



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)



## Physical Therapy Board of California Notice of Public Meeting

### Strategic Planning Session

Department of Consumer Affairs

1747 North Market Blvd., Hearing Room

Sacramento, CA 95834

November 6, 2012 9:00 a.m.

### Regular Meeting

Department of Consumer Affairs

2005 Evergreen St., Hearing Room

Sacramento, CA 95815

November 7, 2012 8:30 a.m.

November 8, 2012 8:30 a.m.

#### 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

#### Board Staff

Rebecca Marco, Executive Officer

Liz Constancio, Manager

Jason Kaiser, Manager

Sarah Conley, Executive Associate

**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.**

**The Board intends to webcast only the regular meeting on November 7<sup>th</sup> and 8<sup>th</sup>. It may not, however, be possible to webcast the entire open meeting due to limitations on resources.**

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## Agenda

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### **Strategic Planning November 6, 2012**

- 1. Call to Order and Roll Call**
- 2. Strategic Planning Session**
- 3. 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  
Pursuant to Government Code section 11126(c)(1)

**4. Special Order of Business – November 7, 2012 8:45 a.m.  
Hearing on Petitions for Early Termination of Probation**

- (A) Azita Yazdani, PT
- (B) Abraham Ortiz III, PT

After submission of the matter(s), the Board will convene in CLOSED SESSION to deliberate per Government Code section 11126(c)(3).

**5. 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  
Pursuant to Government Code section 11126(c)(1)

**6. Approval of August 1 & 2, 2012 Meeting Minutes – Sarah Conley**

**7. President's Report – Dr. Debra Alviso**

- (A) 2013 Meeting Calendar

**8. Executive Officer's Report – Rebecca Marco**

**9. Administrative Services Report – Liz Constancio**

- (A) Budget
- (B) Outreach

**10. Application & Licensing Services Report – Liz Constancio**

**11. Consumer Protection Services Enforcement Report – Jason Kaiser**

- (A) Performance Measures
- (B) Disciplinary Summary

**12. 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 – Jason Kaiser**

**13. Continuing Competency Report – Jason Kaiser**

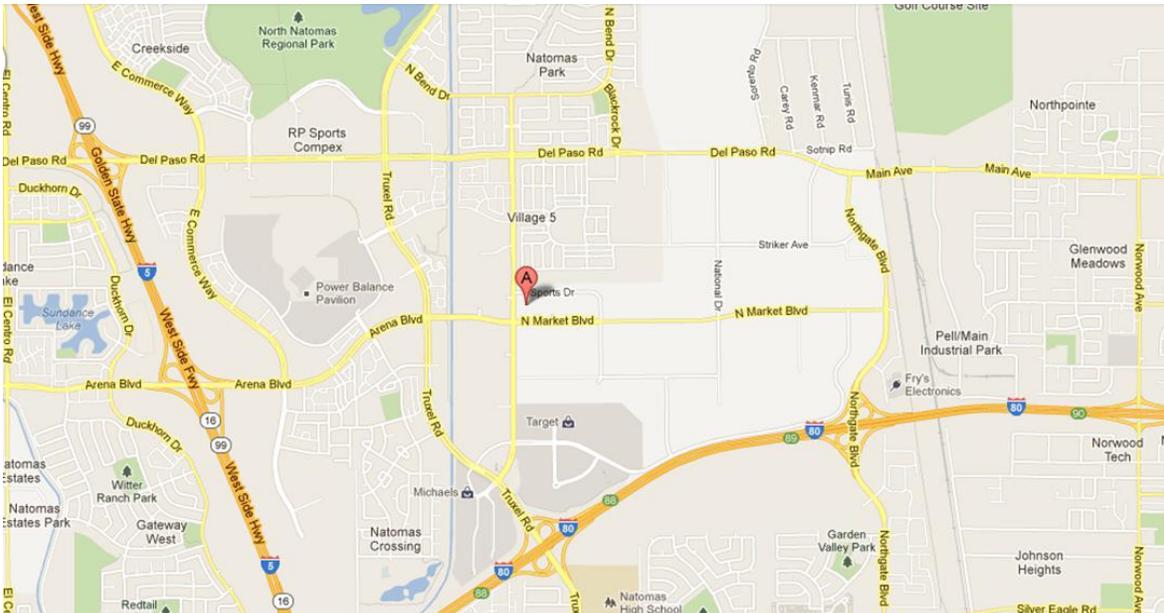
- (A) Statistics
- (B) Withdraw of Approval Agency Recognition for:
  - i. Vital Spark, LLC
  - ii. Gateway International, LLC

**14. Consumer and Professional Associations and Intergovernmental Relations Report**

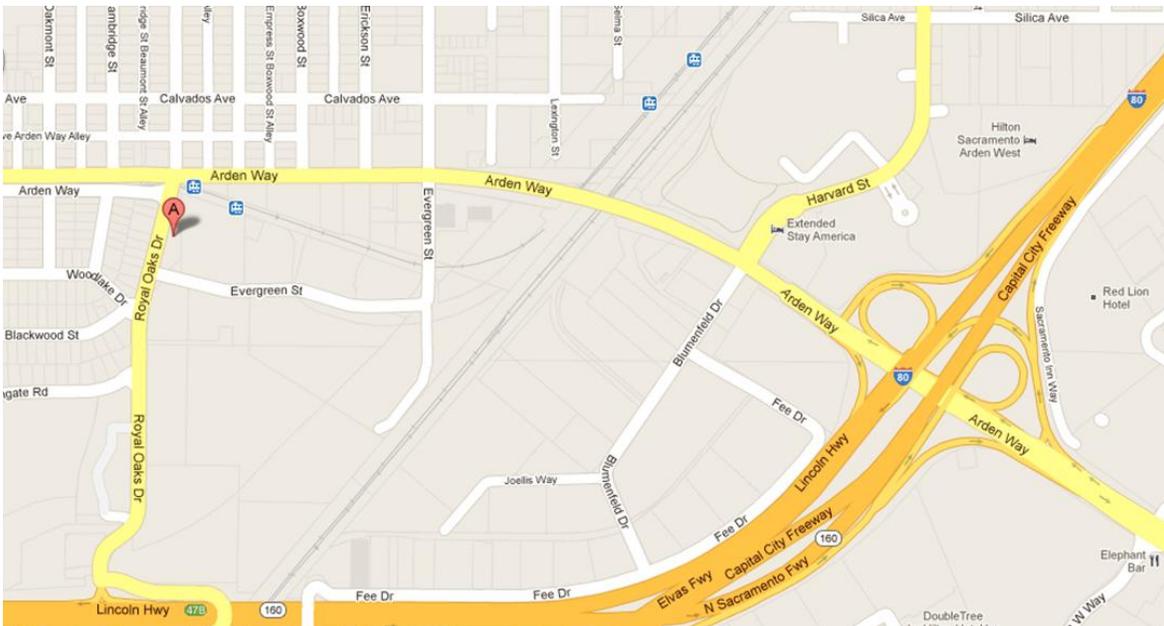
- (A) Department of Consumer Affairs (DCA) – Reichel Everhart
- (B) California Physical Therapy Association (CPTA)

- (C) Federation of State Boards of Physical Therapy (FSBPT)
15. **2011-2012 Legislative Session Summary – Sarah Conley**
    - (A) AB 2570 – Licensees: Settlement Agreements  
Author(s): Assembly Member Hill
    - (B) SB 924 – Physical Therapists: Direct Access to Services: Professional Corporations  
Author(s): Senators Price, Walters, and Steinberg
    - (C) SB 1236 – Professions and Vocations  
Author(s): Senator Price
  16. **Review of Proposed Physical Therapy Practice Act for Submission to Legislature – Sarah Conley**
  17. **Review of Sunset Report Addendum for Submission to Legislature – Rebecca Marco**
  18. **Rulemaking Calendar Update – Sarah Conley**
    - (A) Summary of 2012 Rulemaking Progress
    - (B) Adoption of 2013 Calendar
  19. **Special Order of Business – November 8, 2012 8:45 a.m.  
Regulatory Hearing on Proposed Language for Required E-mail Filing, Section 1398.6 of Division 13.2 of Title 16 of the California Code of Regulations**
  20. **Special Order of Business – November 8, 2012 9:00 a.m.  
Regulatory Hearing on Proposed Language for Notice to Consumers, Section Number 1398.15 of Division 13.2 of Title 16 of the California Code of Regulations**
  21. **Consideration of Physical Therapists Working as Physical Therapist Assistants – Dr. Martha Jewell**
  22. **Board Member Ethics Training – Laura Freedman, Legal Counsel**
  23. **Elections**
    - (A) President
    - (B) Vice-President
    - (C) FSBPT Delegate
    - (D) FSBPT Alternate Delegate (Primary)
    - (E) FSBPT Alternate Delegate (Back-up)
  24. **Public Comment on Items Not on the Agenda**
  25. **Agenda Items for Next Meeting – February 13 & 14, 2013  
Sacramento, CA**
  26. **Adjournment**

## 1747 North Market Blvd., Sacramento, CA 95834



## 2005 Evergreen St., Sacramento, CA 95815



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:

**Roll Call**

**Strategic Planning Session & Regular Meeting – Department of Consumer Affairs, Sacramento, CA**

**Strategic Planning Session – November 6, 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		

**Regular Meeting – November 7, 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		

## Regular Meeting – November 8, 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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## Agenda Item #6

1  
2

### 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

### **DRAFT Meeting Minutes**

**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**

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

5

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

7

8 The Physical Therapy Board of California (Board) August 2012 meeting was called to order by  
9 Dr. Alviso at 9:02 a.m. All members were present, with the exception of Dr. Jewell, and a  
10 quorum was established. Also present at the meeting were Laura Freedman, Legal Counsel;  
11 Rebecca Marco, Executive Officer; and, other Board staff, including Sarah Conley, Liz  
12 Constancio, Sophia Cornejo, Jason Kaiser, Monny Martin and Elsa Ybarra.

13

### 14 **2. Closed Session**

15

#### 16 **(A) Pursuant to Government Code Section 11126(c)(3) 17 Deliberation on Disciplinary Actions**

18

19 The Board convened in closed session to deliberate on disciplinary actions pursuant to  
20 Government Code section 11126(c)(3).

21

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

23

#### 24 **(B) Pursuant to Government Code section 11126(e) 25 US Equal Employment Opportunity Commission (EEOC) Charge 26 Number: 555-2012-00027**

27

#### 28 **(C) Pursuant to Government Code section 11126(a)(1) 29 Appointment, Employment, Evaluation of Executive Officer**

30

#### 31 **(D) Pursuant to Government Code section 11126(c)(1) 32 Discussion of California Law Exam (CLE) Security Concerns if CLE Used as 33 a Component of the Continuing Competency Program and to Prepare, 34 Approve, Grade or Administer the CLE**

1  
2 **3. Approval of Meeting Minutes**

3  
4 **(B) May 9 & 10, 2012**

5  
6 The Board made the following changes to the minutes:

7  
8 Page 16, Line 5-6

9  
10 *MOTION: To table the Uniform Standards until the ~~August~~ next meeting and direct staff to*  
11 *make the changes to the Guidelines.*

12  
13 **MOTION: To adopt the draft May 9 & 10, 2012 meeting minutes as amended.**

14  
15 **MOVED: Dr. Takii**

16  
17 **SECOND: Mr. Turner**

18  
19 **VOTE: 5-0 Motion carried**

20  
21 **(C) May 30, 2012**

22  
23 The Board made the following changes to the minutes:

24  
25 Page 24, Line 29

26  
27 *MOTION: To postpone Strategic Planning ~~until the next meeting~~ for a future meeting when all*  
28 *members are sure to be in attendance.*

29  
30 **MOTION: To adopt the draft May 30, 2012 meeting minutes as amended.**

31  
32 **MOVED: Dr. Takii**

33  
34 **SECOND: Ms. Wallisch**

35  
36 **VOTE: 5-0 Motion carried**

37  
38 **4. President's Report – Dr. Debra Alviso**

39  
40 **(A) 2012/2013 Meeting Calendar**

41  
42 Dr. Alviso reported that on May 21<sup>st</sup> she and Ms. Marco met with Denise Brown, DCA Director,  
43 and then with Le Ondra Clark, Senate Business, Professions and Economic Development  
44 (BP&ED) Committee Consultant to introduce themselves and hopefully establish open lines of  
45 communication.

46  
47 The Board rescheduled the October 25<sup>th</sup> and 26<sup>th</sup> meeting to November 7<sup>th</sup> and 8<sup>th</sup> and added  
48 November 6<sup>th</sup> for strategic planning. Additionally, the Board changed the meeting location  
49 from Newark to Sacramento as a cost-saving measure, and to allow staff as well as DCA  
50 Strategic Planning facilitators to participate in strategic planning.

1           **MOTION:     To add strategic planning to the next meeting and reschedule for**  
2                           **November 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> and move the location to Sacramento.**

3  
4           **MOVED:     Dr. Takii**

5  
6           **SECOND:    Dr. Chu**

7  
8           **VOTE:       5-0 Motion carried**

9  
10          The Board reviewed the proposed 2013 meeting calendar for any potential conflicts. Ms.  
11          Marco requested, as a cost-saving measure, the Board consider moving one of the meetings  
12          planned for Southern California to Sacramento. The Board agreed to hold the February  
13          meeting in Sacramento instead of at Chapman University.

14  
15          **MOTION:     To adopt the proposed 2013 meeting calendar as amended.**

16  
17          **MOVED:     Mr. Turner**

18  
19          **SECOND:    Dr. Chu**

20  
21          **VOTE:       5-0 Motion carried**

22  
23          **5.     Executive Officer's Report – Rebecca Marco**

24  
25          Ms. Marco reported she received direction from G.V. Ayers, Business, Professions and  
26          Economic Development (BP&ED) Committee Consultant, that the Board should complete an  
27          addendum to the original Sunset report submitted last November. The addendum should  
28          address any changes to data and issues since the submission of the report. Ms. Marco  
29          requested the assistance of a Board member to work with staff on completing the Sunset  
30          report addendum. Ms. Wallisch volunteered to assist; however, also indicated she will be  
31          unavailable from September 20<sup>th</sup> until October 9<sup>th</sup>. Dr. Alviso volunteered to be back-up and to  
32          conduct the final review. The Board and staff agreed that the other members, if they have any  
33          recommendations, can e-mail them to Ms. Marco by September 1<sup>st</sup>. Ms. Marco explained the  
34          report is due November 1<sup>st</sup>; however, the BP&ED Committee granted an extension to  
35          December 1<sup>st</sup> so the Board can review its addendum at the November meeting.

36  
37          Ms. Marco applauded Korey Landry for her exceptional work with the Outreach Program. Staff  
38          has completed its work on the newsletter and it is currently with the DCA Publications, Design  
39          and Editing Office. This newsletter will be distributed and made available in electronic format  
40          only. Ms. Marco informed the Board of the successful WebEx with Kaiser and indicated staff  
41          hopes to do similar outreach activities in the future.

42  
43          Ms. Marco provided an update on the status of Practice Issues stating staff has been working  
44          with Dr. Jewell and compiling resources to provide licensees. Ms. Wallisch questioned how  
45          other boards address practice issue questions. Ms. Freedman advised, in her experience, it  
46          depends on how significant an issue is, whether it is frequently a disciplinary issue and the  
47          resources the board wishes to put toward the issues. Many boards had a Practice Issue  
48          Committee; however, due to the increased number of potential underground regulations,  
49          boards have since ceased this practice. Ms. Freedman explained Board staff can advise a  
50          single person on a specific issue with specific application; however, even that can be  
51          problematic if the question is legal in nature or would require an expert in the profession.

1  
2 Dr. Chu expressed his concern with the issues preventing the Board from providing guidance  
3 to licensees regarding the practice. Dr. Alviso suggested the Board's discussion of practice  
4 issues is not dead; the Board will continue to address the matter as needed.

5  
6 Ms. Marco added that even after consulting with Dr. Jewell and gaining insight into some of the  
7 inquiries, staff did not obtain answers to the questions, which leads back to the issue of  
8 resources.

9  
10 The Board agreed to allow staff to continue its work on this issue and will address it again at a  
11 future meeting.

### 12 13 **(A) Bureau of State Audits' Findings of Board Audits**

14  
15 Ms. Marco shared the outcome of the audit was favorable and informed the Board of the three  
16 Bureau of State Audits'(BSA) recommendations to the Board, which included: 1) explore the  
17 feasibility of establishing a state position to perform the duties of the expert in-house  
18 consultant at a reduced cost; 2) develop a means to formally evaluate its expert consultants;  
19 and, 3) Notify the Department of Consumer Affairs' filing officer when board members are  
20 appointed or intend to leave office. Staff and the Board President developed responses to the  
21 recommendations prior to the release of the audit report; therefore, the recommendations have  
22 already been addressed with the exception of exploring the feasibility of a state-employed  
23 expert consultant. Ms. Marco explained staff is currently in the process of exploring the  
24 potential cost savings of using a state-employed in-house expert consultant, but has  
25 completed its research on establishing a new position for an in-house expert consultant.  
26 Establishing a new state position that would require all the necessary qualifications to meet the  
27 Board's needs is a very extensive process and requires concurrence of multiple agencies; this  
28 has been expressed to the BSA.

29  
30 Ms. Marco informed the Board it is required to submit follow-up reports to the BSA at sixty  
31 days, six months and one year following the release of the report. The Board determined it  
32 would be appropriate for staff to prepare each follow-up report and for the Board President to  
33 conduct the final review of each report on behalf of the Board.

34  
35 Dr. Takii inquired what the cost is to the Board for the audit. Ms. Marco explained the initial  
36 quote was \$188,000. The BSA was paid through the State's General Fund and the Board is  
37 responsible for reimbursing the State for that amount, which will be done over two fiscal years.

38  
39 Mr. Turner confirmed this was the Board's first audit since established.

### 40 41 **6. Administrative Services Report – Liz Constancio**

42  
43 Ms. Constancio presented the budget report addressing information current as of June 30,  
44 2012 and explained this is the last month of the fiscal year; however, there is what is referred  
45 to as a "Month 13" report that includes all expenditures recorded during the last month of the  
46 fiscal year. Additionally, Ms. Constancio reported a one percent reversion, or unspent  
47 monies, of the Board's budget that will go to the Board's fund.

48  
49 Mr. Turner questioned why the temporary help line item was so greatly over expended. Ms.  
50 Constancio explained the Board relies heavily on temporary help; therefore, though the  
51 temporary help line item allotment is over expended, cost savings have been identified in other

1 line items of the budget to enable the Board to continue to fund these positions.

2  
3 Dr. Chu inquired why the cost of fingerprinting is so low in comparison to the amount  
4 budgeted. Ms. Constancio explained that though these costs are a budget allotment, the  
5 Board is reimbursed, so there is actually no cost to the Board. Ms. Wallisch questioned why  
6 the exam contract expenditure was far below the allotted amount, which the Board's Budget  
7 Analyst, Carl Nelson, explained it is due to the Board not having a contract in place with the  
8 Federation of State Boards of Physical Therapy; without a contract, the Board cannot spend  
9 the money allotted for that item. Moreover, unspent exam monies are disencumbered, or  
10 returned, at the end of the fiscal year, so the percent of the budget spent is zero.

11  
12 Mr. Turner complemented Ms. Constancio on the budget line item definitions she provided.

13  
14 Ms. Marco added staff is reviewing the budget line-by-line to identify all possible cost-saving  
15 opportunities to address the Board's oversight agencies' concerns with the Board's budget  
16 deficiency last fiscal year, which was due to: 1) the amount spent on temporary help and 2) the  
17 over-expenditure of the Attorney General line item.

18  
19 Dr. Chu inquired about the status of the repayment of the loan to the State's General Fund.  
20 Ms. Constancio explained the State will not repay the loan until the Board's fund is insolvent.  
21 Ms. Marco added the Board's current fund condition does not reflect the audit expense or  
22 funding for BreEZe.

23  
24 Ms. Marco inquired whether the Board wished to appoint a member to assist staff with the  
25 budget revisions. Mr. Turner volunteered to assist.

## 26 27 **7. Application & Licensing Services Report – Liz Constancio**

28  
29 Dr. Alviso questioned whether the applications have been received at the same rate with fixed-  
30 date testing as they were with continuous testing. Ms. Constancio explained the number of  
31 received applications is reliant upon school graduation dates, so although there are been some  
32 change in the pattern, there is still a fairly consistent intake flow.

33  
34 Dr. Alviso inquired about the increase of Inactive status licenses. Mr. Kaiser, prior Application  
35 and Licensing Services Manager, explained Inactive status was not offered prior to the  
36 Continuing Competency requirement; therefore, the number of licensees with Inactive status  
37 will increase each month until the completion of a full two-year renewal cycle with the  
38 Continuing Competency requirement. Once all licensees have been subject to the Continuing  
39 Competency requirement, the number of Inactive status licensees should begin to stabilize.

40  
41 Dr. Takii requested staff provide statistics in the report on the number of foreign trained  
42 physical therapists who opt to apply for a physical therapist assistant license. Ms. Marco  
43 explained this is something staff is currently looking into; however, this type of data collection  
44 can only be done manually, so it will take some work. Mr. Kaiser added there are only two  
45 foreign physical therapist assistant programs, so the assumption is most foreign trained  
46 applicants that apply for a physical therapist assistant license were trained as a physical  
47 therapist. Moreover, to identify why the applicant made that decision would require staff  
48 contacting each applicant.

49  
50 Mr. Turner questioned what data is used to show the national average of a jurisdictional, or  
51 state exam. Sophia Cornejo, Application and Licensing Services Lead, explained the data

1 reflects other states' exams, for the states who offer a jurisdictional exam.

2  
3 **8. Consumer Protection Services Enforcement Report – Jason Kaiser**

4  
5 **(A) Performance Measures**

6  
7 Ms. Ybarra reported staff is meeting the Board's goals in areas staff has control over; staff  
8 cannot control formal discipline timelines.

9  
10 **(B) Disciplinary Summary**

11  
12 There was no Board discussion on this item.

13  
14 **9. Continuing Competency Report – Jason Kaiser**

15  
16 Mr. Kaiser reported staff has been redirected from the Continuing Competency program to the  
17 Application and Licensing Services program leaving 1.5 positions in the unit. This loss of staff  
18 is limiting the progress of the Continuing Competency audits. Dr. Alviso questioned whether  
19 staff would consider reducing the sample size due to the increased compliance rate. Mr.  
20 Kaiser explained he has considered that; however, any change in the program would be best  
21 applied at the beginning of a new audit quarter. Dr. Takii requested clarification on the audit  
22 process since there seems to be quite a reduction in failed audits and enforcement cases  
23 based upon a failed audit. Mr. Kaiser explained due to reassessing the audit process and now  
24 allowing licensees to come into compliance rather than directly being sent to the Consumer  
25 Protection Services program, there has been a reduction in the number of failed audits and in  
26 the number of enforcement cases based on failed audits.

27  
28 Dr. Chu commended Mr. Kaiser for getting the Record Compliance Template (RTC) out and  
29 getting responses from all but three agencies. Mr. Kaiser noted those three agencies may  
30 have to come before the Board to have their recognition removed. Additionally, Mr. Kaiser  
31 noted there are two purposes for the RTC: 1) to stay in contact with the approval agencies and  
32 be informed of the courses they are approving, and 2) to provide Board analysts a resource to  
33 verify the certificates licensees are submitting are for valid courses. Compiling the RTCs took  
34 approximately six months.

35  
36 Ms. Takii requested further information on approval agencies who are also course providers.  
37 Mr. Kaiser explained there are three ways an approval agency and course providers may  
38 interact: 1) an approval agency does not provide any courses, only approves providers; 2) an  
39 approval agency provides its own courses, but also approves outside providers; and, 3) an  
40 approval agency that only approves its own courses. If an approval agency is also a course  
41 provider, it must have a policy in place stating the courses offered are held to the same  
42 standards as those approved for outside providers.

43  
44 **10. Consumer and Professional Associations and Intergovernmental Relations**  
45 **Report**

46  
47 **(A) Department of Consumer Affairs (DCA) – Reichel Everhart**

48  
49 Ms. Everhart, DCA Deputy Director of Board Relations, reported the DCA is focusing on the  
50 regulatory packages for the Sponsored Free Health Care Events and SB 1441 encouraging  
51 boards to move forward with both. The DCA is also looking at teleconferencing to reach out to

1 those who cannot physically attend meetings. Ms. Wallisch inquired what the DCA can offer  
2 for individuals with hearing impairments. Ms. Everhart shared the DCA has a Communications  
3 unit that may have options for individuals who may need accommodations and if more boards  
4 are interested in holding teleconferences, the DCA can look into what technology is available.  
5

6 **(B) California Physical Therapy Association (CPTA)**  
7

8 Ms. DeFoe, CPTA Executive Director, informed the Board SB 924 is scheduled for hearing  
9 August 8<sup>th</sup> at 9:00 a.m. by the Assembly Appropriations Committee. If the bill passes, the next  
10 stop would be Assembly Floor and then it would go to the Governor.  
11

12 **(C) Federation of State Boards of Physical Therapy (FSBPT)**  
13

14 Dr. Alviso informed the other members the motions for the Delegate Assembly will be  
15 available August 10<sup>th</sup>. Dr. Alviso noted since the Board is unable to attend the Delegate  
16 Assembly due to travel restrictions, the FSBPT welcomes the Board's input on the motions  
17 prior to the meeting.  
18

19 **11. Legislation Report on Relevant 2011/2012 Bills with Staff Recommendations to**  
20 **Board – Sarah Conley**  
21

22 Ms. Conley provided the Board with an update on AB 2570, SB 924, SB 1237 and SB 1374 in  
23 a new reporting format which provided a flow chart of each bill location as well as narrative on  
24 existing law and how a bill will change the existing law. AB 2570 would prohibit a licensee  
25 from including in a civil settlement a "gag order" and Ms. Conley recommended a Support  
26 position. SB 924 was addressed by Ms. DeFoe under agenda item #10(B). SB 1237, as  
27 amended June 15, 2012, extends the Board's sunset date until January 1, 2014 in addition to  
28 other provisions unrelated to physical therapy. Since the Board's sunset date extension  
29 language was added and hearings took place between meetings, Dr. Alviso took an interim  
30 Support position, which Ms. Conley recommended the Board ratify. SB 1374 failed to pass the  
31 Senate Judiciary Committee, so it is dead. The Board took an Oppose position on SB 1374 at  
32 the May 2012 meeting.  
33

34 Ms. Wallisch suggested Board staff meet with Senate BP&ED Committee staff regarding the  
35 Board's proposed Practice Act after the end of this session. The Committee's  
36 recommendations may provide the Board with some direction as to what proposed changes it  
37 should reconsider.  
38

39 **MOTION: To adopt a Support position as recommended by staff on AB 2570**  
40 **and ratify the interim Support position taken by the Board President**  
41 **on SB 1237.**  
42

43 **MOVED: Ms. Wallisch**  
44

45 **SECOND: Mr. Turner**  
46

47 **VOTE: 5-0 Motion carried**  
48

49 **12. Special Order of Business – August 2, 2012 9:00 a.m.**  
50 **Hearing on Petition for Reinstatement – Anthony del Zompo**  
51

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

4  
5 **13. DCA BreEZe Presentation – Sean O'Connor, BreEZe Business Project Manager**

6  
7 Mr. O'Connor delivered a presentation on the status of the BreEZe project and provided  
8 examples of what consumers and licensees will encounter when using the public or front-end  
9 interface of BreEZe.

10  
11 **14. 2012 Rulemaking Calendar Update– Sarah Conley**

12  
13 Ms. Conley presented a new rulemaking reporting format and provided a brief explanation of  
14 the rulemaking process. One issue identified in the flow chart presented was there was only  
15 one section for Board approval, which actually occurs at two points in the process: 1) Board  
16 approves for initial filing with the Office of Administrative Law (OAL) to notice the proposed  
17 regulatory change, and 2) Board approves final language to file with OAL. Ms. Conley noted  
18 the Board's concern and will edit the flow chart accordingly. Ms. Conley will also add process  
19 notes, such as specific deadlines and Board identified priorities of each rulemaking item to the  
20 report.

21  
22 **15. Required E-mail Filing Draft Regulatory Language for Board Consideration and**  
23 **Possible Action for Section 1398.6 of Division 13.2 of Title 16 of the California**  
24 **Code of Regulations – Sarah Conley**

25  
26 Ms. Conley presented proposed draft language for CCR section 1398.6, Required E-mail  
27 Filing, and explained though the Board approved the language to notice and schedule a  
28 hearing for this meeting, staff identified applicants were omitted in the language; therefore,  
29 staff brought it back for Board consideration. The Initial Statement of Reasons and the Notice  
30 of Regulatory Change were also included for Board consideration. Dr. Alviso expressed  
31 concern that in the Initial Statement of Reasons the reason the newsletter is inadequate – out  
32 dated information – is not clear and questioned whether the Board is required to issue a  
33 newsletter. Ms. Conley noted Dr. Alviso's concern regarding the reason the newsletter is an  
34 inadequate method if disseminating information and will amend the Initial Statement of  
35 Reasons accordingly, and will verify whether the Board is or is not required to issue a  
36 newsletter. Ms. Freedman suggested, if it is the Board's intent, the requirement for each  
37 change of address, name and e-mail may be in writing.

38  
39 **MOTION: To adopt presented language as amended to include applicants and**  
40 **to add language indicating all reporting must be submitted in writing,**  
41 **and direct staff to initiate the rulemaking process by filing the Notice**  
42 **of Regulatory Change to be published by OAL.**

43  
44 **MOVED: Dr. Chu**

45  
46 **SECOND: Dr. Takii**

47  
48 **VOTE: 5-0 Motion carried**

49  
50 **16. Modified Text for Board Consideration and Possible Action for Guidelines for**  
51 **Issuing Citations and Imposing Discipline, Section 1399.15 of Division 13.2 of**

1           **Title 16 of the California Code of Regulations – Elsa Ybarra**

2  
3 Ms. Ybarra presented revised probationary conditions of supervision (A) & (F). Staff  
4 determined that the previously proposed language was too broad and lacked clarity; therefore,  
5 presented revised proposed language on the two probationary conditions. The revised  
6 language clarifies the supervision requirements for probation and also includes specific  
7 requirements of the supervisor. The supervision requirement was further defined by three  
8 levels of supervision 1) full presence and documentation review required 2) limited presence  
9 and documentation review required and 3) No supervision required and document review  
10 required as determined necessary.

11  
12 Mr. Turner requested clarification of full presence supervision because the term as presented  
13 does not require the supervisor to be in the same treatment room. Dr. Alviso explained this is  
14 highest level of supervision without having a third party present while treating. Mr. Turner, Ms.  
15 Wallisch and Dr. Takii continued to express concern using the term “instantly” and  
16 recommended term replaced with “immediate” presence.

17  
18 The Board did not make any amendments to the second level of supervision - *Limited*  
19 *Presence/Documentation Review* or the third level of supervision – *No*  
20 *Presence/Documentation Review As Determined*.

21  
22 Ms. Marco explained the purpose of adding the “Note” is to provide direction to the Deputy  
23 Attorney General (DAG) and/or Administrative Law Judge (ALJ) that the supervision term may  
24 be written as needed to allow modification of the probationer’s level of supervision at the  
25 Executive Officer’s discretion. Ms. Freedman requested clarification whether the “Note” was  
26 intended to grant the Executive Officer the discretion to modify a probationer’s level of  
27 supervision or that the “Note” itself be added to the Order. Mr. Martin and Ms. Ybarra  
28 responded the intent of the “Note” is that it be added to the Order and that the modification  
29 would have to be earned, not written in a way such that the supervision level was reduced  
30 automatically after a specified period of time.

31  
32 Ms. Freedman explained that in order for the Executive Officer to have the authority to modify  
33 the level of supervision, it would have to be expressly indicated in the Order and therefore  
34 recommended replacing the “Note” with the language from current “Optional” condition to  
35 reflect the discretion to reduce the level of supervision.

36  
37           **MOTION:**       **To adopt the amended Disciplinary Guidelines language as proposed**  
38                               **by staff with legal counsel’s recommendations and direct staff to**  
39                               **proceed with the 15-day notice of modified language, and, if there are**  
40                               **no adverse comments, delegate authority to the Executive Officer to**  
41                               **adopt the revisions and to make any non-substantive changes**  
42                               **recommended by the DCA and/or the OAL.**

43  
44           **MOVED:**       **Dr. Chu**

45  
46           **SECOND:**     **Dr. Takii**

47  
48           **VOTE:**       **5-0 Motion carried**

49  
50       **17. Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (SB**  
51       **1441) Language for Board Consideration and Possible Action for Section**

1           **Number(s) to be Determined of Division 13.2 of Title 16 of the California Code of**  
2           **Regulations – Elsa Ybarra**

3  
4 Ms. Freedman explained Legislative Counsel, Attorney General’s Office and the DCA opine  
5 the boards do not have discretion to modify the Uniform Standards, and they shall be applied,  
6 as written, to all licensees identified to be a substance-abusing licensee with no deviations by  
7 the Administrative Law Judge (ALJ) or by the Board.  
8

9 Ms. Freedman advised the caveat to this mandate is that there is no classic definition of a  
10 “substance-abusing licensee;” therefore, the DCA Legal Office developed three versions of  
11 regulatory language which may be adopted by the Board to implement the Uniform Standards  
12 as directed. Option 1 would apply a rebuttable presumption that a licensee is a substance-  
13 abusing licensee if convicted of drug or alcohol offense. In Options 2 & 3, if a licensee is  
14 deemed a substance-abusing licensee, the licensee is still subject to the Uniform Standards as  
15 written; however, how the licensee is determined to be a substance-abusing licensee varies.  
16 Option 2 identifies the expert to be the clinical diagnostician and whether a licensee is a  
17 substance-abusing licensee is dependent upon the clinical diagnostic evaluation. Option 3  
18 places the burden fully on the Board to determine whether a licensee is a substance-abusing  
19 licensee. Ms. Freedman informed the Board she is looking into whether a hearing is required  
20 as part of Option 3, or if settlement is an option.  
21

22 Dr. Chu questioned whether the potential for litigation is based upon the determinations made  
23 to identify the licensee as a substance-abusing licensee. Ms. Freedman explained how these  
24 standards are being applied is new, so there is no comparison to determine the chance for  
25 litigation. Ms. Marco shared these terms are currently being applied and they are required by  
26 Maximus, so the Uniform Standards themselves are not a major departure from what is  
27 currently applied.  
28

29 The Board requested a cost-comparison of all options, input from the Board’s Deputy Attorney  
30 General liaison, and information on how these options would impact enforcement case  
31 documentation and timelines for the next meeting.  
32

33           **18. Notice to Consumers Draft Regulatory Language for Board Consideration and**  
34           **Possible Action for Section Number(s) to be Determined of Division 13.2 of Title**  
35           **16 of the California Code of Regulations – Sarah Conley**  
36

37 Ms. Conley presented proposed draft language for CCR 1398.14, Notice to Consumers, and  
38 explained that though the Board approved the language to notice and schedule a hearing for  
39 this meeting, staff identified that the approved language included both a description of the  
40 required posting information as well as a prescribed form when only one method should be  
41 used; therefore, staff brought it back for Board consideration. Moreover, the Board was  
42 presented with a rulemaking request from a member of the public at the May 2012 meeting  
43 that identified a number of issues the Board could potential address through this regulatory  
44 change proposal. The Initial Statement of Reasons and the Notice of Regulatory Change were  
45 also included for Board consideration.  
46

47 Dr. Chu noted many of the issues presented in agenda item #19 are addressed on the Board’s  
48 website.  
49

50 Staff presented an updated notice with the intent of making it more appealing for consumer  
51 consumption as well as addressing the concerns identified in agenda item #19. The Board,

1 with the assistance of Legal Counsel, made various edits to the notice and the proposed  
2 regulatory language.

3  
4 Legal Counsel recommended the Board give the notice a form number and incorporate the  
5 notice by reference.

6  
7 **MOTION:** To approve the proposed regulatory language as amended and direct  
8 staff to initiate the rulemaking process by filing the Notice of  
9 Regulatory Change to be published by OAL and delegate authority to  
10 the Executive Officer to make any non-substantive edits to the form  
11 required by this proposed section.

12  
13 **MOVED:** Dr. Chu

14  
15 **SECOND:** Ms. Wallisch

16  
17 **VOTE:** 5-0 Motion carried

18  
19 **19. Board Consideration of Public Request for Regulatory Action Regarding**  
20 **Notification to Patient of Responsible Care Provider Pursuant to Government**  
21 **Code section 11340.7**

22  
23 Minutes for agenda items 18 and 19 have been combined; see agenda item 18.

24  
25 **20. Board Consideration of Continuing Competency Alternate Pathway**  
26 **(A) Presentation by Jason Tonley, PT, DPT, OCS, from the American Board of**  
27 **Physical Therapy Residency and Fellowship Education (ABPTRFE)**  
28 **(B) Staff Comments**

29  
30 Dr. Tonley, PT, DPT, OCS, delivered a presentation on fellowship and residency programs,  
31 and proposed adding participation in these programs as an alternate pathway to obtain  
32 continuing competency credit in California.

33  
34 Dr. Alviso informed Dr. Tonley that if the Board chose to accept his proposal, it would have to  
35 be implemented through regulation. Existing continuing competency regulations are not  
36 scheduled to be revised until a later date. Mr. Kaiser projected early 2014 would be the  
37 earliest opportunity for the continuing competency regulations to be revised due to the status  
38 of the audits. The Board directed staff to make note of Dr. Tonley's proposal for future  
39 consideration.

40  
41 **21. Adoption of Precedential Decision**  
42 **Ernest Sluder, PT**  
43 **PTBC Case Numbers ID 2008 66674 and 1D 2001 68256**

44  
45 Ms. Freedman explained the process and purpose of adopting precedential decisions. A  
46 precedential decision is a noticed, controlling factor for regulated individuals, such as  
47 regulation; however, precedential decisions are exempt from the traditional rulemaking  
48 process. The Board has the authority to designate a decision, or portions thereof, as  
49 precedential. The Board must maintain an index of all precedential decisions and file the index  
50 annually with the Office of Administrative Law (OAL).

1 Ms. Marco explained the decision imposed on Ernest Sluder, for case numbers 1D 2008  
2 66674 and 1D 2010 68256, would establish a general application that poor judgment outside  
3 the practice of physical therapy relates to judgment in the practice of physical therapy. Ms.  
4 Freedman shared her experience with the Personnel Board is that it uses precedential  
5 decisions as a guideline, or legal principal.  
6

7 **MOTION: To adopt Decision imposed on Ernest Sluder for case numbers 1D**  
8 **2008 66674 and 1D 2010 68256 as precedential and to direct staff**  
9 **proceed with the notice and filing process.**

10  
11 **MOVED: Dr. Chu**

12  
13 **SECOND: Dr. Takii**

14  
15 **VOTE: 4-0, 1 Abstention**  
16 **Motion carried**  
17

## 18 **22. Public Comment on Items Not on the Agenda**

19  
20 Lauren Macnaughton, PT, explained she works in home health and requested the Board clarify  
21 whether the comprehensive assessment, which includes a medication regimen review,  
22 required by Medicare is in a physical therapist's scope of practice. She went on to say  
23 medication reviews are a necessary part of the required assessment, but currently completing  
24 this review is in conflict with how California law is being interpreted by the Board. Ms.  
25 Macnaughton informed the Board, in home health, a physical therapist identifies whether  
26 problems exist with a patient's medications, and if they do, then the physical therapist refers  
27 the patient to appropriate health care provider. Ms. Macnaughton requested this issue be  
28 added to future agenda.  
29

30 Dr. Byl also requested the Board reconsider whether medication regimen reviews are within a  
31 physical therapist's scope of practice. Dr. Byl agreed with the overall response initially  
32 provided by Board staff, but expressed she is concerned it further limits current scope of  
33 practice. Dr. Byl explained the consequences of physical therapists not performing the  
34 comprehensive assessment are: 1) lower quality of care for Medicare and home health  
35 patients, and 2) physical therapists won't be able to provide care as an independent care  
36 provider in these cases.  
37

38 The Board expressed interest in collecting additional information and directed staff to add this  
39 topic to the next meeting agenda. Ms. Freedman clarified the Board's options in adding this  
40 item to the agenda is ultimately going to be either 1) requesting a legal opinion, or 2) drafting  
41 regulations – both would require significant use of Board resources.  
42

## 43 **23. Agenda Items for Next Meeting – Sacramento, CA**

44  
45 Dr. Takii will provide staff with a list of items she collected throughout the meeting, and staff  
46 will review the minutes.  
47

## 48 **24. Adjournment**

49  
50 The meeting was adjourned at 4:06 p.m. on Thursday, August 2, 2012.

**Physical Therapy Board  
Adopted 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					
													1																			
			1	2	3	4	2	3	4	5	6	7	8		1	2	3	4	5	6					1	2	3					
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 – Sacramento, CA  
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

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



### AGENDA ITEM #8

**DATE:** October 22, 2012

**TO:** Physical Therapy Board of California (Board)

**SUBJECT:** EXECUTIVE OFFICER'S REPORT

This report is to update you on the current status of the Board's operations.

### ADMINISTRATION

**AUDIT** – The Board submitted the 60 day response to the Bureau of State Audits in August. The auditors had concern with use of the Expert Consultant Evaluative Tool for the in-house Expert Consultant; therefore, staff has made adjustments to the tool for the specific use of evaluating the in-house Expert Consultant. Also, Board staff will be meeting with DCA Personnel staff to discuss the process and feasibility of establishing a civil service position for the in-house Expert Consultant. The six-month report is due to the Bureau of State Audits on December 26, 2012.

**BUDGET/PERSONNEL** – The Board has two distinct deficiencies within its operation: 1) staffing and 2) AG budget.

As you know, last fiscal year the Board submitted a deficiency request to the Department of Finance for augmenting the Attorney General (AG) budget by \$150,000. As a result, State and Consumer Services Agency (Agency) asked for a Corrective Action Plan (CAP) to ensure the Board would not be in the same situation again this year (Agenda item 7, Attachment F – May 9 & 10, 2012 meeting). The CAP identified solutions to prevent the Board from future deficiency 1) Budget Adjustments – (reallocating resources from Operating Expenses to Personnel Services); 2) Zero Base Budgeting - (identifying inefficiencies within individual program line items and align budget authority appropriately); and, 3) Budget Change Proposal (BCP) - (to augment the AG line item and to redirect funds from temp help to authorized positions). Board staff was successful in reallocating \$150,000 from Operating Expenses to the Personnel Services/Temp Help and has been working on BCP's to address the staffing authority and increase in budget; however, since BCPs are part of the Governor's budget and are confidential they cannot be discussed.

By placing caps on expenditures in operating expenses, staff was able to identify \$137,000 to reallocate to AG costs, added to its existing budget of \$285,668 affords the Board a spending authority of \$422,667; however, if monthly billings continue to average \$45,000, this still is not

enough. To date (July - September), the Board has received over \$139,000 in invoices from the AG, almost one half of its \$285,668 budget.

The Board rec'd 1812 complaints last fiscal year, in addition to the 300 plus pending complaints. The Board's Consumer Protection program then had 8.2 staff but now is reduced to only 4.7 staff. This means each staff person will be responsible for processing and maintaining a workload of approximately 500 cases over the course of the year. This is fundamentally impossible.

However, because of the Board's impending budget deficit, DCA will not support the Board employing additional staff even if it weren't already frowned upon for the 2.8 temporary staff the Board currently employs; and for the over expenditure on four positions, equaling 1.3 PY's.

We have moved every temporary staff person possible into authorized positions as the positions come available causing a significant decrease in staffing. Additionally we have lost the 3.5 CPEI positions, the 1 Office Technician position designated for Continuing Comp, the .5 Special Investigator position and the 2 Student Assistants. Unfortunately, with these losses and the 8 hours monthly furlough, staff is stretched really thin and resources have become extremely limited.

DCA suggests the number of temporary help employed by the Board contributes to the Board's budget shortfalls. While they are correct, without them the Board also wouldn't be able to process the large number of complaints received nor meet its performance measures. In any event, the Board is going to be in deficiency again unless it slows its enforcement program down which is contrary to its mandate.

This will be discussed more in depth under agenda item #9(A).

#### **LEGISLATION AND REGULATION –**

The Board President, Debra Alviso, staff and I met with Senate Business, Professions and Economic Development Committee (Committee) staff, Le Ondra Clark and Bill Gage on Friday, October 19, 2012 to discuss Section 11 – “New Issues” of the 2012 Sunset Report. We explained the Board itself has not yet reviewed or adopted the changes made by staff to this section since the Board adopted the 2011 Sunset report (report). However, staff proposes to submit a completely new section 11 with the 2012 addendum to the report since the proposals in the 2011 report have either been incorporated into the Proposed Practice Act or are no longer an issue. Therefore, the issues have been narrowed down to the following:

#### **ISSUE #1: REVISIONS TO THE PRACTICE ACT IN ITS ENTIRETY**

We advised Committee staff that the Board created a task force in 2004 to address the practice act for currency and relevance to the practice of physical therapy in the 21<sup>st</sup> century and that it's structured and organized to be consumer user friendly. We also advised on the Board's unsuccessful attempts in finding an author to introduce the revisions to the Act. They

were receptive to assisting with locating an author but expressed concern with support of the profession. I assured them the California Physical Therapy Association (CPTA) representatives served and participated in the task force but I would meet with them to confirm their position. They did indicate that because of the volume and content it would be inappropriate to introduce the bill in its entirety in the Sunset Bill but suggested it be broken into three 1) scope (carried by an author located by CPTA); 2) controversial issues (own bill); and, 3) non-controversial (Sunset bill).

#### ISSUE #2: CORPORATE PRACTICE OF PHYSICAL THERAPY

Staff suggests this issue be divided into three subsets: 1) Corporation Registration; 2) Fictitious Name Permits; and, 3) Specific statutory prohibition against General Corporations formed by lay persons practicing physical therapy. Subsets one and two would assist the Board in monitoring the practice of physical therapy by layperson owned general corporations. Committee staff was concerned with the layperson ownership issue and offered to seek a legislative counsel opinion on the subject. A more in depth discussion of this issue will take place under agenda item #17.

#### ISSUE #3: OPERATION DEFICIENCIES

The staffing shortages and AG budget deficiencies were discussed with Committee staff; and, they encouraged the Board to submit this as an issue with their Sunset report. They also directed Board staff to an addendum prepared by the Board of Registered Nursing who had similar issues. Staff is working on this and will present it at the meeting along with the Sunset Report under agenda item #17.

Overall the meeting with Committee staff was encouraging and they appeared supportive of the Board's issues.

**OUTREACH** – The summer publication of the Newsletter was released electronically last month and staff have been receiving some favorable reviews on content and the electronic transmission. Staff is beginning the collection of articles for the winter publication; therefore, if you have something to contribute please let us know. Also, the Board's website has a new face. As you may recall, in 2010 the state of California's web design won a highly prestigious award, prompting a directive to all state agencies to adopt the design. While the migration has been completed the updating of all information is still in progress.

**TRAVEL** – Travel continues to be restricted to mission critical travel; however, due to the Board's current Budget deficiencies the Board would need to restrict travel anyway. Therefore, as a further cost saving measure I am suggesting the Board consider moving its May meeting from Los Angeles to Sacramento. This would save the Board approximately \$6,000 in costs and would be consistent with the Governor's Executive Order. Additionally, the meeting is accessible via webcast and staff is currently seeking a means for audience interaction, if possible.

## **CONSUMER PROTECTION**

Due to the staffing shortages described under the Budget/Personnel heading, staff continues to prioritize cases as Urgent, High Priority and Routine and follow the guidelines set forth by the Department of Consumer Affairs Prioritization Guidelines. Unfortunately, a high volume of cases prioritized as Urgent or High Priority may prevent those cases prioritized as Routine from being processed timely. This will significantly impact the Board's Performance Measures which won't be apparent until the next quarter.

## **CONTINUING COMPETENCY**

One staff member was redirected to Licensing to minimize the staffing shortfalls in that program; therefore, it has increased the audit backlogs to 14 months.

## **LICENSING**

There have been a high volume of applications received for the October examination administrations which has caused staff to reach the maximum processing time of 30 days, as mandated. This has resulted in a high call volume preventing staff from processing applications; therefore, staff has temporarily preempted taking calls if the applicant has not allowed 30 days for processing. All other licensing calls received are returned within 48 hours. Callers have been sympathetic to the cause for implementing this process and are receptive to receiving a return phone call.

Additionally, staff has been compelled to strictly adhere to deadlines; if not, applicants who meet the deadline could be delayed and miss making eligibility deadlines set by the Federation of State Boards of Physical Therapy (FSBPT). Some programs are concerned with their students making these deadlines, especially since staff has always been able to accommodate adjusting deadlines in the past.

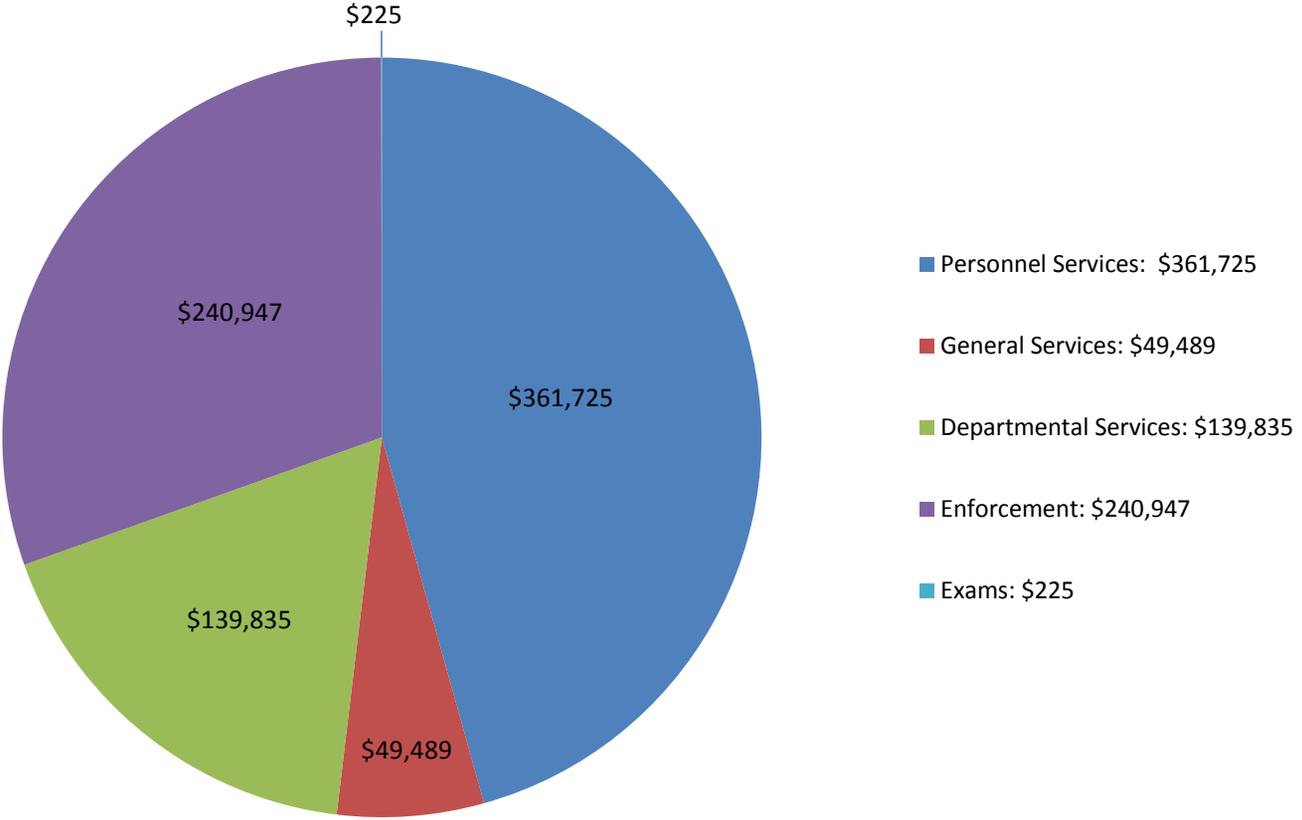
**Physical Therapy Board of California  
Budget Expenditure Report (FY 12/13)  
(As of September 30, 2012)**

Agenda Item #9(A)  
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>1,345,207</b>	<b>361,725</b>	<b>27%</b>	<b>983,482</b>
Civil Services Permanent	736,213	211,821	29%	524,392
Statutory Exempt	81,732	18,407	23%	63,325
Temp help	153,767	11,823	8%	141,944
Committee Member	11,786	2,700	23%	9,086
Overtime	0	1,453	-	-1,453
Staff Benefits	361,709	115,521	32%	246,188
<b>*TOTALS, PERSONNEL SERVICES</b>	<b>1,345,207</b>	<b>361,725</b>	<b>27%</b>	<b>983,482</b>
<b><u>Operating Expense &amp; Equipment</u></b>				
<b>General Services Totals</b>	<b>400,331</b>	<b>49,489</b>	<b>12%</b>	<b>350,842</b>
Fingerprints	99,090	4,459	4%	94,631
General Expense	5,070	2,985	59%	2,085
Minor Equipment	10,150	0	0%	10150
Printing	16,892	440	3%	16,452
Communication	4,712	1,005	21%	3,707
Postage	19,955	7,471	37%	12,484
Travel in State	28,865	915	3%	27,950
Training	7,832	0	0%	7,832
Facilities Ops	118,121	27,571	23%	90,550
C&P Services Internal	11,828	0	0%	11,828
C&P Services External	77,816	4,643	6%	73,173
<b>Departmental Services Totals</b>	<b>618,041</b>	<b>139,835</b>	<b>23%</b>	<b>478,206</b>
OIS Pro Rata	252,500	63,125	25%	189,375
Indirect Dist. Cost	135,598	33,900	25%	101,698
DOI Pro Rata	5,441	1,360	25%	4,081
Public Affairs Pro Rata	7,638	1,910	25%	5,728
CCED Pro Rata	9,774	2,444	25%	7,330
IA with OER	0	0	-	0
Interagency Services	37,136	0	0%	37,136
Consolidated Data Center	6,637	140	2%	6,497
DP Maintenance & Supplies	15,493	0	0%	15,493
Central Admin Services	147,824	36,956	25%	110,868
<b>Exams Totals</b>	<b>12,616</b>	<b>225</b>	<b>2%</b>	<b>12,391</b>
Admin and C/P Services	0	0	-	0
Exam Contracts	9,931	225	2%	9,706
Exam Subject Matter Experts	2,685	0	0%	2,685
<b>Enforcement Totals</b>	<b>944,805</b>	<b>240,947</b>	<b>26%</b>	<b>703,858</b>
Attorney General	285,668	98,857	35%	186811
Office of Admin Hearings	59,584	11,050	19%	48,534
Evidence/Witness	100,145	3,878	4%	96,267
Court Reporters	0	2,310	-	-2,310
DOI Investigation	499,408	124,852	25%	374,556
<b>*TOTALS, OE &amp; E</b>	<b>1,975,793</b>	<b>430,496</b>	<b>22%</b>	<b>1,545,297</b>
<b>**TOTALS</b>	<b>3,321,000</b>	<b>792,221</b>	<b>24%</b>	<b>2,528,779</b>

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

**Physical Therapy Board of California  
 Budget Expenditures (FY 2012/13)  
 (As of 9/30/2012)**



**Personnel Services :** Salary and Wages, Board Member Per Diem, Temp Help, Overtime, Benefits.  
**General Services :** General Expense, Fingerprint, Minor Equipment, Printing, Postage, Travel, Training, Facility Ops, C&P Services (ir  
**Departmental Services:** Pro Rata ,Interagency Services, Consolidated Data, Data Processing, Central Admin.  
**Enforcement:** Attorney General, Office of Administrative Hearing, Evidence/Witness (Expert Consultants), Court Reporter, DOI.  
**Exams:** Examination Contracts, Subject Matter Experts Contracts.

**PERSONNEL SERVICES**

Civil Services Permanent	Salary and wages of civil service - authorized permanent employees.
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).

**GENERAL SERVICES**

Fingerprints	Fingerprint Reports (i.e. DOJ - criminal history State and FBI, CORI, subsequent arrest reports).
General Expense	Office supplies, freight/drayage (FedEx), 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. printed envelopes, 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. State Training Center, colleges, external vendors).
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**

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-agency agreement) (i.e. Development of California Law Exam).
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 operating costs for Consumer Affairs System (CAS)).

DEPARTMENTAL SERVICES Continued..

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.).

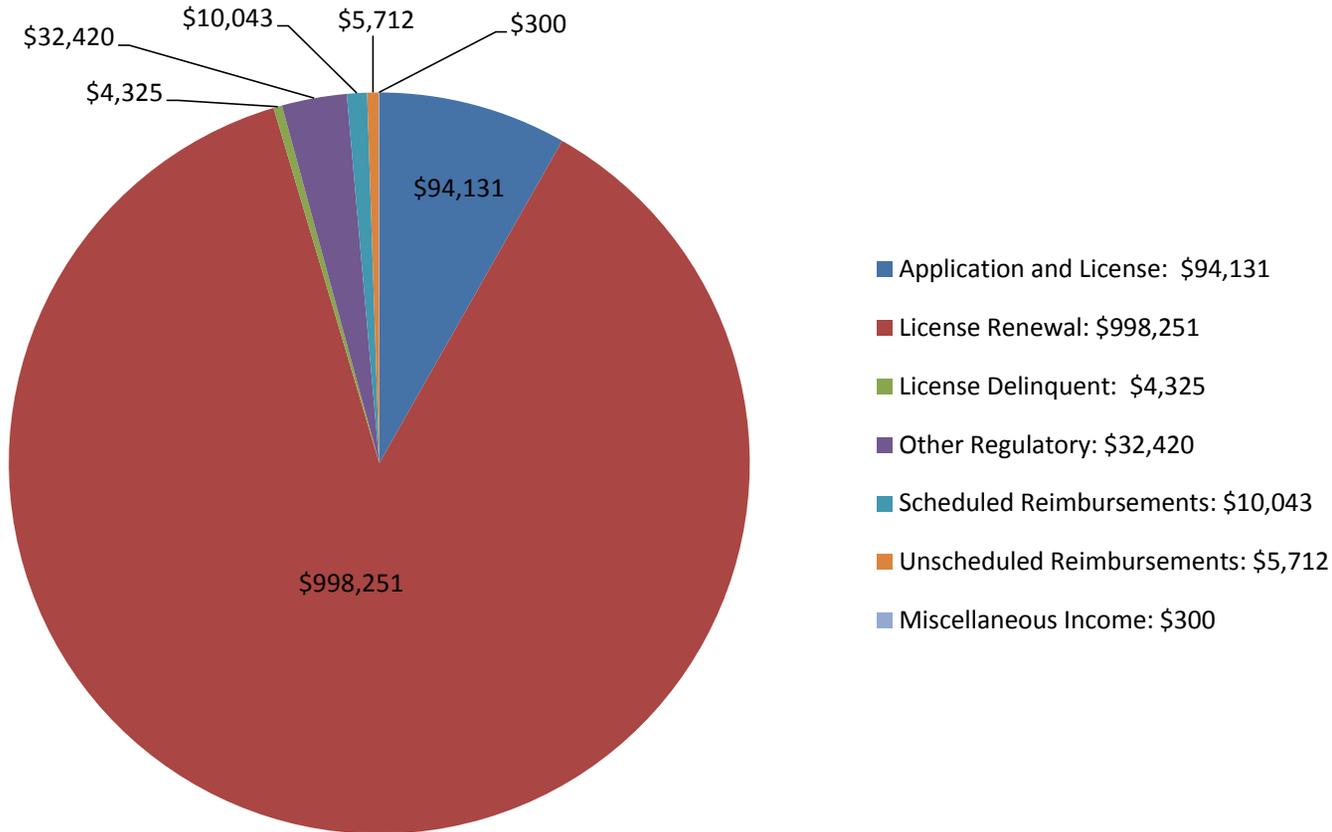
EXAMS

C/P Administrative	Consultant/Professional Services (External) (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 Services (External) (i.e. Wages for services provided by Subject Matter Experts in the oral/written examination processes, including travel).

ENFORCEMENT

Attorney General	Legal services provided by the Attorney General's Office.
Office of Admin Hearings	Services provided 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 2012/13)  
(As of 9/30/12)**



**Application and License:** Application and Initial Licensing Fees.

**License Renewal:** Licensee Renewal Fees.

**License Delinquent:** Licensee Delinquent Fees.

**Other Regulatory:** Administrative Citation Fines, Endorsement Fees, Duplicate License/Cert Fees.

**Scheduled Reimbursements:** Fingerprint reports processed through DOJ, CORI Clearance.

**Unscheduled Reimbursements:** Investigative Cost Recovery, Probation Monitoring Fees.

**Miscellaneous Income:** Investments, Unclaimed and Cancelled Warrants, Dishonored Warrants.

# 0759 - Physical Therapy Analysis of Fund Condition

Agenda Item #9(A-3)

(Dollars in Thousands)

	Month 13 *\$1.5 million GF loan outstanding		Governor's Budget		
	Acutal 2011-12	CY 2012-13	BY 2013-14	BY +1 2014-15	BY +2 2015-16
<b>BEGINNING BALANCE</b>	\$ 2,407	\$ 912	\$ 866	\$ 763	\$ 591
Prior Year Adjustment	\$ 15	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 2,422	\$ 912	\$ 866	\$ 763	\$ 591
<b>REVENUES AND TRANSFERS</b>					
Revenues:					
125600 Other regulatory fees	\$ 174	\$ 156	\$ 156	\$ 156	\$ 156
125700 Other regulatory licenses and permits	\$ 402	\$ 395	\$ 395	\$ 395	\$ 395
125800 Renewal fees	\$ 2,642	\$ 2,609	\$ 2,609	\$ 2,609	\$ 2,609
125900 Delinquent fees	\$ 19	\$ 16	\$ 16	\$ 16	\$ 16
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 6	\$ 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	\$ 3,246	\$ 3,185	\$ 3,183	\$ 3,180	\$ 3,179
Transfers from Other Funds					
Proposed GF Loan Repayment	\$ -	\$ -	\$ -	\$ -	\$ -
Transfers to Other Funds					
Proposed GF Loan	\$ -1,500	\$ -	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 1,746	\$ 3,185	\$ 3,183	\$ 3,180	\$ 3,179
Totals, Resources	\$ 4,168	\$ 4,097	\$ 4,049	\$ 3,943	\$ 3,770
<b>EXPENDITURES</b>					
Disbursements:					
0840 State Controllers (State Operations)	\$ 3	\$ 3	\$ -	\$ -	\$ -
8880 FSCU (State Operations)	\$ 9	\$ 6	\$ -	\$ -	\$ -
OE&E Savings (Approved by Agency)					
1110 Program Expenditures (State Operations) -	\$ 3,244	\$ 3,222	\$ 3,286	\$ 3,352	\$ 3,419
Total Disbursements	\$ 3,256	\$ 3,231	\$ 3,286	\$ 3,352	\$ 3,419
<b>FUND BALANCE</b>					
Reserve for economic uncertainties	\$ 912	\$ 866	\$ 763	\$ 591	\$ 351
<b>Months in Reserve</b>	3.4	3.2	2.7	2.1	1.2

NOTES:

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

Prepared by DCA, Budget Office 9/5/12

Web Hit Statistics			
Category	Web Hits During 4/1/12 - 6/30/12	Web Hits During 7/1/12 - 9/30/12	% Increase/Decrease
Home	74,282	78,890	6% ↑
Consumers	222,266	211,022	5% ↓
Applicants	106,239	106,749	.5% ↑
Licensees	52,005	56,755	8% ↑
Laws/Regs	75,669	81,475	8% ↑
Form/Pub	76,153	75,851	.4% ↓
About Us	67,711	64,031	5% ↓
Continuing Competency	9,038	8,717	4% ↓

Twitter Statistics			
Category	Data As Of 7/6/12	Data As Of 10/15/12	% Increase/Decrease
Number of Tweets	139	168	21% ↑
Number of Followers	100	112	12% ↑

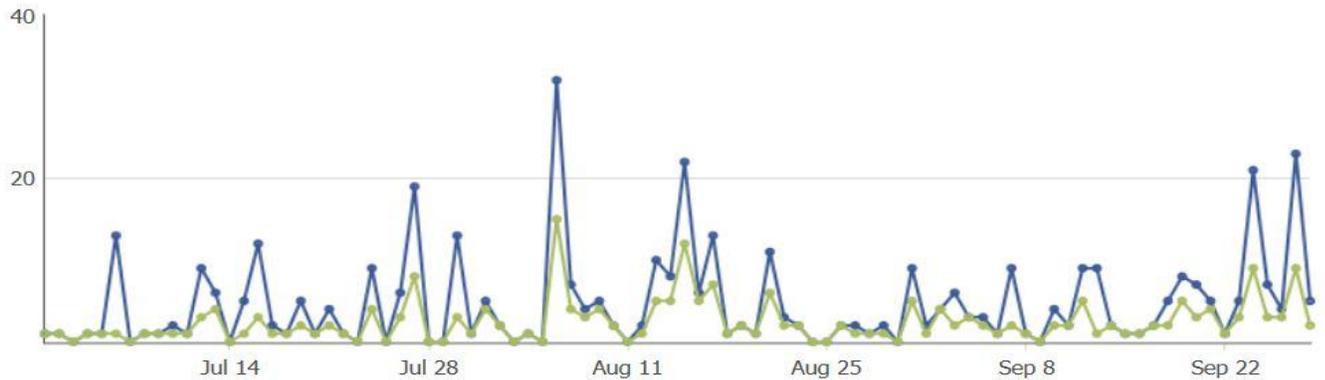
\*Account opened on 2/27/2011

Facebook Statistics			
Category	Data During 4/1/12 – 6/30/12	Data During 7/1/12 – 9/30/12	% Increase/Decrease
Total Likes	987	1048	6% ↑
Friend of Fans	324,335	355,320	10% ↑
People Talking About Page	52	404	670% ↑

Facebook Page Visits: 7/1/12-9/30/12

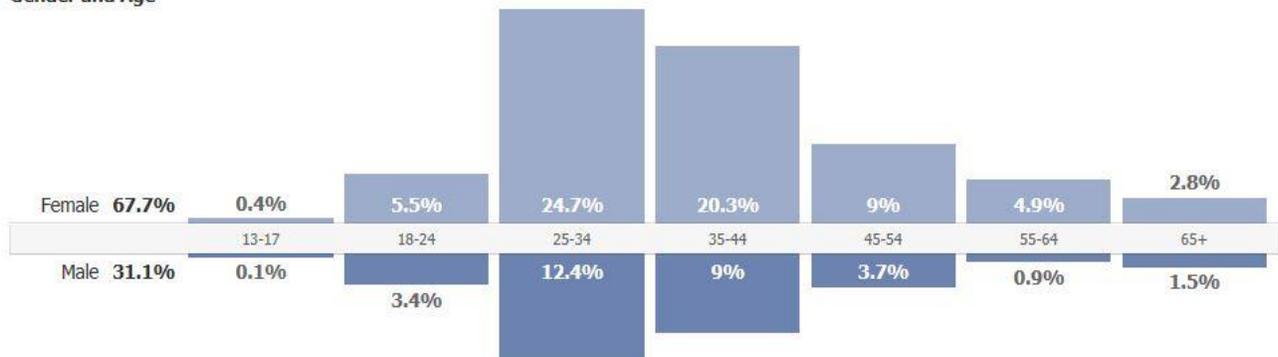
Page Views

Page Views?  Unique Visitors?



Facebook Demographic Users: 7/1/12-9/30/12

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 2012/13

### Application Statistics

APPLICATIONS RECEIVED													
Application Type	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
PT	37	112	152										301
FOREIGN PT	22	22	25										69
FOREIGN PTA*	2	7	3										12
AT	14	22	20										56
EQUIV AT	2	0	2										4
EK	0	0	0										0
EN	0	0	0										0
<b>Total</b>	<b>77</b>	<b>163</b>	<b>202</b>	<b>0</b>	<b>442</b>								

\*Six (6 of 12) applicants applied for PTA licensure after applying for PT licensure.

### Licensing Statistics

LICENSES ISSUED													
License Type	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
PT	203	163	37										403
AT	27	63	22										112
EK	0	0	0										0
EN	0	0	0										0
<b>Total</b>	<b>230</b>	<b>226</b>	<b>59</b>	<b>0</b>	<b>515</b>								

The Licensing Statistics will not match the Application Statistics due to the length of time an application may remain on file.

### License Renewal Statistics

LICENSES RENEWED													
License Type	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
PT	1,334	918	1,750										4,002
AT	293	250	434										977
EK	4	1	0										5
EN	1	2	0										3
<b>Total</b>	<b>1,632</b>	<b>1,171</b>	<b>2,184</b>	<b>0</b>	<b>4,987</b>								

## APPLICATION AND LICENSING SERVICES STATISTICS FY 2012/13

### License Status Statistics

ACTIVE LICENSES												
License Type	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
PT	21,495	21,504	21,471									
AT	5,228	5,222	5,219									
EK	29	29	29									
EN	21	21	21									
<b>Total</b>	<b>26,773</b>	<b>26,776</b>	<b>26,740</b>	<b>0</b>								

INACTIVE LICENSES												
License Type	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
PT	1,142	1,192	1,254									
AT	319	342	356									
<b>Total</b>	<b>1,461</b>	<b>1,534</b>	<b>1,610</b>	<b>0</b>								

DELINQUENT LICENSES*												
License Type	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
PT	3,239	3,293	3,281									
AT	906	926	929									
EK	4	4	4									
EN	5	5	5									
<b>Total</b>	<b>4,154</b>	<b>4,228</b>	<b>4,219</b>	<b>0</b>								

\*Licensees in delinquent status are eligible to renew their license and become active (delinquent status not to exceed 5 yrs.).

## APPLICATION AND LICENSING SERVICES STATISTICS FY 2012/13

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

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

	Jul	Aug*	Sept*	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	293												293
Fail	126												126
<b>Total</b>	<b>419</b>												<b>419</b>
<b>Pass Rate</b>	<b>70%</b>	<b>0%</b>	<b>0%</b>										<b>70%</b>

#### Accredited PT Program Pass/Fail

	Jul	Aug*	Sept*	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	282												282
Fail	42												42
<b>Total</b>	<b>324</b>												<b>324</b>
<b>Pass Rate</b>	<b>87%</b>	<b>0%</b>	<b>0%</b>										<b>87%</b>

#### Foreign Educated PT Pass/Fail

	Jul	Aug*	Sept*	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	11												11
Fail	84												84
<b>Total</b>	<b>95</b>												<b>95</b>
<b>Pass Rate</b>	<b>12%</b>	<b>0%</b>	<b>0%</b>										<b>12%</b>

\*No examination was given during this month.

## APPLICATION AND LICENSING SERVICES STATISTICS FY 2012/13

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

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

	Jul	Aug*	Sept*	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	87												87
Fail	50												50
<b>Total</b>	<b>137</b>												<b>137</b>
<b>Pass Rate</b>	<b>64%</b>	<b>0%</b>	<b>0%</b>										<b>64%</b>

#### Accredited PTA Program Pass/Fail

	Jul	Aug*	Sept*	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	75												75
Fail	26												26
<b>Total</b>	<b>101</b>												<b>101</b>
<b>Pass Rate</b>	<b>74%</b>	<b>0%</b>	<b>0%</b>										<b>74%</b>

#### Foreign Educated PTA Pass/Fail

	Jul	Aug*	Sept*	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	12												12
Fail	24												24
<b>Total</b>	<b>36</b>												<b>36</b>
<b>Pass Rate</b>	<b>33%</b>	<b>0%</b>	<b>0%</b>										<b>33%</b>

#### Equivalency PTA Pass/Fail

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

\*No examination was given during this month.

## APPLICATION AND LICENSING SERVICES STATISTICS FY 2012/13

AGENDA ITEM # 10

### California Law Examination (CLE)

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

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	223	191	103										517
Fail	21	9	7										37
<b>Total</b>	<b>244</b>	<b>200</b>	<b>110</b>										<b>554</b>
<b>Pass Rate</b>	<b>91%</b>	<b>96%</b>	<b>94%</b>										<b>93%</b>

#### Accredited Pass/Fail

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	200	155	88										443
Fail	17	6	6										29
<b>Total</b>	<b>217</b>	<b>161</b>	<b>94</b>										<b>472</b>
<b>Pass Rate</b>	<b>92%</b>	<b>96%</b>	<b>94%</b>										<b>94%</b>

#### Foreign Educated Pass/Fail

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	23	36	15										74
Fail	4	3	1										8
<b>Total</b>	<b>27</b>	<b>39</b>	<b>16</b>										<b>82</b>
<b>Pass Rate</b>	<b>85%</b>	<b>92%</b>	<b>94%</b>										<b>90%</b>

## APPLICATION AND LICENSING SERVICES STATISTICS FY 2012/13

AGENDA ITEM # 10

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

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

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	5178	6	1										5185
Fail	2030	13	2										2045
<b>Total</b>	<b>7208</b>	<b>19</b>	<b>3</b>										<b>7230</b>
<b>Pass Rate</b>	<b>72%</b>	<b>32%</b>	<b>33%</b>										<b>72%</b>

#### Accredited PT Program Pass/Fail

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	4813	6	1										4820
Fail	794	4	0										798
<b>Total</b>	<b>5607</b>	<b>10</b>	<b>1</b>										<b>5618</b>
<b>Pass Rate</b>	<b>86%</b>	<b>60%</b>	<b>100%</b>										<b>86%</b>

#### Foreign Educated PT Pass/Fail

	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	365	0	1										366
Fail	1236	9	2										1247
<b>Total</b>	<b>1601</b>	<b>9</b>	<b>3</b>										<b>1613</b>
<b>Pass Rate</b>	<b>23%</b>	<b>0%</b>	<b>33%</b>										<b>23%</b>

## APPLICATION AND LICENSING SERVICES STATISTICS FY 2012/13

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

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

	Jul	Aug*	Sept*	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	3078												3078
Fail	733												733
<b>Total</b>	<b>3811</b>												<b>3811</b>
<b>Pass Rate</b>	<b>81%</b>	<b>0%</b>	<b>0%</b>										<b>81%</b>

#### Accredited PTA Program Pass/Fail

	Jul	Aug*	Sept*	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	2991												2991
Fail	635												635
<b>Total</b>	<b>3626</b>												<b>3626</b>
<b>Pass Rate</b>	<b>82%</b>	<b>0%</b>	<b>0%</b>										<b>82%</b>

#### Foreign Educated PTA Pass/Fail

	Jul	Aug*	Sept*	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	87												87
Fail	98												98
<b>Total</b>	<b>185</b>												<b>185</b>
<b>Pass Rate</b>	<b>47%</b>	<b>0%</b>	<b>0%</b>										<b>47%</b>

#### Equivalency PTA Pass/Fail

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

\*No examination was given during this month.

## APPLICATION AND LICENSING SERVICES STATISTICS FY 2012/13

AGENDA ITEM # 10

### Law Examination - NATIONAL STATISTICS

#### Law Examination Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	898	656	468										2022
Fail	106	76	65										247
<b>Total</b>	<b>1004</b>	<b>732</b>	<b>533</b>										<b>2269</b>
<b>Pass Rate</b>	<b>89%</b>	<b>90%</b>	<b>88%</b>										<b>89%</b>

#### Accredited Program Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	853	589	425										1867
Fail	88	61	59										208
<b>Total</b>	<b>941</b>	<b>650</b>	<b>484</b>										<b>2075</b>
<b>Pass Rate</b>	<b>91%</b>	<b>91%</b>	<b>88%</b>										<b>90%</b>

#### Foreign Educated Pass/Fail

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FY Total
Pass	45	67	43										155
Fail	18	15	6										39
<b>Total</b>	<b>63</b>	<b>82</b>	<b>49</b>										<b>194</b>
<b>Pass Rate</b>	<b>71%</b>	<b>82%</b>	<b>88%</b>										<b>80%</b>



Physical Therapy Board of California

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

## Physical Therapy Board of California

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### Agenda Item # 11(A)

## Briefing Paper

Date: October 12, 2012

Prepared for: PTBC Board Members

Prepared by: Jason Kaiser

Subject: Consumer Protection Services Performance Measures

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**Purpose:** To update the Board Members of the status of the Performance Measures report provided by the Department of Consumer Affairs.

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**Background:** Pursuant to Executive Order B-13-11, the Governor ordered the Department of Finance (DOF) to create a plan for modifying the budget process to increase efficiency and focus on accomplishing program goals. DCA was one of four departments identified in the 2012-13 Governors' Budget and 2012 May Revise to participate in a performance based budgeting pilot program. As part of this pilot, DCA is working with DOF to prepare a special display for the upcoming Fiscal Year 2013-14 Governor's Budget that will illustrate how a performance based budget model might look. This data will include the already created enforcement performance measures normally reported to the Board. As a result of the Performance Based Budgeting project, the First Quarter (Q1) performance measures report has been delayed and will not be available at the time of this publication.

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**Analysis:** The data compiled in the performance measures report can also be found in Agenda Item #11(A)(i), However, if the Q1 Performance Measures Report is available before the November Board meeting, copies will be provided.

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**Action Requested:** None.

# CHART 1 - Monthly Enforcement Report to DCA 2012/2013

AGENDA ITEM # 11(A)(i)

## Complaint Intake

Complaints Received by the Program.  
Measured from date received to assignment for investigation or closure without action.

Complaints	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	YTD
Received	115	126	169										410
Closed without Assignment for Investigation	2	1	0										3
Assigned for Investigation - <i>Note: Number of assigned cases may include cases from previous month; therefore totals will not add up.</i>	109	133	163										405
Average Days to Close or Assigned for Investigation	2	3	3										2.6667
Pending	16	5	11										

Convictions/Arrest Reports	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	YTD
Received	13	17	19										49
Closed / Assigned for Investigation	12	15	23										50
Average Days to Close	9	3	5										5.6667
Pending	3	4	0										

Total Intake	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	YTD
Received	128	143	188										459
Closed w/o Inv. Assignment	3	1	0										4
Assigned for Investigation	120	148	186										454
Avg. Days to Close or Assign	3	3	3										3
Pending	19	9	11										39

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.

Desk Investigation	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	YTD
Initial Assignment for Desk Investigation	119	147	187										453
Closed	142	117	134										393
Average Days to Close	76	40	58										58
Pending	517	552	601										

Field Investigation (Non-Sworn)	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	YTD
Assignment for Non-Sworn Field Investigation	N/A												0
Closed													0
Average Days to Close													
Pending													

Field Investigation (Sworn)	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	YTD
Assignment for Sworn Field Investigation	7	8	3										18
Closed	7	5	3										15
Average Days to Close	458	335	197										330
Pending	60	64	64										

**FY 2011/2012**

All Investigations	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	YTD
First Assignments	120	147	187										454
Closed	149	122	137										408
Average Days to Close	94	52	61										69
Pending	577	616	665										

All Investigations Aging	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	YTD
Up to 90 Days	129	96	120										345
91 to 180 Days	5	20	6										31
181 Days to 1 Year	7	3	9										19
1 to 2 Years	4	3	2										9
2 to 3 Years	1	0	0										1
Over 3 Years	3	0	0										3

**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-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	YTD
AG Cases Initiated	11	2	3										16
AG Cases Pending	92	86	84										
SOIs Filed	0	0	1										1
Accusations Filed	0	0	2										2

ACC Decisions/Stips	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	YTD
Prop/Default Decisions	0	0	1										1
Stipulations	2	2	2										6

<b>SOI Disciplinary Orders</b>	<b>Jul-12</b>	<b>Aug-12</b>	<b>Sep-12</b>	<b>Oct-12</b>	<b>Nov-12</b>	<b>Dec-12</b>	<b>Jan-13</b>	<b>Feb-13</b>	<b>Mar-13</b>	<b>Apr-13</b>	<b>May-13</b>	<b>Jun-13</b>	<b>YTD</b>
SOI Final Orders (Dec/Stips)	1	0	0										1
Average Days to Complete	630	0	0										210

<b>ACC Disciplinary Orders</b>	<b>Jul-12</b>	<b>Aug-12</b>	<b>Sep-12</b>	<b>Oct-12</b>	<b>Nov-12</b>	<b>Dec-12</b>	<b>Jan-13</b>	<b>Feb-13</b>	<b>Mar-13</b>	<b>Apr-13</b>	<b>May-13</b>	<b>Jun-13</b>	<b>YTD</b>
ACC Final Orders (Dec/Stips)	2	2	3										7
Average Days to Complete	312	469	384										388.33

<b>Total Disciplinary Orders</b>	<b>Jul-12</b>	<b>Aug-12</b>	<b>Sep-12</b>	<b>Oct-12</b>	<b>Nov-12</b>	<b>Dec-12</b>	<b>Jan-13</b>	<b>Feb-13</b>	<b>Mar-13</b>	<b>Apr-13</b>	<b>May-13</b>	<b>Jun-13</b>	<b>YTD</b>
Total Final Orders (Dec/Stips)	3	2	3										8
Total Average Days to Complete	418	469	384										423.67

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

<b>Disciplinary Orders</b>	<b>Jul-12</b>	<b>Aug-12</b>	<b>Sep-12</b>	<b>Oct-12</b>	<b>Nov-12</b>	<b>Dec-12</b>	<b>Jan-13</b>	<b>Feb-13</b>	<b>Mar-13</b>	<b>Apr-13</b>	<b>May-13</b>	<b>Jun-13</b>	<b>YTD</b>
Final Orders (Proposed Decisions, Default Decisions, Stipulations)	3	2	3										8
Average Days to Complete*	418	469	384										423.67

<b>Citations</b>	<b>Jul-12</b>	<b>Aug-12</b>	<b>Sep-12</b>	<b>Oct-12</b>	<b>Nov-12</b>	<b>Dec-12</b>	<b>Jan-13</b>	<b>Feb-13</b>	<b>Mar-13</b>	<b>Apr-13</b>	<b>May-13</b>	<b>Jun-13</b>	<b>YTD</b>
Final Citations	31	27	51										109
Average Days to Complete*	39	53	57										49.667
<b>Other Legal Actions</b>	<b>Jul-12</b>	<b>Aug-12</b>	<b>Sep-12</b>	<b>Oct-12</b>	<b>Nov-12</b>	<b>Dec-12</b>	<b>Jan-13</b>	<b>Feb-13</b>	<b>Mar-13</b>	<b>Apr-13</b>	<b>May-13</b>	<b>Jun-13</b>	<b>YTD</b>
Interim Suspension Orders/PC 23	0	1	0										1

Performance Measures	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	
PM1 Volume	115	126	169										
PM1 Conv/Arrest Rpts Volume	13	17	19										
PM2 Cycle Time - Intake	3	3	3										
PM3 Cycle Time-No Discipline	36	45	56										
PM 4 Cycle Time-Discipline	418	383	384										

**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 **August, September, and October 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**



**August 2012**

**STRAUB, DAWN (PT 30057)**

Accusation Filed 09/12/11. Violation of B & P Codes: 490 Conviction of a Crime, 2660(d) Conviction of Criminal Offense, 2660(e) Habitual Intemperance, 2660(f) Drug Addiction, 2661 Conviction of a Crime. Proposed Stipulated Settlement and Disciplinary Order Effective 08/29/12. Revocation, Stayed, 3 or 6 Yrs. Prob., Depending if accepted into Drug and Alcohol Recovery Program.

**TSUDA, AARON (AT 8827)**

Order Granting Petition for Ex Parte Interim Suspension Order Issued 03/14/12. Decision and Order on Petition for Interim Suspension 03/29/12. Accusation Filed 04/11/12. Violation of B & P Codes: 490 Conviction of a Crime, 2237 Conviction of Drug Violations, 2239 Self-Use of Drugs or Alcohol, 2660(d) Conviction of Criminal Offense, 2660(f) Drug Addiction, 2660(h) Violating the Code, 2661 Conviction of a Crime. Violation of CCR: 1399.20(b) Convict of Crime. Stipulated Surrender of License and Order Effective 08/24/12. License Surrendered.

**September 2012**

**CLAROS, RYAN ROBERT (**

Violation of B & P Codes: 480 Grounds for Denial of License, 2660(d) Conviction of Criminal Offense, 2661 Conviction of a Crime. Initial Probationary License Issued 09/20/12. 3 Yrs. Prob. or Diversion Plus 1 Yr., whichever is longer.

**KUMAR, ABHINAV (PT 22501)**

Accusation Filed 09/26/11. Violation of B & P Codes: 490 Conviction of a Crime, 2660(d) Conviction of Criminal Offense, 2660(m) Verbal Abuse or Sexual Harassment, 2661 Conviction of a Crime. Violation of CCR: 1399.20 Criminal Substantial Relation. Stipulated Settlement and Disciplinary Order Effective 09/21/12, Revocation, Stayed, 6 Yrs. Prob.

**MAGGIORA, KELSEY (PT 39467)**

Violation of B & P Code: 480 Grounds for Denial of License. Initial Probationary License Issued 09/27/12. 3 Yrs. Prob. or Diversion Plus 1 Yr., whichever is longer.

54 **MARRS, KERI (AT 6052)**  
55 Accusation Filed 05/03/12. Violation of B & P Code: 125.9(b)(5) Failure to Pay Fine w/in 30 Days, 2660(h)  
56 Violating the Code. Violation of CCR: 1399.15 Failure to Pay Fine. Default Decision and Order Effective 09/14/12.  
57 License Revoked.

58  
59 **ZAJICEK, VAL (PT 16462)**  
60 Accusation Filed 12/15/11. Violation of B & P Codes: 498 Licensure by Fraud, 2261 False Statements on  
61 Documents, 2660 Unprofessional Conduct, 2660(b) Procuring Licensure by Fraud, 2660(h) Violating the Code, and  
62 2660(k) Commit Fraud, Dishonest Act. Violation of CCR: 1399.91 Continuing Comp Required, and 1399.93  
63 Continuing Comp Required & Limitations. Stipulated Settlement and Disciplinary Order Effective 09/06/12.  
64 Public Reprimand.

65  
66 **October 2012**

67  
68 **CHESTELSON, JENNIFER (PT 24550)**  
69 Order Restricting Defendant's Practice of Physical Therapy Effective 10/10/12.

70  
71 **COOK, ERIC (PT 24888)**  
72 Accusation Filed 10/13/11. Violation of B & P Codes: 2620.7 Pt. Record Docum & Retention, 2630 Unlawful  
73 Physical Therapist, 2660(g) Gross Negligence, 2660(i) Aiding and Abetting, 2660(j) Aiding/Abetting Unlic  
74 Activity, 2660(k) Commit Fraud, Dishonest Activity. Revocation, Stayed, 3 Yrs. Prob.

75  
76 **MELLENDEZ, CLARA (AT 3408)**  
77 Violation of B & P Codes: 2660(h) Violating the Code, 2660(k) Commit Fraud, Dishonest Act. Stipulated  
78 Settlement and Disciplinary Order Effective 10/24/12. Revocation, Stayed, 4 Yrs. Prob.

79  
80 **Administrative Citations and Fines Paid**



83  
84 **August 2012**

85  
86 **HORSLEY, JOHN (PT 16520)**  
87 Violation of B & P Codes: 2660 Unprofessional Conducts. Violation of CCR: 1399.91 Continuing Comp Required,  
88 1399.93 Cont Comp Requir & Limitations. Citation and Fine Ordered 06/20/12. Citation Paid in Full 08/13/12.

89  
90 **NEHLS, LINDSAY (PT 39211)**  
91 Violation of B & P Codes: 2239 Self-Use of Drugs or Alcohol, 2660(d) Conviction of Criminal Offense, 2660(h)  
92 Violating the Code. Citation and Fine Ordered 08/13/12. Citation Paid in Full 08/30/12.

93  
94 **PENARANDA III, HILARIO (PT 27496)**  
95 Violation of B & P Codes: 2660 Unprofessional Conducts. Violation of CCR: 1398.6 Filing of Address. Citation  
96 and Fine Ordered 08/10/12. Citation Paid in Full 08/15/12.

97  
98 **PEPE, JESSICA (AT 8816)**  
99 Violation of B & P Codes: 2660 Unprofessional Conducts. Violation of CCR: 1398.6 Filing of Address. Citation  
100 and Fine Ordered 08/10/12. Citation Paid in Full 08/17/12.

101  
102 **SALAK, JOSE (PT 27714)**  
103 Violation of B & P Codes: 2660 Unprofessional Conducts. Violation of CCR: 1398.6 Filing of Address. Citation  
104 and Fine Ordered 08/10/12. Citation Paid in Full 08/27/12.

105  
106 **SHAHAMATI, FARIMA (PT 11796)**  
107 Violation of CCR: 1399.91 Continuing Comp Required, 1399.93 Cont Comp Requir & Limitations. Citation and  
108 Fine Ordered 06/20/12. Citation Paid in Full 08/06/12.

109 **THOMPSON, DAWN (PT 17199)**  
110 Violation of B & P Codes: 2239 Self-Use of Drugs or Alcohol, 2660(d) Convict of Criminal Offense, 2660(h)  
111 Violating the Code. Citation and Fine Ordered 07/24/12. Citation Paid in Full 08/30/12.  
112  
113 **WIDENER, DEREK (AT 6568)**  
114 Violation of B & P Codes: 2660(d) Convict of Criminal Offense, 2660(k) Commit Fraud, Dishonest Act. Citation  
115 and Fine Ordered 05/18/12. Citation Paid in Full 08/20/12.  
116  
117 **YOSUICO, THOMAS (PT 16161)**  
118 Violation of B & P Codes: 2660(d) Convict of Criminal Offense, 2660(h) Violating the Code. Citation and Fine  
119 Ordered 07/24/12. Citation Paid in Full 08/16/12.  
120  
121 Violation of CCR: 1398.6 Filing of Address  
122 Citations Paid in Full in August 2012  
123  
124 ANTONE, GARY (PT 27651)  
125 AUYEUNG, JENNIFER (PT 38318)  
126 BARBER, JASON (PT 33830)  
127 BEYER, LORI (PT 35364)  
128 BLANKENSHIP, AYN (PT 37509)  
129 BRUAN, OWEN (PT 28716)  
130 CARREON, LAURA (PT 29128)  
131 COOK, MARTHA (AT 6370)  
132 CROUSE, PHILIP (PT 21891)  
133 EMHOF, DANIELLE (PT 29481)  
134 FORBES, MARGARET (PT 6225)  
135 HARDY, CLAUDINE (AT 3628)  
136 HENRICKS, LISA (PT 34928)  
137 INOUYE, LANCE (PT 34284)  
138 JENUSAITIS, LARA (PT 20791)  
139 KAMIN, JOYCE (PT 3012)  
140 LARIOS, JOHN (PT 30165)  
141 LOAIZA, CATALINA (PT 30252)  
142 LONG, NICHOLAS (PT 37448)  
143 MANSFIELD, CYNTHIA (PT 24980)  
144 MAWHINEY, JAMES (PT 37283)  
145 NILLO, ERWIN (AT 8996)  
146 OGDEN, EINAT (PT 30406)  
147 O'HAGAN, RILEY (PT 37375)  
148 OLARITA, FELIX (PT 25809)  
149 PURVIS, CARRIE (PT 29565)  
150 QUAID, MATT (AT 4849)  
151 SETYAN, HELEN (PT 37438)  
152 STANFORD, DENISE (PT 27794)  
153 RESNICK, ELIZABETH (PT 25474)  
154 TASSINARI, MARCIA (PT 20362)  
155 TORRES-WOOD, LUPITA (AT 5851)  
156 TREVING, LISSA (PT 21353)  
157 VILLALUZ, MARIA (PT 28395)  
158 WHITE, LINDA (PT 30224)  
159 ZUPPERO, ALYSON (PT 24300)  
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164 **September 2012**

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**REUSS, THOMAS (PT 25699)**

Violation of CCR: 1399.93 Cont Comp Require & Limitations. Citation and Fine Ordered 10/17/11. Citation Paid in Full 09/07/12.

**SALAH, HUSSEIN (AT 550)**

Violation of B & P Codes: 2660 Unprofessional Conducts. Violation of CCR: 1398.6 Filing of Address. Citation and Fine Ordered 08/10/12. Citation Paid in Full 09/26/12.

**SULLIVAN, CARLA (AT 5791)**

Violation of B & P Codes: 2239 Self-Use of Drugs or Alcohol, 2660 Unprofessional Conducts, 2660(d) Convict of Criminal Offense, 2660(h) Violating the Code. Citation and Fine Ordered 08/13/12. Citation Paid in Full 09/13/12.

**WILNER, KENNETH (PT 19059)**

Violation of B & P Codes: 2660 Unprofessional Conducts. Violation of CCR: 1399.91 Continuing Comp Required, 1399.93 Cont Comp Require & Limitations. Citation and Fine Ordered 08/06/12. Citation Paid in Full 09/10/12.

Violation of CCR: 1398.6 Filing of Address  
Citations Paid in Full September 2012

BAYLES, LONNA (PT 35575)

CAREY, ELIZABETH (AT 5920)

CHESTER, AUBREY (AT 9395)

DODGE, JAKE (PT 37712)

DOUGHERTY, TANYA (PT 24774)

FRANZA, GWENDOLYN (PT 36564)

JACKA, MELISSA (PT 33482)

KNAPP, KELLY (PT 11236)

LOPEZ, RICARDO (PT 25550)

MICHALSKI, CHRISTINE (AT 3512)

MURPHY, SEAN (AT 3576)

TEODORO, ANNA (PT 17516)

VILLADELGADO, LYNETTE (PT 33044)

WASHINGTON, DENNIS (AT 6882)

YANG, TONY (PT 37097)

**October 2012**

**BURKE, LAURA (AT 1073)**

Violation of B & P Codes: 2660 Unprofessional Conducts. Violation of CCR: 1399.91 Continuing Comp Required, 1399.93 Cont Comp Require & Limitations. Citation and Fine Ordered 06/26/12. Citation Paid in Full 10/11/12.

**MONTANA, JAMES (PT 14685)**

Violation of B & P Codes: 2660 Unprofessional Conducts. Violation of CCR: 1399.91 Continuing Comp Required, 1399.93 Cont Comp Require & Limitations. Citation and Fine Ordered 09/26/12. Citation Paid in Full 10/04/12.

**LIU, AMY (PT 28003)**

Violation of B & P Codes: 2660 Unprofessional Conducts. Violation of CCR: 1398.6 Filing of Address. Citation and Fine Ordered 09/13/12. Citation Paid in Full 09/28/12.

**OLIVER, ELIZABETH (PT 17443)**

Violation of B & P Codes: 2239 Self-Use of Drugs or Alcohol, 2660(d) Convict of Criminal Offense, 2660(h) Violating the Code. Citation and Fine Ordered 09/13/12. Citation Paid in Full 10/04/12.

219  
220 **WONG, TONY (PT 34221)**  
221 Violation of B & P Codes: 2660(d) Convict of Criminal Offense, 2660(h) Violating the Code. Citation and Fine  
222 Ordered 09/13/12. Citation Paid in Full 10/11/12.  
223  
224 Violation of CCR: 1398.6 Filing of Address  
225 Citations Paid in Full October 2012  
226  
227 ANAYA, JEANETTE (AT 8971)  
228 BROWN, DANIELLA (PT 33207)  
229 CHRISTENSEN, KRISTY (AT 9070)  
230 CLAVERIA, EDGAR (PT 37652)  
231 DJERBAKA, JOHN (PT 22204)  
232 FLORES, ANGELA (AT 5934)  
233 FUJII, YOSHI (PT 35236)  
234 GILLERAN, TIMOTHY (PT 20733)  
235 GRAHAM, ROBERT (AT 4342)  
236 HARTMAN, REBECCA (PT 32261)  
237 HAYNOR, JANE (AT 4785)  
238 HENDRICKX, THOMAS (PT 20058)  
239 HERKIMER, MICHELE (PT 17062)  
240 HOUSTON, LESLI (AT 2436)  
241 LEVINSON, SAMANTHA (PT 23779)  
242 NOMBRE, MICHELLE (AT 9546)  
243 PRACHT, HAZEL (PT 20482)  
244 PUSAVAT, MELISSA (AT 5407)  
245 RADHAKRISHNAN, SMITA (PT 34914)  
246 RINALDI, CORINNE (AT 9359)  
247 SACRAMENTO, CAROLYN (AT 6058)  
248 TASSINARI, RUSSELL (PT 20254)  
249 VANNATTA, JOAN (PT 33648)  
250 WILLIAMS, KATHRYN (AT 9344)  
251

## 252 **Glossary of Terms**

253  
254 B & P Code – Business and Professions Code  
255 H & S Code – Health and Safety Code  
256 R & R – Rules and Regulations  
257 CCR – California Code Regulations  
258 Accusations: Charges and allegations, which still must undergo rigorous tests of proof at later administrative  
259 hearings.  
260 Citation & Fine: An alternative means to address relatively minor violations that are not discipline in order to  
261 protect the public. Citations and Fine Orders are not disciplinary actions, but are matters of public record.  
262  
263 Petition to Revoke Probation: A Petition to Revoke Probation is filed when a licensee is charged with violation of a  
264 prior disciplinary decision.  
265  
266 Probationary License: Where good cause exists to deny a license, the licensing agency has the option to issue a  
267 conditional license subject to probationary terms and conditions.  
268  
269 Statement of Issues Filed: When an applicant for licensure is informed the license will be denied for cause, the  
270 applicant has a right to demand a formal hearing, usually before an Administrative Law Judge. The process is  
271 initiated by the filing of a Statement of Issues, which is similar to an accusation.  
272  
273 Surrender of License: License surrenders are accepted in lieu of further proceedings.

274  
275 Statement of Issues Decision: These are decisions rendered after the filing of a Statement of Issues.  
276  
277 Stipulated Decision: Negotiated settlements waiving court appeals.



Physical Therapy Board of California

# 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



## Briefing Paper

## Agenda Item 12

Date: 10/25/12

Prepared for: PTBC Members

Prepared by: Jason Kaiser

SUBJECT: Uniform Standards for Substance-Abusing Licensees

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**Purpose:** To provide an analysis regarding the 3 options, provided by the Department of Consumer Affairs, for determining whether a licensee is a substance-abusing licensee, this in turn would be included in the adoption of the Uniform Standards.

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**Background:** At the August 2012 PTBC Board meeting the Board received Agenda Item #17, a briefing paper asking the Board to adopt 1 of 3 versions of language provided by the Legal Affairs Division of the Department of Consumer Affairs regarding possible methods for determining whether a licensee is a substance-abusing licensee, which in turn would trigger the application of all of the Uniform Standards. The options are as follows;

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

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

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

The Board requested a cost-comparison of all options, input from the Board’s Deputy Attorney General Liaison, and information on how these options would impact enforcement case documentation and timelines for the next meeting.

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**Analysis:** Option 1, the Presumption Trigger says that if the conduct involves drugs or alcohol the licensee would be presumed to be a substance abusing licensee. They would have the opportunity to rebut the presumption. If they don’t rebut that presumption then the Standards would be placed in their probationary order. The positive side of this option is that it is easy to implement and there is not a lot of evaluation up front. The drawback is that it is overly broad. A licensee would rebut the presumption in a variety of ways including but not limited to their own sworn testimony, the testimony of an evaluator, test results from rehab etc. As an example, at the minimum, a licensee who has never had any other problems but is caught once and given a DUI could use the fact that they have never been in trouble before to rebut the presumption that

they are a substance abuser. It is yet undetermined whether we could issue citations for our least egregious cases using this option.

Option 2, the Clinical Diagnostic Trigger would apply when there is evidence provided by an expert, usually a clinical diagnostic evaluator, that someone is a substance-abusing licensee. In other words if there is evidence presented at a hearing that the licensee is a substance abuser then the Standards would apply. If evidence is not presented at hearing, any case involving drugs and/or alcohol would mandate that the licensee be referred to a Clinical Diagnostic Evaluator. If the Clinical Diagnostic Evaluator determines that they are a substance abuser, the Standards would apply. The benefit of this trigger is that the expert opinion verifies the condition. The drawback is that under the current contract with Maximus, the requirement for referral to the Clinical Diagnostic Evaluator includes a 30-day cease practice during the evaluation. Would a clinical evaluation be required for each and every drug or alcohol related charge, even our least egregious?

Option 3, states that if, after notice and a hearing, the Board finds that the evidence establishes an individual as a substance abuser then the Standards would be applied. This places the burden on the Executive Officer to decide which cases to plead as substance-abusing. The Executive Officer must provide affirmative evidence that the licensee is a substance abuser in order for the Standards to be triggered. This trigger is more of a factual analysis up front and may require a clinical evaluation to substantiate the claim of substance abusing licensee. It may also be more legally defensible in that it most closely resembles due process. The licensee is put on notice about what is about to happen, and they can provide their own proof if they so choose and they have a chance to defend themselves before the label of substance abuser is put on them and the Standards are applied. As an example, if a person has one DUI, there's no cease practice until a hearing determines the facts and they have the opportunity to defend themselves and provide evidence at the hearing before the Standards are implemented.

Attached is a violation matrix identifying 3 categories of violations. This matrix provides a visual representation to the approximate affect each option would provide, followed by notes of interest pertaining to that option. It is important to note that these three options, in no way prevent the Board from settlement in regards to a disciplinary case, but will bind an Administrative Law Judge in how the standards apply to a licensee in a formal decision.

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

**Category 1: Least Egregious – Fairly Common**

Licensee is arrested and convicted for: Open Container, Drunk in Public, Possession of Controlled Substance(Marijuana), Contributing to Delinquency of a Minor

	LICENSEE		PTBC	
OPTION#1	COST	TIME	COST	TIME
Using a rebuttable presumption. If the charge involves alcohol or drugs, it will be assumed that the licensee is in fact a substance abusing licensee and he then bears the burden of proving that he is NOT a substance-abusing licensee at the hearing.	Green	Yellow	Green	Yellow
OPTION#2	COST	TIME	COST	TIME
Imposing probationary terms that include the Uniform Standards when the charges involve drugs and or alcohol, but making them contingent on the outcome of an ordered clinical diagnostic evaluation to determine whether or not the individual is a substance-abusing licensee.	Green	Yellow	Green	Yellow
OPTION#3	COST	TIME	COST	TIME
The Board bears the burden of proving (via facts, layperson and expert testimony, etc.) at a hearing that the individual is a substance abusing licensee.	Green	Yellow	Green	Yellow
In processing our least egregious cases it is often identified that while a charge may involve a drug or alcohol, it is not indicative of a substance abusing licensee. These cases are most often handled through the citation process. As a result of this analysis, new questions have arisen. For instance, it is unclear how the selection of one of the three options, provided by DCA, would affect our ability to use the citation process in this regard.				

**Category 2 – Moderately Egregious – Most Common**

Licensee is arrested and convicted for: Driving Under the Influence (Alcohol) First Offense & Repeat, Driving Under the Influence (Drugs) First Offense & Repeat, Driving with BAC .08 or Higher First Offense & Repeat, Wet Reckless

	LICENSEE		PTBC	
OPTION#1	COST	TIME	COST	TIME
Using a rebuttable presumption. If the charge involves alcohol or drugs, it will be assumed that the licensee is in fact a substance abusing licensee and he then bears the burden of proving that he is NOT a substance-abusing licensee at the hearing.	Green	Yellow	Green	Yellow
OPTION#2	COST	TIME	COST	TIME
Imposing probationary terms that include the Uniform Standards when the charges involve drugs and or alcohol, but making them contingent on the outcome of an ordered clinical diagnostic evaluation to determine whether or not the individual is a substance-abusing licensee.	Green	Yellow	Green	Yellow
OPTION#3	COST	TIME	COST	TIME
The Board bears the burden of proving (via facts, layperson and expert testimony, etc.) at a hearing that the individual is a substance abusing licensee.	Green	Yellow	Green	Yellow
Our most common and most laborious case to process are often first time DUI's. Even these cases, with the right circumstances, can be dealt with using the citation process. Would we lose this ability utilizing one of these options?				

**Category 3 - Most Egregious – Least Common**

Licensee is arrested and convicted for: Driving Under the Influence with Bodily Injury, Driving Under the Influence with Hit & Run, Possession of a Schedule 1 Controlled Substance, Possession for Sale of a Controlled Substance, Under the Influence of a Controlled Substance(Schedule 1), Under the Influence w/ working, Theft of drugs from patients(home health) Manufacturing or Trafficking.

	LICENSEE		PTBC	
OPTION#1	COST	TIME	COST	TIME
Using a rebuttable presumption. If the charge involves alcohol or drugs, it will be assumed that the licensee is in fact a substance abusing licensee and he then bears the burden of proving that he is NOT a substance-abusing licensee at the hearing.				
OPTION#2	COST	TIME	COST	TIME
Imposing probationary terms that include the Uniform Standards when the charges involve drugs and or alcohol, but making them contingent on the outcome of an ordered clinical diagnostic evaluation to determine whether or not the individual is a substance-abusing licensee.				
OPTION#3	COST	TIME	COST	TIME
The Board bears the burden of proving (via facts, layperson and expert testimony, etc.) at a hearing that the individual is a substance abusing licensee.				
Our most egregious cases are often the most complex and the most costly. Would either of these options be more costly than the others? Option 2 may provide the quickest and most defensible determination.				

## 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~~ 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:

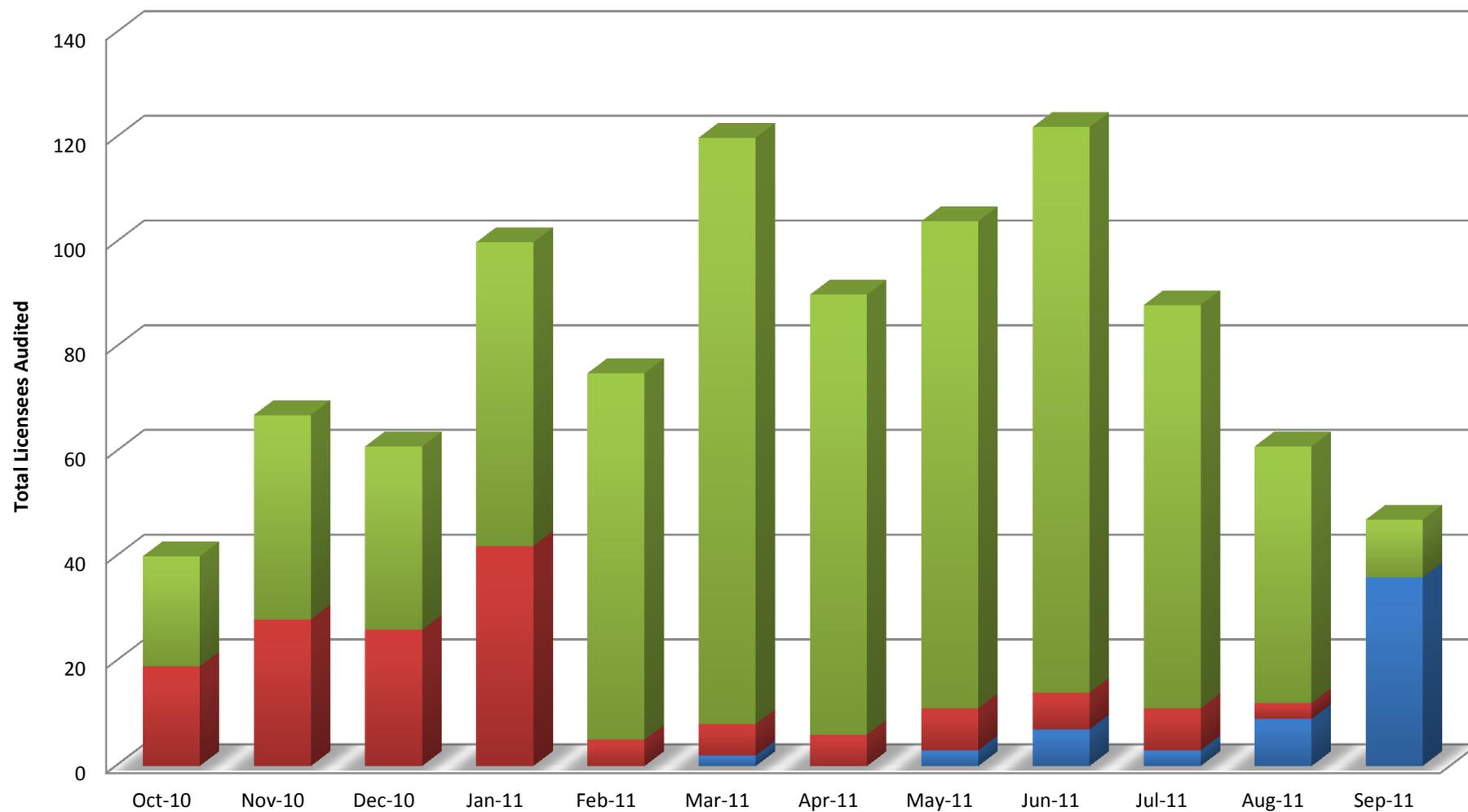
#### Section 2524.01. Uniform Standards for Substance Abuse

- (a) If 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.

### Continuing Competency Audits 2012



	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11
Pass	21	39	35	58	70	112	84	93	108	77	49	11
Fail	19	28	26	42	5	6	6	8	7	8	3	0
Pending	0	0	0	0	0	2	0	3	7	3	9	36



Physical Therapy Board of California

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### Agenda Item #13(B)(i).

## Briefing Paper

Date: October 12, 2012

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

SUBJECT: Termination of Recognition of an Approval Agency for Non-compliance of CCR 1399.95(i)

**Purpose:** To inform the PTBC Board Members of Vital Sparks non-compliance in not providing the records requested for approval agency audit purposes. (CCR 1399.95(i))

**Background:** Vital Spark applied February 3, 2010 to become an approval agency, approval was granted February 23, 2010. A Records Compliance Template (RCT) was sent by email to all listed PTBC approval agencies in February 2012 with a response due date of April 2012. The PTBC has not received a response from Vital Spark.

The Following attempts were made to contact Vital Spark:

- May 15, 2012 – called – phone number appears to be disconnected
- May 15, 2012 – emailed – emailed failed
- August 1, 2012 – several attempts via email – failed
- August 1, 2012 – phone number disconnected – completed a detailed website search
- September 5, 2012 – certified letter mailed
- September 20, 2012 – certified letter received back – ATTEMPTED NOT KNOWN

**Analysis:** After a number of follow up telephone calls, emails and certified mailings, Vital Spark has yet to respond to CCS requests for information. This creates a problem for staff; they are essentially unavailable to our queries in regards to audit of their recognition as well as the audits of our licensees. This is also a problem for our licensees in contacting and obtaining course information, proof of attendance and duplicate certificates. The Board considers the included letter, dated September 6, 2012, to be written notice setting forth the reasons for withdrawal and affording a reasonable opportunity for the approval agency to be heard.

**Action Requested:** It is the recommendation of the Continuing Competency Services staff that the Board initiate the process to withdraw Vital Sparks Recognition as an Approval Agency as set forth in CCR1399.95(j).

**CCR1399.95(j)** - Failure of an approval agency to substantially comply with the provisions as set forth in this section, or a material misrepresentation to the board, shall constitute cause for withdrawal of recognition by the board. Recognition can be revoked only by the members of the board, after written notice setting forth the reasons for withdrawal and after affording a reasonable opportunity for the approval agency to be heard.



Physical Therapy Board of California

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

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September 6, 2012

Vital Spark LLC  
Att: Heather Vasilopoulos  
85 Jobin Drive  
Manchester, NH 03103

Re: Withdrawing Recognition as an Approval Agency to Approve Providers Offering Continuing Competency Courses

Dear Vital Spark LLC:

Pursuant to California Code of Regulations (CCR) 1399.95(i) the Physical Therapy Board of California (Board) requires all Recognized Approval Agencies to complete a Records Compliance Template (RCT). On February 7, 2012 and on April 10, 2012 the RCT was sent to you via email at [contact\\_us@yourvitalspark.com](mailto:contact_us@yourvitalspark.com); the email address provided to the Board on February 10, 2011. To date the Board has made several additional attempts to reach you regarding the RCT, at (603) 206-4741 the phone number provided to the Board on the application; this number has been disconnected. To date all attempts have been unsuccessful. In addition receiving mail router failures to the email address as provided.

Please consider this the Board's last attempt to reach you regarding completion of the RCT. Failure to respond to this correspondence by close of business on Friday, September 14, 2012 will cause the Board to place Vital Spark, LLC on the agenda for the November meeting to withdraw recognition of approval.

Sincerely,

Kirsten Salters  
Physical Therapy Board of California



Physical Therapy Board of California

## Physical Therapy Board of California

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### Agenda Item # 13(B)(ii)

## Briefing Paper

Date: October 12, 2012

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

SUBJECT: Termination of Recognition of an Approval Agency for Non-compliance of CCR 1399.95(i)

**Purpose:** To inform the PTBC Board Members of Vital Sparks non-compliance in not providing the records requested for approval agency audit purposes. (CCR 1399.95(i))

**Background:** Gateway International applied February 22, 2010 to become an approval agency, approval was granted April 5, 2010. A Records Compliance Template (RCT) was sent by email to all listed PTBC approval agencies in February 2012 with a response due date of April 2012. The PTBC has not received a response from Gateway International.

The Following attempts were made to contact Gateway International;

- April 24, 2012 – called, left message, voicemail answers Pharm Aid
- April 24, 2012 – emailed router failed
- June 12, 2012 – left message on voicemail – no return call
- July 25, 2012 – left message on voicemail – no return call
- August 1, 2012 - left message on voicemail – no return call
- August 1, 2012 – No applicable classes on Gateway Internationals class schedule
- September 6, 2012 – certified letter mailed
- September 20, 2012 – certified letter from 9/6 could not be tracked – resent
- September 25, 2012 tracked certified mail – addressee unknown
- October 1, 2012 – certified letter received back – ATTEMPTED NOT KNOWN

**Analysis:** After a number of follow up telephone calls, emails and certified mailings, Gateway International has yet to respond to CCS requests for information. This creates multiple problems for staff; they are essentially unavailable to our queries in regards to the audit of their recognition as well as the audits of our licensees. This is also a problem for our licensees in contacting and obtaining course information, proof of attendance and duplicate certificates. The Board considers the included letter, dated September 6, 2012, to be written notice setting forth the reasons for withdrawal and affording a reasonable opportunity for the approval agency to be heard.

**Action Requested:** It is the recommendation of the Continuing Competency Services staff that the Board initiate the process to withdraw Gateway Internationals recognition as an Approval Agency as set forth in CCR1399.95(j).

**CCR1399.95(j)** - Failure of an approval agency to substantially comply with the provisions as set forth in this section, or a material misrepresentation to the board, shall constitute cause for withdrawal of recognition by the board. Recognition can be revoked only by the members of the board, after written notice setting forth the reasons for withdrawal and after affording a reasonable opportunity for the approval agency to be heard.



Physical Therapy Board of California

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

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



September 6, 2012

Gateway International, LLC  
Att: Lin Pride  
3634 Ocean Ranch Blvd  
Oceanside, CA 92056

Re: Withdrawing Recognition as an Approval Agency to Approve Providers Offering Continuing Competency Courses

Dear Gateway International, LLC:

Pursuant to California Code of Regulations (CCR) 1399.95(i) the Physical Therapy Board of California (Board) requires all Recognized Approval Agencies to complete a Records Compliance Template (RCT). On February 7, 2012 and on April 10, 2012 the RCT was sent to you via email at [lin@livecenow.com](mailto:lin@livecenow.com); the email address provided to the Board when applying for your recognition. To date the Board has made several additional attempts to reach you regarding the RCT, at (760) 231-5763 leaving voice mail messages on April 24<sup>th</sup>, June 12<sup>th</sup>, July 25<sup>th</sup> and August 1, 2012. To date all attempts have been unsuccessful. In addition receiving mail router failures to the email address as provided.

Please consider this the Board's last attempt to reach you regarding completion of the RCT. Failure to respond to this correspondence by close of business on Friday, September 14, 2012 will cause the Board to place Gateway International, LLC on the agenda for the November meeting to withdraw recognition of approval.

Sincerely,

Kirsten Salters  
Physical Therapy Board of California



Physical Therapy Board of California

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

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### Agenda Item #14(C)

#### Briefing Paper

Date: October 10, 2012  
Prepared for: PTBC Members  
Prepared by: Debra Alviso, PT Board Member, FSBPT Delegate  
Subject: FSBPT Annual Meeting  
September 20-22, Indianapolis, Indiana

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#### **Purpose:**

To provide PTBC with summary of the 2012 Annual Meeting of the Federation of State Boards of Physical Therapy (FSBPT)

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#### **Background:**

Due to the travel restrictions, CA did not have a delegate in attendance at the Federation's Annual Meeting. There were motions passed by the Delegate Assembly and the elections of Board of Director offices were held. There were numerous educational and roundtable sessions for attendees. This paper provides a summary of the 2012 annual meeting.

#### Delegate Assembly Motions

Motions: Three motions were proposed by the Board of Directors. One motion was proposed by Texas and Washington. It received the 2/3 vote needed to be heard on the Assembly floor. All motions were passed.

#### **Motion DEL-12-01 Areas of Focus**

The Board of Directors must complete an annual review of the focus areas and present them to the Delegate Assembly for review and adoption. This is in accordance with Delegate Assembly motion DEL-02-26.

There were not changes made to the areas of Focus.

This motion was passed by the 2012 Delegate Assembly.

### **Motion DEL-12-02 Conflict of Interest**

Proposed by the Board of Directors, this further defines and provides guidance and procedures for decision making regarding potential conflicts of interest.

This motion was passed by the 2012 Delegate Assembly.

### **Motion DEL-12-03 Health Professions Minimum Dataset (MDS)**

“The delegate assembly supports and encourages the FSBPT member jurisdiction to work with FSBPT staff, HRSA and other appropriate entities to define components of a minimum dataset (MDS) of licensed physical therapists and physical therapist assistants and develop a database that includes the components of this MDS.”

Fiscal impact: Fiscal impact would include funding one or more meetings of a task force, meeting with and assisting jurisdictions and the development of a new database. Estimated cost is \$100,000.

This motion was passed by the 2012 Delegate Assembly.

### **Motion DEL-12-04 License Portability**

Proposed by: Texas, Washington

Motion: The delegate assembly supports the goal of license portability for physical therapy. The board of directors is requested to identify and recommend potential tools to improve the portability of physical therapy licenses and report to the 2013 Delegate Assembly.

This motion was passed by the 2012 Delegate Assembly.

Final motion language will be released after the minutes of the Delegate Assembly are approved.

### Election Results

- Secretary- Ron Seymour
- Treasurer- Natalie Harms
- Director- Dave Relling
- Nominating Committee- Tina Kelley

## Committee Nominations

If interested in being appointed to a committee, the Board of Directors will make appointments at their December meeting.

Committee information available at [www.fsbpt.org](http://www.fsbpt.org) under about us/organization

Send email to [communications@fsbpt.org](mailto:communications@fsbpt.org) expressing interest.

## Resources

Documents related to the presentations of the Annual Meeting will be available in the members section of the FSBPT website soon. The documents will remain accessible for one year.

## **Next meeting: 2013 Meeting San Antonio, Texas**

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### **Analysis:**

The motion DEL-12-03 related to the Health professions minimum dataset (MDS) is of concern to CA. We would need legislative changes to participate and/or be able to gather information to assist in the dataset. This has been added to the New Issues section of the Sunset report to the legislature and can be discussed further when the report is addressed.

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### **Action Requested:**

None requested at this time.

## 2011-12 Legislative Summary

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

**Status:** 9/25/2012-Chaptered by Secretary of State - Chapter 561, Statutes of 2012.

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

**Summary:** This statute prohibits 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 may be subject to disciplinary action by the board, bureau, or program. The statute also prohibits 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 monies to the plaintiff in the civil action.

**Position: Support**

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

**Status:** 9/1/2012-Failed Deadline pursuant to Rule 61(b)(17). (Last location was A. RLS. on 8/27/2012)

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

**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 have specified 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 have prohibited 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 have required 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 have amended 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 specified. This bill would have added 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.

**Position: Watch**

**SB 1236 (Price D) Professions and vocations.**

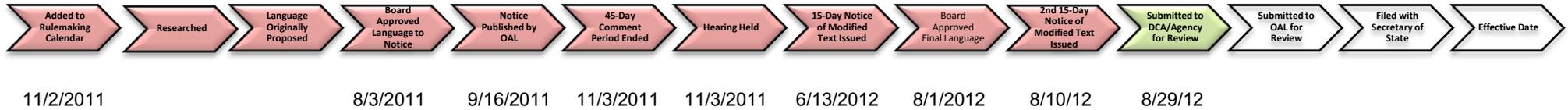
**Status:** 9/14/2012-Chaptered by the Secretary of State, Chapter Number 332, Statutes of 2012

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

**Summary:** This statute extends the Board's sunset date until January 1, 2014 in addition to enacting various other provisions unrelated to physical therapy.

**Position: Support**

## Model Guidelines for Issuing Citations and Imposing Discipline

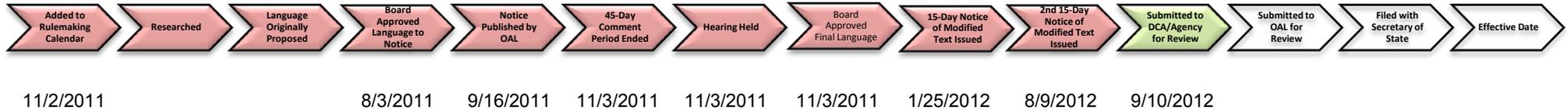


**OAL File No.:** Z2011-0907-01

**Priority:** 2011 - 1 (carried over from 2011 calendar)

**Notes:** A rulemaking file must be completed one year from the date of publication. The deadline to complete this file was September 16, 2012; however, the DCA obtained a 90-day extension on September 14, 2012, on behalf of the Board, from OAL. The DCA anticipates completing its review by the end of October.

## Free Sponsored Health Care Events

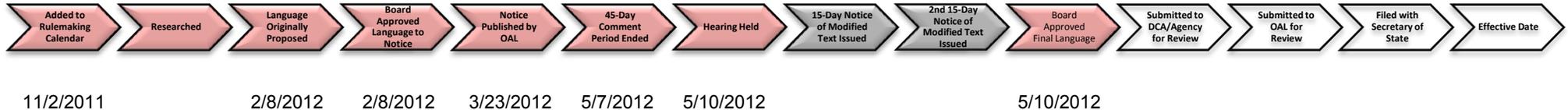


**OAL File No.:** Z2011-0907-02

**Priority:** 2011 - 1 (carried over from 2011 calendar)

**Notes:** Added to comply with AB 2699 (Bass) enacted in 2010 and effective January 1, 2011. A rulemaking file must be completed one year from the date of publication. The deadline to complete this file was September 16, 2012; however, the DCA obtained a 90-day extension on September 12, 2012, on behalf of the Board, from OAL.

## Mandatory Fingerprinting



**OAL File No.:** Z2012-0313-10

**Priority:** 1(A)

**Notes:**

## Continuing Competency



11/2/2011

**OAL File No.:** N/A

**Priority:** 1 (B)

**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. However, Heidi Herbst Paakkonen, MPA, from the FSBPT, will be presenting on the FSBPT continuing competency program at the May 2013 PTBC meeting.

## Notice to Consumers



11/2/2011

5/8/2012

8/1/2012

9/21/12

11/5/2012

11/8/2012

**OAL File No.:** Z2012-0911-05

**Priority:** 1 (C)

**Notes:**

## Delegation Authority for Citation Informal Conferences



11/2/2011

**OAL File No.:** N/A

**Priority:** 1 (D)

**Notes:** This proposal has been added to the Board's proposed 2013 Rulemaking Calendar

## Pathways for Rehabilitation



11/2/2011

**OAL File No.:** N/A

**Priority:** 1

**Notes:** Staff confirmed with legal counsel a regulation is not required to use programs other than the Maximus; this authority is already provided in statute. However, this is a component of the Uniform Standards, which are scheduled to be adopted into regulation pursuant to the Board's proposed 2013 Rulemaking Calendar.

## Application and Licensing Services Regulations



11/2/2011

**OAL File No.:** N/A

**Priority:** 2

**Notes:** Staff determined a complete revision of the Application and Licensing regulations is needed. A task force of staff members and Legal Counsel will be established to conduct a review of the current regulations. Staff has added this to the Board's proposed 2013 Rulemaking Calendar.

## Required E-mail Filing



11/2/2011

5/8/2012

8/1/2012

9/21/2012

11/5/2012

11/8/2012

**OAL File No.:** Z2012-0911-06

**Priority:** 2

**Notes:**

## NPTE Passing Score



11/2/2011

**OAL File No.:** N/A

**Priority:** 2

**Notes:** This proposal is incorporated with the Application and Licensing Services regulations on the Board's proposed 2013 Rulemaking Calendar.

## Office Location



11/2/2011

**OAL File No.:** N/A

**Priority:** 3

**Notes:** Section 100 change – does not require full rulemaking process.

## Processing Times

- A rulemaking file must be completed within one year of the publication date of the Notice of Proposed Rulemaking.
- The DCA is allowed thirty (30) calendar days to review the rulemaking file prior to submission to the OAL.
- The OAL is allowed thirty (30) working days to review the rulemaking file.
- Regulations, unless otherwise specified, take effect thirty (30) calendar days after filing with the Secretary of State.

**Physical Therapy Board of California  
PROPOSED 2013 RULEMAKING CALENDAR**

**SCHEDULE A: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED DURING THE YEAR 2012**

<b>Subject:</b>		<b>CCR Title &amp; Sections Affected:</b>		<b>Statute(s) Being Implemented:</b>	
<b>Responsible Agency Unit:</b>		<b>Contact Person &amp; Phone Number:</b>		<b>Projected Dates:</b>	
				<b>Notice Published:</b>	<b>Public Hearing:</b>
				<b>Adoption by your agency:</b>	<b>To OAL for review:</b>

At this time, the Physical Therapy Board of California has not identified a need to promulgate regulations implementing statutes enacted during the year 2012.

**Physical Therapy Board of California  
2013 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2012**

<b>Subject:</b> Review and/or Update of All Application and Licensing Regulations		<b>CCR Title &amp; Sections Affected:</b> Title 16, Division 13.2, Section(s) specifically identified: 1398.21, 1398.21.1, 1398.22, 1398.23, 1398.24, 1398.25, 1398.26, 1398.26.5, 1398.27, 1398.28, 1398.42, 1398.47, 1399.10, 1399.12 TBD section number – processing time for applicants completing application process, TBD section number – establishing exam scores		<b>Statute(s) Being Implemented:</b> Business and Professions (B&P) Code, Division 2, Chapter 5.7, Articles 3-4.5	
<b>Responsible Agency Unit:</b> Application and Licensing Services	<b>Contact Person &amp; Phone Number:</b> Liz Constancio (916) 561-8274	<b>Projected Dates:</b>			
		<b>Notice Published:</b> 6/4/2013	<b>Public Hearing:</b> 8/7/2013	<b>Adoption by your agency:</b> 8/7/2013	<b>To OAL for review:</b> 9/9/2013

<b>Subject:</b> Continuing Competency		<b>CCR Title &amp; Sections Affected:</b> Title 16, Division 13.2, Article 13		<b>Statute(s) Being Implemented:</b> B&P Code, Division 2, Chapter 5.7, Section(s) 2676	
<b>Responsible Agency Unit:</b> Application and Licensing Services	<b>Contact Person &amp; Phone Number:</b> Jason Kaiser (916) 561-8278	<b>Projected Dates:</b>			
		<b>Notice Published:</b> 9/3/2013	<b>Public Hearing:</b> 11/6/2013	<b>Adoption by your agency:</b> 11/6/2013	<b>To OAL for review:</b> 2/2014

**Physical Therapy Board of California  
2013 RULEMAKING CALENDAR**

<b>Subject:</b> Delegation Authority for Citation Information Conferences (Cite and Fine)		<b>CCR Title &amp; Sections Affected:</b> Title 16, Division 13.2, Section(s) 1399.29		<b>Statute(s) Being Implemented:</b> B&P Code, Division 1, Chapter 1, Section(s) 125.9 and 125.95			
<b>Responsible Agency Unit:</b> Consumer Protection Services		<b>Contact Person &amp; Phone Number:</b> Jason Kaiser (916) 561-8262		<b>Projected Dates:</b>			
				<b>Notice Published:</b> 3/5/2012	<b>Public Hearing:</b> 5/8/2013	<b>Adoption by your agency:</b> 5/8/2013	<b>To OAL for review:</b> 7/2013

<b>Subject:</b> Uniform Standards		<b>CCR Title &amp; Sections Affected:</b> Title 16, Division 13.2, Section(s) to be determined		<b>Statute(s) Being Implemented:</b> B&P Code, Division 2, Chapter 5.7, Section(s) 2663, 2665 and 2666.			
<b>Responsible Agency Unit:</b> Consumer Protection Services		<b>Contact Person &amp; Phone Number:</b> Jason Kaiser (916) 561-8212		<b>Projected Dates:</b>			
				<b>Notice Published:</b> 12/18/2012	<b>Public Hearing:</b> 2/13/2013	<b>Adoption by your agency:</b> 2/13/2013	<b>To OAL for review:</b> 4/2013

**Physical Therapy Board of California**  
**2013 RULEMAKING CALENDAR**

**Report on the status of all uncompleted rulemaking described on previous calendars:**

Abandonment of Applications

CCR Section(s) Affected: Title 16, Division 13.2, Section(s) 1398.21, 1398.21.1, 1398.22, 1398.23

Status: Proposal Inactive – Reintroduced on 2013 Rulemaking Calendar as a part of the review of the application and licensing regulations.

Application of Foreign Educated Physical Therapists and Clinical Services Requirements

CCR Section(s) Affected: Title 16, Division 13.2, Section(s) 1398.26.5

Status: Proposal Inactive – Reintroduced on 2013 Rulemaking Calendar as a part of the review of the application and licensing regulations.

Continuing Competency

CCR Section(s) Affected: Title 16, Division 13.2, Article 13, Section(s) 1399.90-1399.98

Status: Proposal Inactive – Reintroduced on 2013 Rulemaking Calendar.

Physical Therapist Assistant Equivalency Academic Coursework and Work Experience Requirement

CCR Section(s) Affected: Title 16, Division 13.2, Section(s) 1398.47

Status: Proposal Inactive – Reintroduced on 2013 Rulemaking Calendar as a part of the review of the application and licensing regulations.

Uniform Standards Related to Substance Abuse and Guidelines for Issuing Citations and Imposing Discipline (Disciplinary Guidelines)

CCR Section(s) Affected: 1399.15

Status: The Uniform Standards have been separated from the Disciplinary Guidelines for a separate rulemaking file. The Uniform Standards have been reintroduced on the 2013 Rulemaking Calendar and the Disciplinary Guidelines have been finalized and submitted to the OAL for review.



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 #19

#### Briefing Paper

Date: October 24, 2012  
Prepared for: PTBC Members  
Prepared by: Sarah Conley  
Subject: Proposed Regulation: Required E-mail Filing

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#### **Purpose:**

To inform the Board of the status of the proposed changes to California Code of Regulations section 1398.6.

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#### **Background:**

At the August 2012 meeting, the Board adopted the language proposed by staff and directed staff to notice the language for hearing at the November 2012 meeting.

Staff filed the Notice of Regulatory Change with the Office of Administrative Law (OAL), which was published September 21, 2012. The public is allowed 45 days to comment on the language, which ends November 5, 2012. The public may, however, also provide comment at the hearing scheduled for this meeting.

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#### **Analysis:**

Since the August 2012 meeting, legal counsel has voiced concern with the Board's authority to "require" licensees and applicants to file an e-mail address with the Board; therefore, she will propose an amendment to the language at the hearing.

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#### **Action Requested:**

If the Board chooses to modify the proposed language, approve the modified text, and direct staff to move forward with the rulemaking process, the following motion should be made:

*“I move that we approve the proposed modified text for a 15-day public comment period and delegate to the Executive Officer the authority to adopt the proposed regulatory changes, as modified, if there are no adverse comments received during the public comment period, and also delegate to the Executive Officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.”*

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

1398.6. Filing of Addresses.

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

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

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

~~(b)~~ (c) Name Change. Each Every applicant and licensee shall report to the Board in writing each and every change of name within no later than thirty (30) calendar days after each change has occurred, giving both the old and new names.

(d) E-mail Address. Every applicant and licensee shall file a current e-mail address with the Board and shall notify the Board in writing of any and all changes of the e-mail address no later than thirty (30) calendar days after the change has occurred, giving

both the old e-mail address and the new e-mail address. E-mail addresses are confidential information and shall not be made available to the public.

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

Authority cited: Section 2615, Business and Professions Code.

Reference: Sections ~~2655.12~~, 136, 2602.1, 2680, 2683, 2684 and 2685, Business and Professions Code and Section 1798.61, Civil Code.

**PHYSICAL THERAPY BOARD OF CALIFORNIA  
INITIAL STATEMENT OF REASONS**

**HEARING DATE:** November 8, 2012

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Required E-mail Filing

**SECTION(S) AFFECTED:** California Code of Regulations (CCR) Title 16, Division 13.2, Section 1398.6

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

1. Problem being addressed:

Existing Title 16, CCR section 1398.6 (CCR §1398.6), which further defines Business and Professions Code (B&P) section 136, does not clearly define “address of record” or explain, in light of B&P §2680, licensees’ options for address filing. The Board receives a large amount of returned mail from licensees, which includes renewal notices. The largest number of citations issued by the Board is for failure to report address changes. Moreover, if licensees do not receive their license renewal form, they may continue to practice with an expired license.

Another issue is that often times the Board is unable to contact and/or physically locate a licensee who may be under investigation or for other enforcement purposes because the licensee did not update his or her address.

Currently, there is no requirement for licensees to provide an e-mail address to the Board, which is a fast and cost effective method of communication. The Board maintains a voluntary e-mail list, but is only able to reach a fraction of its licensee population this way. The Board publishes a newsletter, but only periodically, so the information contained in the newsletter is out-of-date by the distribution date. Additionally, due to cost, the Board is no longer mailing the newsletter, but instead posting it on-line.

Specifically, the proposed amendments would do the following:

- a) Clarify “address of record.”
- b) Establish the purpose for the Board requiring a residence address, if the residence address is not the address of record.
- c) Provide examples of what may constitute an “alternate address.”
- d) Clarify “residence address.”
- e) Explain a residence address will be kept confidential should a licensee also provide an alternate address of record, as defined.
- f) Add a requirement that a licensee must provide a current e-mail address and update his or her e-mail address, as specified.

- g) Add e-mail addresses are not public information and shall be kept confidential.
- h) Add “inactive” to the license statuses which define “licensee” for the purposes of the section.

2. Anticipated benefits from this regulatory action:

The Board anticipates increased compliance with CCR §1398.6 with the clarification of what is expected from the licensees when reporting addresses. This compliance is important should the Board need to contact and/or physically locate a licensee for a various reasons.

The Board anticipates improved communications with its licensees through e-mail, and using e-mail will allow the Board to immediately disseminate important information to its licensees without incurring significant mailing costs. Moreover, with the future implementation of BreEZe, the Department of Consumer Affairs (DCA) automated licensing system, there is potential for the license application process to be fully automated; therefore, all Board communications with those licensees could be sent electronically.

### **FACTUAL BASIS/RATIONALE**

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

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

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

### **BUSINESS IMPACT**

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

The proposed regulation would apply to licensees, not licensees’ place of business.

## **ECONOMIC IMPACT ASSESSMENT**

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it does not impose any requirements affecting employment.
- It will not create new business or eliminate existing businesses within the State of California because it does not impose any requirements affecting business operations.
- It will not affect the expansion of businesses currently doing business within the State of California because it does not impose any requirements affecting business operations.
- This regulatory proposal benefits the health and welfare of California residents because licensees will potentially be more informed of laws and regulations, which are in place to provide public protection; and, the Board will have the information necessary to contact and/or locate licensees who may be the subject of a complaint, which will assist investigations.
- This regulatory proposal does not affect worker safety because it does not impose any requirements affecting working environments.
- This regulatory proposal does not affect the State's environment because it does not impose requirements on the operations of the State.

## **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

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

## **CONSIDERATION OF ALTERNATIVES**

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

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

1. The Board publishes a newsletter, but only periodically, so the information contained in the newsletter is out-of-date by the distribution date. Additionally, due to the high cost of printing and mailing, the Board posts its newsletter online, so only those who access the Board's Web site will be aware of Board

news.

2. The Board maintains a voluntary e-mail address list; however, only a fraction of licensees sign-up. The Board would like to take advantage of this inexpensive method to disseminate important information to all licensees.

## TITLE 16. PHYSICAL THERAPY BOARD OF CALIFORNIA

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

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

**November 8, 2012**

**8:45 a.m.**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than **5:00 pm** on **November 5, 2012** or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 2615 of the Business and Professions Code, and to implement, interpret or make specific Sections 136 and 2680 of said Code, the Board is considering changes to Division 13.2 of Title 16 of the California Code of Regulations as follows:

### **INFORMATIVE DIGEST**

#### A. Informative Digest/Policy Statement Overview

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

The proposed amendments to CCR §1398.6 would further clarify address reporting

requirements and add an e-mail filing requirement for licensees.

B. Anticipated Benefits of Proposal

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

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

C. Consistency and Compatibility with Existing State Regulations

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

**FISCAL IMPACT ESTIMATES**

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

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

**AND**

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

Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None

### **EFFECT ON SMALL BUSINESS**

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

### **RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

#### Impact on Jobs/Businesses:

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

#### Benefits of Regulation:

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

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

The proposed amendments clarifying address reporting requirements would allow the Board to contact and/or physically locate a licensee should the Board need to contact the licensee.

Both of the above mentioned results of the proposed amendments would increase public protection by making the Board more efficient in communicating with licensees.

### **CONSIDERATION OF ALTERNATIVES**

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

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

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

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

## **TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person at or by accessing the 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).

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the 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).

## **CONTACT PERSON**

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

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

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

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 #20

#### Briefing Paper

Date: October 24, 2012  
Prepared for: PTBC Members  
Prepared by: Sarah Conley  
Subject: Proposed Regulation: Notice to Consumers

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#### **Purpose:**

To inform the Board of the status of the regulatory proposal to add Section 1398.15 to the California Code of Regulations (CCR).

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#### **Background:**

At the August 2012 meeting, the Board adopted the language proposed by staff and directed staff to notice the language for hearing at the November 2012 meeting.

Staff filed the Notice of Regulatory Change with the Office of Administrative Law (OAL), which was published September 21, 2012. The public is allowed 45 days to comment on the language, which ends November 5, 2012. The public may, however, also provide comment at the hearing scheduled for this meeting.

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#### **Analysis:**

The Board adopted the proposed regulation Section 1398.14: Notice to Consumers; however, the Mandatory Fingerprinting regulation was already assigned this number. Therefore, staff amended the Notice to Consumers proposed section number to 1398.15. A Notice of Correction will be published by the OAL in the Notice Register on October 26, 2012. This amendment is non-substantive and needs no further action beyond addressing the change in the Final Statement of Reasons completed at the end of the rulemaking process.

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**Action Requested:**

If the Board chooses to approve the proposed language and direct staff to move forward with the rulemaking process, the following motion should be made:

*“I move that we adopt the proposed regulatory changes as noticed, and delegate to the Executive Officer the authority to make technical or non-substantive changes in completing the rulemaking file.”*

The Physical Therapy Board of California proposes to add Section 1398.15 to Division 13.2 of Title 16 of the California Code of Regulations to read:

1398.15. Notice to Consumers.

- (a) A licensed physical therapist engaged in the practice of physical therapy shall provide Form NTC 12-01, August 2, 2012, to each patient.
- (b) The notice required by this section shall be provided by at least one of the following methods:
  - (1) Prominently posting Form NTC 12-01, August 2, 2012, in an area visible to patients on the premises where the licensee provides the licensed services; or,
  - (2) Providing the patient or the patient's representative with a copy of Form NTC 12-01, August 2, 2012. An acknowledgement, signed and dated by the patient or the patient's representative, shall be retained in that patient's medical records demonstrating receipt.

NOTE: Authority cited: Sections 2615 and 2655.1, Business and Professions Code.  
Reference: Sections 138 and 2602.1, Business and Professions Code.

# **DID YOU KNOW?**

The Physical Therapy Board of California licenses and regulates your Physical Therapist and Physical Therapist Assistant.

*\*A Physical Therapy Aide, while regulated by the Board, is not licensed.*

Visit the Board's website at [www.ptbc.ca.gov](http://www.ptbc.ca.gov) for information on:

- **Verifying a license**
- **What to expect when you receive care**
  - **Your rights as a patient**
  - **How to file a complaint**

## Board Contact Information

2005 Evergreen Street, Suite 1350  
Sacramento, CA 95815  
1-800-832-2251



Physical Therapy Board of California



**PHYSICAL THERAPY BOARD OF CALIFORNIA  
INITIAL STATEMENT OF REASONS**

**HEARING DATE:** November 8, 2012

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Notice to Consumers

**SECTION(S) AFFECTED:** California Code of Regulations (CCR) Title 16, Division 13.2, Section 1398.15

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

1. Problem being addressed:

Currently, there is no effective method of consumer notification of the existence of the Physical Therapy Board of California (Board) and the Board's role in regulating physical therapists and physical therapist assistants. Moreover, the Board must comply with Business and Professions Code (B&P) section 138 which mandates that each board adopt regulations requiring its licentiates to provide notice to their customers that the practitioner is licensed by the State.

This proposed regulation would make consumers receiving physical therapy services aware that physical therapists and physical therapist assistants are licensed and regulated by the Board and how to contact the Board should they need assistance. By law, public protection is the highest priority of the Board, and public protection is enhanced when patients and other interested parties are aware of the Board's existence at a time close to when physical therapy services are provided.

Specifically, the proposed regulation would do the following:

- a) Require physical therapists to provide a notice, referred to as NTC 12-01, August 2, 2012, to consumers
- b) NTC 12-01, August 2, 2012, will be provided by the Board on its Web site where physical therapists may print it out.
- c) NTC 12-01, August 2, 2012, includes the Board's contact information; what information consumers can get from the Board, specifically on the Board's Web site; and, a statement informing consumers that physical therapist and physical therapist assistants are licensed and regulated by the Board.
- d) Physical therapists may provide notice by at least one of two ways: 1) prominently posting NTC 12-01, August 2, 2012, in an area visible to patients on the premises where the licensee provides the licensed services, or 2) providing the patient or the patient's representative with a copy of NTC 12-01, August 2, 2012, and have an acknowledgement signed and dated by the patient or the patient's representative, which shall then be kept in the patient's medical record documenting receipt.

2. Anticipated benefits from this regulatory action:

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

**FACTUAL BASIS/RATIONALE**

Factual basis for determination that each proposed change is necessary:

As stated above, public protection is the highest priority of the Board and this proposal is consistent with that objective. By requiring physical therapists to provide NTC 12-01, August 2, 2012, to all consumers of physical therapy services, the consumer is then directly informed of the Board's existence, that physical therapists and physical therapist assistants are licensed and regulated by the Board, the Board's contact information, and what information and services the Board provides. With access to this information, a physical therapy consumer is in a better position to make reasoned choices for himself or herself and also to assist the Board in regulating physical therapists and physical therapist assistants via the Board's complaint process, should a problem arise.

It has long been suggested by public policy advocates, concerned citizens, and other interested parties that too few Californians are aware of the existence and role of the Board or the public services it offers, e.g., the information available about physical therapists and physical therapist assistants, physical therapy services, laws and regulations, and the complaint process. If the public does not know whom to contact when an issue with a physical therapist, or physical therapist assistant arises or where to seek information about a physical therapist or physical therapist assistant, the Board's effectiveness is hampered and its public protection mission is compromised. With the adoption of this proposal, patients will be provided with a tangible document with the Board's information or will have the opportunity to see a posted notice with the Board's contact information.

This proposed regulation also comports with the provisions of Section 138 of the Business and Professions Code, which requires all DCA boards to promulgate regulations regarding notice that a practitioner is licensed by the State; the Physical Therapy Board is one of these boards.

**UNDERLYING DATA**

None.

**BUSINESS IMPACT**

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

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

### **ECONOMIC IMPACT ASSESSMENT**

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it does not impose any requirements affecting employment.
- It will not create new business or eliminate existing businesses within the State of California because it does not impose significant requirements affecting business operations.
- It will not affect the expansion of businesses currently doing business within the State of California because it does not impose significant requirements affecting business operations
- This regulatory proposal benefits the health and welfare of California residents because it will notify California physical therapy consumers that the Board is the oversight agency for the practice of physical therapy and provide information on how to contact the Board with questions and/or complaints. In addition to contacting the Board via phone or e-mail, consumers will also be provided the Board's Web site address, which has information that will inform consumers as to what care they are entitled to, and, if necessary, how to report a complaint. This will create more informed consumers who are in a better position to make reasoned choices for regarding their care, and also to assist the Board in regulating physical therapists and physical therapist assistants via the Board's complaint process, should a problem arise
- This regulatory proposal does not affect worker safety because it does not impose any requirements affecting working environments.
- This regulatory proposal benefits the State's environment because it will potentially increase the standard of physical therapy care. Consumers are where the Board cannot always be; therefore, if consumers are informed, they can identify possible deviations from what "should be." Additionally, once identified, consumers will know who to contact – the Board – to assist with their concerns.

### **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

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

## **CONSIDERATION OF ALTERNATIVES**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

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

The Physical Therapy Board has for many years used the traditional methods to try to inform the public of its existence and how to contact it: outreach at various health-related events, newsletters to the Board's licensees and others, a comprehensive Web site, and written materials (e.g., pamphlets).

Posting a notice as required by this regulation would be much more effective than all of these activities combined. While the Board endeavors to inform the public of its roles and functions via various methods, the proposed regulation would enhance awareness within the point-of-service area. This is a more effective means of educating patients.

## TITLE 16. PHYSICAL THERAPY BOARD OF CALIFORNIA

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

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

**November 8, 2012**

**9:00 a.m.**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than **5:00 p.m.** on **November 5, 2012**, or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for fifteen (15) days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 2615 and 2655.1 of the Business and Professions Code (B&P Code), and to implement, interpret or make specific Section 138 of the B&P Code, the Board is considering changes to Division 13.2 of Title 16 of the California Code of Regulations as follows:

### **INFORMATIVE DIGEST**

#### **A. Informative Digest**

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

This proposal to adopt Title 16, California Code of Regulation, section 1398.15 would implement section 138 by requiring physical therapists to notify consumers by physical therapists of the fact that physical therapists and physical therapist assistants are licensed by the Physical Therapy Board of California, also providing the Board's toll-free phone number and its Web site address.

## B. Policy Statement Overview/Anticipated Benefits of Proposal

As drafted, this proposal would increase public protection by informing the public of the existence of the Board and by providing the contact information for the Board. The general public may not be aware that 1) the Board exists, 2) physical therapists and physical therapist assistants are licensed and regulated by the Board, and 3) the Board can investigate complaints about care provided by a physical therapist or physical therapist assistant. The notices will increase consumer awareness and provide immediate access to contact information for the Board, the primary entity ensuring physical therapy consumers have fair and safe access to quality physical therapy care.

This specific proposal would add Section 1398.15. Notice to Consumers, requiring physical therapists to either 1) post a notice prescribed by the Board, or 2) provide a copy of a notice prescribed by the Board to the patient. If a physical therapist chooses to provide a copy of notice to each patient rather than posting the notice, an acknowledgement of receipt of the notice shall be signed by the patient and maintained in the patient's record.

## C. Consistency and Compatibility with Existing State Regulations

This proposal is consistent and compatible with existing State regulations in that it implements Business and Professions Code section 138, which is required by all Department of Consumer Affairs (DCA) boards, and the Board has found this proposal to be consistent with similar regulations implementing Business and Professions Code section 138, such as the regulation adopted by the Medical Board of California. Additionally, this proposal is similar to Business and Professions Code section 2936, which statutorily requires licensees of the Board of Psychology to provide a notice to consumers informing consumers how to contact the Board of Psychology.

## **INCORPORATED BY REFERENCE** (if applicable)

1. NTC 12-01, August 2, 2012

## **FISCAL IMPACT ESTIMATES**

### A. Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

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

Other than this potential effect on the Board itself, there are no costs or savings to any

other State agency, nor is there any effect on Federal funding to the State.

B. Nondiscretionary Costs/Savings to Local Agencies: None.

C. Local Mandate: None.

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

E. Business Impact:

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

### **AND**

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

F. Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None

### **EFFECT ON SMALL BUSINESS**

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

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

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

### **RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

A. Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the

expansion of businesses in the State of California.

#### B. Benefits of Regulation

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

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

#### **CONSIDERATION OF ALTERNATIVES**

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

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

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

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

#### **TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person or by accessing the Board's Web site:

[http://www.ptbc.ca.gov/laws\\_regs/prop\\_regs/index.shtml](http://www.ptbc.ca.gov/laws_regs/prop_regs/index.shtml).

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

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

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

## **CONTACT PERSON**

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

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

The backup contact person is:

Name: Rebecca Marco  
Address: Physical Therapy Board of California  
2005 Evergreen St., Ste. 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

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 #21

1  
2 Briefing Paper

3  
4 Date: October 15, 2012

5  
6 Prepared for: PTBC Members

7  
8 Prepared by: Martha Jewell, Ph.D., PT

9  
10 Subject: PT-educated individuals who were tested, licensed and are working  
11 as a PTA

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12  
13 **Purpose:**

14 Inform Board and Staff of possible issues.  
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18  
19 **Background:**

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21 In January 2012 FSBPT issued a Resource Paper discussing the issues around  
22 applicants educated as Physical Therapists but who were licensed and are working  
23 as PTA's.

24  
25 Arguments against allowing a PT-educated individual to sit the NPTE-PTA exam  
26 include: 1) PT-educated PTA's are more likely to exceed their scope of practice than  
27 PTA's educated as PTA's. 2) The purpose of licensure is to protect the public. 3) Any  
28 data to date indicating that no harm exists by allowing PT-educated individuals to  
29 practice as PTA's is very small. 4) PT's are trained to supervise, and are not trained  
30 to be supervised but to be autonomous practitioners.

31  
32 Arguments for allowing a PT-educated individual to sit the NPTE-PTA exam include:  
33 1) This could contribute to meeting PTA workforce needs. 2) There is no evidence  
34 that a PTA educated as a PT will exceed his/her scope of practice. 3) PTA's,  
35 regardless of their education, must work under the supervision of a PT. 4) Being  
36 overqualified for a job is not a valid reason to exclude an applicant from the job. 5)  
37 Limitations in education could be addressed through a supervised clinical practice, or  
38 additional education through other avenues.

39  
40 The assumption is that a PT educated individual who cannot pass the NPTE or a  
41 foreign-educated PT whose credentials are not found to be substantially equivalent

1 will request to take the NPTE-PTA. However most states and the FSBPT Model  
2 Practice Act include language like: “An applicant for licensure as a physical therapist  
3 assistant shall: Submit proof of graduation from a physical therapist assistant  
4 education program accredited by a national accreditation agency approved by the  
5 board.”  
6

7 Currently there are at least ten jurisdictions including California that allow a PT-  
8 educated individual to take the NPTE-PTA exam. California B&P 2655.3 states that a  
9 person applying for approval as a PTA must have the following qualifications: “(a)  
10 Have graduated from a physical therapist assistant education program approved by  
11 the board..., or have training or experience or a combination of training and  
12 experience which in the opinion of the board is equivalent to that obtained in an  
13 approved physical therapist assistant education program.”  
14

15 In 2008-2009 FSBPT conducted a small study to determine if PT-educated PTA’s  
16 exceeded their scope of practice more often than PTA-educated PTA’s. Although the  
17 numbers of PT-educated PTA’s were exceedingly small there was no evidence that  
18 they exceeded their scope of practice more frequently than PTA-educated PTA’s. As  
19 a part of this study FSBPT found that in the 5 states studied only 2.4% of the PTA’s  
20 licensed during that time were PT-educated. The PT-educated PTA’s had failed the  
21 NPTE-PT an average of four times, but there were also individuals for whom no  
22 record of attempting the NPTE-PT. And all but one PT-educated PTA passed the  
23 NPTE-PTA on the first attempt.  
24  
25

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26  
27 **Analysis:**  
28

29 PT-educated individuals are able to sit the NPTE-PTA exam in California. These  
30 individuals should appear in the data on alternative pathways. This may be a reason  
31 for retaining the alternative pathway as an access to PTA approval. There is no  
32 statistically significant evidence that PT-educated PTA’s have a higher incidence of  
33 law and statute violations than PTA-educated PTA’s.  
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37 **Action Requested:**  
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39 The board may wish to address the issue of being trained to be supervised and  
40 education on PTA scope of practice at some future date.

FEDERATION OF STATE BOARDS OF PHYSICAL THERAPY

**Educated as a PT, Testing and Working as a PTA**

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**Resource Paper**

**Contact Person – Leslie Adrian, PT, MS, MPA, Director of Professional Standards**

**January 2012**

## **Educated as a PT, Testing and Working as a PTA Resource Paper**

The purpose of regulatory boards is to provide some assurance to the public that the regulated individual is competent to provide certain services in a safe and effective manner and to ensure that the public is protected from incompetent and unethical practitioners.<sup>i</sup> Historically, most regulatory boards have not allowed individuals educated as physical therapists to work as physical therapist assistants in the belief that this could potentially lead to harm. Often, this argument is based on the assumption that individuals trained as physical therapists would tend to practice beyond the PTA scope of work because they have training which exceeds that of the PTA.

For many people it is difficult to understand why individuals trained as PTs would even consider working as PTAs. The financial and time commitment required to complete physical therapist education and the earning potential is much more significant than the same for the physical therapist assistant. It is generally assumed that the candidate looks to this option when they cannot pass the PT National Physical Therapy Examination. A second common assumption is that a foreign-educated physical therapist whose credentials are not found to be substantially equivalent to a CAPTE-accredited physical therapist education may attempt to alternatively pursue licensure as a physical therapist assistant.

Each regulatory board must define for itself what it considers public protection and harm. It may be argued that public protection includes access to necessary services. If the regulatory board determines that access to care due to a shortage of providers is indeed a public protection issue, facilitation of qualified individuals into the workforce should fall under its mission. As it is the jurisdiction boards that are responsible for determining who will be considered a qualified individual, the board may potentially start looking at non-traditional paths to licensure. Allowing a trained, unlicensed physical therapist the option to pursue a career as a physical therapist assistant may be one strategy to help to meet the projected employment needs of the future.

The potential workforce shortage in physical therapy has been discussed for a number of years within the respective professional and regulatory organizations. According to the United States Bureau of Labor Statistics Occupational Outlook Handbook, employment of physical therapists and physical therapist assistants is expected to grow faster than average demonstrating that the need for qualified personnel to deliver physical therapy services continues to increase.<sup>ii iii</sup> In all 53 licensing jurisdictions, physical therapist assistants must work under the supervision of a physical therapist. Forty-nine states (excludes Hawaii) regulate physical therapist assistants to some degree through certification or licensure.

The pool from which qualified candidates can come to fill the vacancies is fairly shallow at this time. Jurisdictions set the typically strict requirements for access to the NPTE and subsequently licensure. Individuals would have to graduate from physical therapist or physical therapist assistant schools or be substantially equivalent foreign educated. Most state practice acts, including the FSBPT Model Practice Act, whether specifically intended or not, prohibit a physical

## **Educated as a PT, Testing and Working as a PTA Resource Paper**

therapist graduate from sitting for the PTA exam. The requirements specifically state the individual must be a graduate of a **physical therapist assistant** education program:

*C. An applicant for [certification/licensure] as a physical therapist assistant shall:*

- 1. Complete the application process including payment of fees.*
- 2. Submit proof of graduation from a physical therapist assistant education program accredited by a national accreditation agency approved by the board.*
- 3. Pass the examination approved by the board.*
- 4. Meet the requirements established by board rule if applicable.<sup>iv</sup>*

Currently, at least ten jurisdictions (CA, CO, DC, ID, KY, ME, MI, NM, NY, TX) allow a graduate of a CAPTE-accredited physical therapy program to choose to sit for the physical therapist assistant licensure exam. Michigan allows a PT-educated individual to take the PTA examination after a credentials review is completed. Michigan passed the law requiring licensure in 2009 and only began licensing PTAs in 2010. Up until 2005, Kentucky allowed PT-educated individuals to take the PTA exam. From 2005-2011, Kentucky discontinued that practice, but decided in Fall 2011 to resume PTA testing for PT-educated candidates. If successful, these candidates in Kentucky and the other nine jurisdictions will become licensed physical therapist assistants and may work at minimum in any of the ten jurisdictions listed. However, mobility to other states is limited. Statutory language discussed above may invalidate the now-licensed PTA's eligibility in other states. Because most states do not allow PT-educated individuals to test for the PTA exam, the PT-educated PTAs from these ten states will likely not be able to get licensed by endorsement in other states.

While all ten jurisdictions *allow* for this testing, the jurisdictions vary with regard to how enthusiastic they are about the policy. For instance, board members from one jurisdiction reported that although it is allowed if a candidate asks, they do not publicize the availability for the PT-educated to test as a PTA. The District of Columbia board members acknowledge that they allow this because of an attorney general opinion stating that they could not prevent those persons that were "over qualified" from taking the PTA exam.

Although little data exists to back either position, there are plausible arguments for both sides of the issue. As is the case in DC, the argument that being overqualified, or trained beyond the allowed scope of work, is not a valid argument for prohibiting someone who has demonstrated competence to perform a job that requires less knowledge and skill - at least based on the advice of the board's legal counsel. Someone who is trained as a physical therapist will have all the requisite skills and knowledge to work as a physical therapist assistant. The knowledge and skills taught within the physical therapist assistant program are included and surpassed within the physical therapist program.

On the other hand, the physical therapist, while being trained to supervise the physical therapist assistant, may not have specific education and training on the work limitations of the physical

## **Educated as a PT, Testing and Working as a PTA Resource Paper**

therapist assistant. And it can be argued that while it is part of the accreditation criteria, the education and training on supervision of the PTA may widely vary between programs. Another “con” argument is that individuals graduating from a physical therapist program have been academically trained in differential diagnosis and critical thinking and are clinically trained to perform patient diagnosis, assessment of prognosis, and design a plan of care, activities that are not within the scope of work of a physical therapist assistant. There may be a concern by licensing jurisdictions that these individuals will knowingly or unknowingly use these skills in working as physical therapist assistants.

The NPTE is not the only tool that may be utilized by a board to ensure that a PT-educated individual is appropriate for licensure as a PTA. In many practice acts or rules, boards have the flexibility and discretion for additional requirements. It is not uncommon to see in statute or rule the “disclaimer” for licensure eligibility of *“Completed any additional education as required by the board.”* Some state boards have required additional training specifically in the work role of the PTA, supervised clinical practice as a PTA either prior to or after the examination, mentoring with an established PTA, etc. These jurisdictions have used this power to augment the PT-educated individual’s exposure to the role of the PTA. In these cases the board members felt that the lack of education as to the specific role of a PTA from the perspective of a PTA was an important piece of education that was missing. By requiring a little more from the candidate, the boards were satisfied the individual had a good grasp of the work requirements and limitations of the PTA versus what was taught as a PT.

The argument that a PTA who is educated as a PT will be more likely to exceed his or her scope of work is an interesting one. Because PTAs in every jurisdiction must work under the supervision of the PT, it could be argued that it is the supervising PT’s responsibility to assure that the PTA works within their designated scope. Theoretically, effective supervision by the PT should assure the PTA does not exceed their scope of work.

In 2008-2009, FSBPT utilized internal data for a small study to look at PT-educated individuals taking the PTA examination and subsequently becoming licensed and working. The total numbers in this study were extremely small, but do represent all the incidences that could be found in the specified time period. This study may demonstrate that there have been minimal reported disciplinary actions; however it does not answer the question if there is risk. It is well accepted in the regulatory community that not all offenses are reported to regulatory boards. Most patients are ignorant or what would/should happen and never realize there was any offense to report and peers/supervisors often report only if they feel the offense is egregious enough. The study performed by FSBPT cannot answer the question if offenses are occurring or not occurring, but may only show that they are not being handled through the jurisdiction discipline process. However, the purpose of this study was to determine whether evidence exists to support the hypothesis:

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*In the states that allow individuals trained as physical therapists to sit for the physical therapist assistant examination, and practice as physical therapist assistants, the individuals will demonstrate a greater incidence of disciplinary actions in HIPDB category code 29, Practicing Beyond the Scope of Practice, as compared to individuals educated, licensed, and working as PTAs.*

The study was based on the data in California, Maine, New Mexico, New York, and Texas for the time period 1/1/2006 through 7/31/2008. The following abbreviations will be used with regard to the study results.

PT: Physical therapist

PTA: Physical therapist assistant

PTA-PTA: Physical therapist assistant educated in a physical therapist assistant program

PTA-PT: Physical therapist assistant educated in a physical therapist program

The five jurisdictions were selected for this study because at the time these were the only known jurisdictions which allowed persons during the timeframe 1/1/2006-7/31/2008 to take the PTA exam if educated in a PT program. At the time, it was believed that including all five of these states evaluated the entire population, rather than just a sample of jurisdictions which allow PT-educated individuals to become licensed PTAs. However, it was discovered (September 2011) that there were three additional states that should have been included (CO, DC, and ID). The Federation of State Boards of Physical Therapy's Exam Licensure and Disciplinary Database was utilized to generate the following sets of information:

1. List of PTA-PTs licensed between 1/1/2006-7/31/2008 in CA, ME, NM, NY, and TX
2. List of PTA-PTAs licensed between 1/1/2006-7/31/2008 in CA, ME, NM, NY, and TX
3. List of PTA-PTs licensed between 1/1/2006-7/31/2008 in CA, ME, NM, NY, and TX with disciplinary action against them
4. List of PTA-PTAs licensed between 1/1/2006-7/31/2008 in CA, ME, NM, NY, and TX with disciplinary action against them
5. List of all disciplinary action in CA, ME, NM, NY, and TX between 1/1/2006-7/31/2008 regardless of licensure date

The total number of PTA-PTAs licensed in California, Maine, New Mexico, New York, and Texas between 1/1/2006 and 7/31/2008 was 2,011. By contrast, only 48 PTA-PTs were licensed, 2.4% of the total physical therapist assistant licenses granted. A simple search for exam score history of each of the 48 identified PTA-PTs was performed in the FSBPT licensure database using social security number as the identifier. Name, school attended, and graduation date were compared and used to confirm the identity of the PTA-PT.

Although a majority of PTA-PTs had failed the NPTE-PT, there is still a noteworthy percentage that FSBPT has no record of attempting the NPTE-PT, but took and passed the NPTE-PTA. All of

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the candidates who attempted the NPTE-PT failed multiple times prior to attempting the NPTE-PTA. On average, a candidate attempted the NPTE-PT four times before taking the NPTE-PTA, and five times overall. For the 29 PTA-PTs that had testing data available, all but one was successful in passing the NPTE-PTA on the first attempt. The one candidate who failed the NPTE-PTA was successful on the second attempt. Performance on the NPTE-PTA suggests that PTA-PTs are competitive with PTA-PTAs at achieving a passing score.

The disciplinary actions against all PTAs, regardless of licensure date, for CA, ME, NM, NY, and TX were retrieved, totaling 202 separate violations between 1/1/2006-7/31/2008. A small percentage, 2.0% or four violations, were against PTA-PTs. The other 98% would be for PTA-PTAs. Violations were in the categories of Violation of Federal or State Statutes, Regulations or Rules (three instances) and Patient Abandonment (one instance). A test of the difference in proportions was performed to compare the rate of disciplinary action between the PTA-PT and PTA-PTA groups. The statistical analysis resulted in values which did not support a statistical difference; therefore there was no evidence that the rate of disciplinary action was different for the two groups.

Additionally, five violations of the total 202 were specifically for exceeding Scope of Practice (table 1). All three with known schooling were committed by a PTA-PTA; that is, none of the Scope of Practice violations was committed by PTA-PT. Admittedly small in scope, the evidence from this study did not support the hypothesis that there will be a greater incidence of disciplinary actions in HIPDB category code 29, Practicing Beyond the Scope of Practice, by PTA-PTs as compared to PTA-PTAs. Interestingly, on June 3, 2011, Kentucky reported a PT-educated individual who became a PTA was disciplined for exceeding the scope of practice and reported to HIPDB on June 3, 2011. This is the first instance in the state.

Table 1: Number of Exceeding Scope of Practice Violations, by State

Exceeding scope of practice	CA	ME	NM	NY	TX
PTA-PTs	0			0	0
PTA-PTAs	2		1	0	0
Unknown schooling	1	1			

### **Conclusion**

In most states, a legislative change would be required in order to implement language that allows graduates of an accredited physical therapist or physical therapist assistant program to sit for the physical therapist assistant licensure exam. This is certainly not an easy process and likely is not the highest legislative priority in many jurisdictions. However for those states struggling with problems of access issues and shortages of qualified personnel, allowing an individual fully educated as a PT to test, license, and work as a physical therapist assistant may be a viable and preferred solution. Historically, the total number of PT-educated candidates

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who have chosen to take the PTA exam is so small however, that the impact on the workforce would be minimal.

### **Summary**

Arguments for:

1. Allowing PT-educated individuals to sit for the PTA exam could augment the shortage or mal-distribution of physical therapists assistants.
2. There is no evidence that PT-educated PTAs will exceed their scope of work.
3. PTAs must work under supervision which provides a safeguard for the fear that they will exceed their scope.
4. Being overqualified is not a valid argument for not allowing someone to perform a job.
5. Any limitations in education related to adequate supervision can be addressed through supervised clinical practice, augmentation of education or through other means.

Arguments against:

1. Since it is human nature to perform at the level of education and training, PT-educated PTAs will more likely exceed their scope of work.
2. The purpose of licensure and determining qualifications for licensure is to protect the public.
3. While currently evidence of harm in the states that currently allow PT trained PTAs does not exist, the data set is extremely small.
4. PTs are not trained to be supervised in their education and training. Rather they are trained to supervise.

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<sup>i</sup> Schmitt and Shimberg, *Demystifying Occupational and Professional Regulation*, Council on Licensure, Enforcement and Regulation, 1996, p. 1.

<sup>ii</sup> Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2010-11 Edition*, Physical Therapists, on the Internet at <http://www.bls.gov/oco/ocos080.htm> (visited November 14, 2011).

<sup>iii</sup> Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2010-11 Edition*, Physical Therapist Assistants and Aides, on the Internet at <http://www.bls.gov/oco/ocos167.htm> (visited November 14, 2011).

<sup>iv</sup> FSBPT *The Model Practice Act for Physical Therapy. A Tool for Public Protection and Legislative Change*. FSBPT. Alexandria, VA. 2011, on the Internet at <https://www.fsbpt.org/RegulatoryTools/ModelPracticeAct>.

**BAGLEY-KEENE OPEN MEETING ACT  
TOP TEN RULES  
(October 2010)**

**[NOTE: GC § = Government Code Section; AG = Opinions of the California Attorney General.]**

- 1. All meetings are public. (GC §11123.)**
- 2. Meetings must be noticed 10 calendar days in advance—including posting on the Internet. (GC §11125(a).)**
- 3. Agenda required—must include a description of specific items to be discussed (GC §§ 11125 & 11125.1).**
  - a. No item may be added to the agenda unless it meets criteria for an emergency. (GC §11125(b).)**
- 4. Meeting is “gathering” of a majority of the board or a majority of a committee of 3 or more persons where board business will be discussed. Includes telephone & e-mail communications. (GC § 11122.5; Stockton Newspapers Inc. v. Members of the Redevelopment Agency of the City of Stockton (1985) 171 Cal.App.3d 95.)**
- 5. Law applies to committees, subcommittees, and task forces that consist of 3 or more persons (includes all persons whether or not they are board members). (GC §11121)**
- 6. Public comment must be allowed on open session agenda items before or during discussion of each item and before a vote, unless: (GC §11125.7.)**
  - a. The public was provided an opportunity to comment at a previous committee meeting of the board. If the item has been substantially changed, another opportunity for comment must be provided.**
- 7. Closed sessions (GC §11126.) At least one staff member must be present to record topics discussed and decisions made. (GC § 11126.1).**

**Closed session allowed:**

- a. Discuss and vote on disciplinary matters under the Administrative Procedure Act (APA). (subd. (c)(3).)**
- b. Prepare, approve or grade examinations. (subd. (c)(1).)**
- c. Pending litigation. (subd. (e)(1).)**

- d. Appointment, employment, or dismissal of executive officer (EO) unless EO requests such action to be held in public. (subd. (a), (b).)

No closed session allowed for:

- a. Election of board officers. (68 AG 65.)
- b. Discussion of controversial regulations or issues.

- 8. No secret ballots or votes except mail votes on APA enforcement matters. (68 AG 65; GC §11526.)
- 9. No proxy votes. (68 AG 65.)
- 10. Teleconference Meetings (GC §11123.)
  - a. Suitable audio or video must be audible to those present at designated location(s). (subd. (b)(1)(B).)
  - b. Notice and agenda required. (subd. (b)(1)(A).)
  - c. Every location must be open to the public and at least one board member must be physically present at the specified location. All members must attend at a public location. (subds. (b)(1) (C), and (F).)
  - e. Rollcall vote required. (subd. (b)(1)(D).)
  - f. Emergency meeting closed sessions not allowed. (subd. (b)(1)(E).)

Reference: January 2010 “Public Meetings” Memorandum & Attached Guide to the Bagley-Keene Open Meeting Act

[http://www.dca.ca.gov/publications/bagleykeene\\_meetingact.pdf](http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf)

# ETHICAL DECISION MAKING

Questions	Mandatory Disqualification	Need Further Discussion
<p>Have you served as</p> <ul style="list-style-type: none"> <li>• investigator</li> <li>• prosecutor, or</li> <li>• advocate</li> </ul> <p>before or during the adjudicative proceeding?</p>	<b>Yes</b>	
<p>Are you biased or prejudiced for or against the person?</p> <p style="text-align: center;">or</p> <p>Do you have an interest (including a financial interest) in the proceeding?</p>	<b>Yes</b>	
<p>Have you</p> <ul style="list-style-type: none"> <li>• engaged in a prohibited ex parte communication before or during adjudicative proceeding (may result in disqualification)?</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• complained to you about investigation currently in progress and said how great he or she is</li> </ul> <p>√ “Ex parte” communication: direct or indirect communication with you by one of the parties or its representative without notice and opportunity for all parties to participate in the communication (e.g. applicant or licensee (or someone acting on that person’s behalf)</p>		<b>Yes</b>
<p>Do you or your spouse or a close family member (such as an uncle or cousin) have personal knowledge of disputed evidentiary facts concerning the proceeding?</p>		<b>Yes</b>
<p>Do you doubt your capacity to be impartial?</p>		<b>Yes</b>
<p>Do you, for any reason, believe that your recusal would further the interests of justice?</p>		<b>Yes</b>