications, functions, and duties of a physical therapist, so that discipline may be imposed on respondent's license pursuant to Business and Professions Code section 2660, subdivision (k). As noted, respondent's Vehicle Code violations involved substantial dishonesty and evidence a present or potential unfitness to practice physical therapy.

8. By reason of Factual Findings 1 to 15 and Legal Conclusions 1 to 7, cause exists to impose discipline on respondent's license, but not to revoke respondent's license.

On the one hand, any ~~conduct involving dishonesty is always a serious~~ concern in the context of a health care professional and the trust that patients and society must necessarily repose in him.<sup>5</sup> Further, respondent's several failures to appear,<sup>5</sup> his probation violation, and some of respondent's statements at the hearing suggest a certain failure to appreciate the importance of abiding by not only the law in general, but by court orders in particular. A concern thus arises as to whether or not respondent can be depended on to comply with the terms of a probationary order.

On the other hand, respondent's desire and ability to provide care to an underserved community is commendable, he seems to care genuinely for his patients, and his present employer speaks very highly of him.

Based on the entirety of the record, it is concluded that straight revocation of respondent's license is not required for the protection of the public, but that instead the imposition of a substantial period of probation on appropriate terms and conditions is consistent with the health, safety, and welfare of respondent's patients and the general public.

Respondent is strongly urged, however, to take the terms of his probation with the utmost seriousness, and not to presume that he will be accorded any leniency should he violate his probation in any material respect.

9. Business and Professions Code section 125.3 provides in pertinent part:

"(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a

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<sup>5</sup> The evidence established that respondent had personal, actual knowledge of at least two of these.

violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

\* \* \*

(d) The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). . . .”

10. As previously found, the total costs of investigation and enforcement reasonably incurred in this action were \$4,947.50. Cause exists to issue an order requiring respondent to pay the full amount of these costs.

Accordingly, there is hereby issued the following:

#### ORDER

Respondent Ernest Sluder’s physical therapist license number PT 20795 is revoked; but that revocation is stayed for a period of three years, and a probationary license is issued to respondent, under the following terms and conditions of probation:<sup>6</sup>

**1. License Revocation, stayed**

The respondent’s license shall be revoked, with the revocation stayed.

**2. Cost Recovery**

The respondent is ordered to reimburse the Board the actual and reasonable investigative and prosecutorial costs incurred by the Board in the amount of \$4,947.50. The Board may set up a monthly payment plan

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<sup>6</sup> Optional conditions of probation E, T, and W are excluded from the order. Condition E is excluded because: (i) as a practical matter, respondent’s compliance with it is not possible, since no other physical therapists are available to work on the same shift as respondent, and (ii) the absence of another physical therapist on duty would not jeopardize the health, safety, or welfare of any patient or the general public. Condition T is excluded because the basis for the probationary order is not related to drug or alcohol abuse. Condition W is excluded because the record does not reflect any basis for ordering a psychiatric evaluation of respondent. Optional condition of probation A is included, but has been modified to permit supervision by either a licensed physical therapist or by respondent’s direct supervisor at Catalina Island Medical Center. This modification is made for similar reasons as the exclusion of condition E.

for these costs and shall determine the time within which such costs are to be paid. Failure to pay the ordered reimbursement constitutes a violation of the probation order. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board. If respondent is in default of his responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise Tax Board, the Internal Revenue Service or by any other means of attachment of earned wages legally available to the Board. Failure to fulfill the obligation could also result in attachment to Department of Motor Vehicle registrations, license renewals, or both.

**3. Obey All Laws**

Respondent shall obey all federal, state and local laws, the statutes and regulations governing the practice of physical therapy, and remain in full compliance with any court ordered criminal probation. This condition applies to any jurisdiction with authority over respondent, whether it is inside or outside of California.

Further, respondent shall, within five days of any arrest, submit to the Board in writing a full and detailed account of such arrest.

**4. Compliance with Orders of a Court**

The respondent shall be in compliance with any valid order of a court. Being found in contempt of any court order is a violation of probation.

**5. Compliance with Criminal Probation and Payment of Restitution**

Respondent shall not violate any terms or conditions of criminal probation and shall be in compliance with any restitution ordered, payments or other orders.

**6. Quarterly Reports**

Respondent shall submit quarterly reports under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation.

**7. Probation Monitoring Program Compliance**

Respondent shall comply with the Board's probation monitoring program.

**8. Interview with the Board or its Designee**

Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals.

**9. Notification of Probationer Status to Employers**

The respondent shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the Initial Probationary License, Statement of Issues, Accusation and the Decision and Order, or Stipulated Settlement to the employer, and submit written employer confirmation of receipt to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.

**10. Notification of Change of Name or Address**

The respondent shall notify the Board, in writing, of any and all of name and/or address changes within ten days.

**11. Restriction of Practice—Temporary Service Agencies**

The respondent's work for a temporary services agency or registry shall be limited as follows:

- 1) Respondent shall be limited to work for one temporary service agency or registry.
- 2) This work must be approved by the probation monitor.
- 3) Respondent must disclose this disciplinary proceeding as described above in Condition 9 to the temporary service agency or registry.
- 4) Respondent must disclose this disciplinary proceeding, as described above in Condition 9 to the supervisor at the facility where physical therapy care is being performed.

Respondent must notify his/her probation monitor or Board's designee, in writing, of any change in registry or temporary service. The Respondent must have written approval by the probation monitor prior to commencing work at a new registry or temporary service agency.

**12. Restriction of Practice - Clinical Instructor of Physical Therapy Student Interns or Foreign Educated Physical Therapist License Applicants Prohibited.**

Respondent shall not supervise any physical therapy student interns, foreign educated physical therapist license applicants or other individuals accumulating hours or experience in a learning capacity in physical

therapy during the entire period of probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of this probation.

**13. Prohibited Use of Aliases**

Respondent shall not use aliases and shall be prohibited from using any name which is not his/her legally-recognized name or based upon a legal change of name.

**14. Intermittent Work**

If the respondent works less than 192 hours as a physical therapist or a physical therapist assistant in the physical therapy profession in a period of three months, those months shall not be counted toward satisfaction of the probationary period. The respondent is required to immediately notify the probation monitor or his or her designee if he/she works less than 192 hours in a three-month period.

**15. Tolling of Probation**

The period of probation shall run only during the time respondent is practicing or performing physical therapy within California. If, during probation, respondent does not practice or perform within California, respondent is required to immediately notify the probation monitor in writing of the date that respondent is practicing or performing physical therapy out of state, and the date of return, if any. Practicing or performing physical therapy by the respondent in California prior to notification to the Board of the respondent's return will not be credited toward completion of probation. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.

**16. Violation of Probation**

Failure to fully comply with any component of any of the probationary terms and conditions is a violation of probation.

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

**17. Request to Surrender License Due to Retirement, Health or Other Reasons**

Following the effective date of this probation, if respondent ceases practicing or performing physical therapy due to retirement, health or other reasons or is otherwise unable to satisfy the terms and conditions of probation respondent may request to surrender his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as the license is no longer renewable; the respondent makes application for the renewal of the tendered license or makes application for a new license.

**18. Completion of Probation**

Respondent shall comply with all financial obligations required by this Order (e.g., cost recovery, restitution, probation costs) not later than 180 calendar days prior to completion of probation unless otherwise specified in Order. Upon successful completion of probation, respondent's license shall be fully restored.

**19. California Law Examination - Written Exam on the Laws and Regulations Governing the Practice or Performance of Physical Therapy**

Within 90 Days of the effective date of this decision, respondent shall take and pass the Board's written examination on the laws and regulations governing the practice of physical therapy in California. If respondent fails to pass the examination, respondent shall be suspended from the practice of physical therapy until a repeat examination has been successfully passed. Respondent shall pay the costs of all examinations.

**20. Practice or Performance of Physical Therapy While on Probation**

It is not contrary to the public interest for the respondent to practice and/or perform physical therapy under the probationary conditions specified in the disciplinary order. Accordingly, it is not the intent of the Board that this order, the fact that the respondent has been disciplined, or that the respondent is on probation, shall be used as the sole basis for any third party payor to remove respondent from any list of approved providers.

**21. Probation Monitoring Costs**

Respondent shall reimburse all costs incurred by the Board for probation monitoring during the entire period of probation. Respondent will be billed at least quarterly. Such costs shall be made payable to the Physical Therapy Board of California and sent directly to the Physical Therapy Board of California. Failure to make ordered reimbursement within 60 days of the billing shall constitute a violation of the probation order.

**22. Restriction of Practice - Supervision Required**

Respondent shall only practice physical therapy under the supervision of: (i) a physical therapist who holds a valid unrestricted license, and who is responsible for the care rendered; or (ii) his direct supervisor at Catalina Island Medical Center.

After one year of full compliance of probation, respondent may request in writing for the approval by the Board or its designee, to remove this condition entirely or modify the requirement.

**23. Restriction of Practice - Home Care**

The respondent shall not provide physical therapy services in a patient's home.

**24. Restriction of Practice - Solo Practice**

The respondent shall be prohibited from engaging in the solo practice of physical therapy. However, he shall be allowed to practice physical therapy at Catalina Medical Center notwithstanding the fact that no other physical therapists are on staff as long as he is supervised, as set forth in condition 22.

**25. Restriction of Practice - Prohibition of Self-Employment or Ownership**

Respondent shall not be the sole proprietor or partner in the ownership of any business that offers physical therapy services. Respondent shall not be a Board member or an officer or have a majority interest in any corporation that offers or provides physical therapy services.

**26. Restriction of Practice - Prohibition of Direct Billing of Third-Party Payers**

Respondent shall not have final approval over any physical therapy billings submitted to any third-party payers in any employment.

**27. Restriction of Practice - Monitoring**

Within thirty (30) days of the effective date of this decision, the respondent shall select a licensed physical therapist to serve as the professional practice monitor during the period of probation and submit the name of the licensed physical therapist selected for approval by the Board or its designee. The professional practice monitor shall be selected from an established pool of physical therapists licensed to practice in the State of California who are currently serving as trained expert consultants to the Board. If there is no practice monitor available from the pool of physical therapists, the respondent may provide the probation monitor with the name and license number of a physical therapist for approval if deemed appropriate. The professional practice monitor shall not be someone with a conflict of interest in reviewing the licensee's practice. A conflict of interest is one that may interfere with the ability to fairly assess the licensee's practice and provide the probation monitor with a non-biased report. This includes, but is not limited to, a business partner or family member of the licensee.

After the professional practice monitor has been approved by the Board, the professional practice monitor in conference with the Board's probation monitor will establish the schedule upon which clinical visits will be made to respondent's place of employment to review respondent's current practice and respondent's adherence to the terms of probation. The professional practice monitor shall report to the Board's probation monitor on compliance with the terms and conditions of the respondent's probation after each clinical visit. The report shall indicate whether respondent's practices are within the standards of practice of physical therapy and/or billing, and whether respondent is practicing physical therapy safely, and/or billing appropriately.

Should the professional practice monitor resign or no longer be available, the Respondent shall within 15 days submit for approval by the Board another physical therapist from the pool of expert consultants or provide the name and license number of a physical therapist for approval.

Respondent shall pay all monitoring costs, including the cost of the professional practice monitor within a time frame agreed upon by the professional practice monitor, but shall not exceed more than 15 days of being billed.

Respondent shall make all patient records available for immediate inspection by the professional practice monitor at all times, or for copying on premises, and shall retain all records for the entire term of probation.

Respondent shall make all appropriate records available for immediate inspection by the Board's probation monitor at all times, or for copying on premises, and shall retain all records for the entire term of probation.

## **28. Notification to Patients**

The respondent shall notify each patient, in writing, that his or her license is on probation and that a professional practice monitor will be reviewing patient records.

Such notification shall be signed and dated by each patient prior to the commencement or continuation of any examination or treatment of each patient by the respondent. A copy of such notification shall be maintained in the patient's record. Respondent shall offer the patient a copy of the acknowledgement.

The notification shall include the following language unless the Board or its designee agrees, in writing, to a modification:

The Physical Therapy Board of California (PTBC) has placed physical therapist license number PT20795, issued to Ernest Sluder, on probation.

As a condition of probation, the above-named physical therapist must notify patients that a professional practice monitor will be reviewing patient records. In addition, the physical therapist is required to notify and obtain written acknowledgement from each patient of this condition. A copy of the acknowledgement shall be offered to the patient and placed in the patient's record.

Information regarding PTBC license disciplinary actions may be accessed online at [www.ptbc.ca.gov](http://www.ptbc.ca.gov).

## **29. Notification of Probationer Status to Employees**

If respondent is an employer of other physical therapist or physical therapist assistants, respondent shall, notify all present or future employees of the reason for and terms and conditions of the probation. Respondent shall do so by providing a copy of the Initial Probationary License, Statement of Issues, Accusation, and Decision and Order to each employee and submit confirmation of employee receipt to the Board within 10 days. The confirmation(s) provided to the Board shall include the name, address and phone number of the employees.

30. Community Services

The respondent shall be required to provide community service without compensation within the State of California as part of the probation. The respondent shall submit for prior approval a community service program to the Board or its designee.

DATED: November 10, 2010



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DONALD P. COLE  
Administrative Law Judge  
Office of Administrative Hearings