

## **INITIAL STATEMENT OF REASONS**

**HEARING DATE:** May 13, 2015

**SUBJECT MATTER OF PROPOSED REGULATION:** English proficiency requirements and credential evaluation service reports.

**SECTION(S) AFFECTED:** California Code of Regulations, Title 16, Division 13.2, Amend 1398.25 and Adopt 1398.26.3

### **SPECIFIC PURPOSE OF THE PROPOSED CHANGES:**

The Physical Therapy Board of California (Board) proposes to amend section 1398.25 and adopt section 1398.26.3 into the California Code of Regulations (BPC), Title 16, Division 13.2 to clarify English proficiency requirements for applicants who completed a non-approved PT program outside of the United States. Specifically, 1) Set a passing score on the Test of English as a Foreign Language (TOEFL); 2) require the exam to be passed in one sitting; and, 3) Identify exemption qualifications. The proposed language also requires approved credential evaluation services (CES) to report on the evaluation the applicant's compliance on the TOEFL examination or exemption.

### **FACTUAL BASIS/RATIONALE:**

**Business and Professions Code Section (BPC§) 2615**, authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable the Board to carry out the provisions of the Physical Therapy Practice Act.

**BPC §2653**, authorizes the Board to adopt regulations defining requirements for satisfying English Proficiency and authorizes the Board to require an applicant to submit documentation of their education to an approved CES for review and submission of a report to the Board.

SB 198 amended Business and Professions Code (BPC) § 2653 (b) of the Physical Therapy Practice Act (Act) when it was chaptered into law. The amendment requires an applicant for a license as a physical therapist who has graduated from a physical therapist education program, that is not approved by the Board and is not located in the United States, demonstrate proficiency in English by achieving a score specified by the Board on the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Services (ETS) or such other examination as may be specified by the Board by regulation.

Since TOEFL was required by statute prior to the promulgation of regulation, the Board has deferred to the examination score minimums set in federal regulation, Title 8, Code of Federal Regulations (CFR), section 212, subdivision (g), by the United States Citizenship and Immigration Services (USCIS) for immigrants seeking to come into the United States to practice physical therapy. The Board also has relied on the four board approved CES to report the scores to the Board on the credential evaluation report.

### **Problem**

The Board finds the score minimums acceptable by USCIS for immigration purposes outdated and insufficient for consumer protection. Federal regulations allow for combining of scores of the

multiple part exam from multiple sittings which the Board also finds insufficient for consumer protection. Although, consistent with federal regulation the board proposes to define in regulation those considered to be exempt from the TOEFL requirement for having studied in countries where English is not a foreign language. Finally, the CES reporting scores to the Board are doing so voluntarily since it is not mandated in regulation.

TOEFL is a test of English proficiency of individuals whom English is a foreign language. It contains four sections: Reading, Listening, Speaking and Writing. In the current version of the TOEFL, an applicant may receive up to 30 points for each section, for a maximum total score of 120.

Over a decade ago, the federal government began requiring tests of English proficiency for non-citizens coming into the US to practice physical therapy. While the USCIS recognizes the TOEFL, the current federal regulation does not mirror the current administration of the TOEFL. The federal regulation specifically refers to the old TOEFL and TSE (Test of Spoken English) scores by name and assigns a pass score for each. When those were no longer available, the concordance tables between the exams for the new integrated exam led to using the composite scores of reading, writing and listening which matched the old TOEFL, and the Speaking score matched the old TSE. Since those were two separate exams, they allowed the separate exams scores but this is no longer the case; therefore, USCIS is looking for ways to adjust this.

The figures below are the scores currently required by the USCIS-approved Foreign Credentialing Commission on Physical Therapy (FCCPT), which is authorized to issue certifications for physical therapists by the Secretary of Homeland Security in consultation with the Secretary of Health and Human Services. The minimum scores are:

TOEFL SECTION(S)	MINIMUM SCORE
Total Score	89
Composite of Reading Comprehension, Listening Comprehension and Writing	63 (equivalent to USCIS computer based score 220)*
Speaking	26 (equivalent to USCIS TSE score 220)*

\*The scores recommended by USCIS in federal statute refer to exams that are no longer available. The TOEFL has been consolidated into one internet based test (TOEFL- iBT) and the scores have been converted from the original USCIS standard,

The Federation of State Boards of Physical Therapy (FSBPT) is a member organization of physical therapy state licensing boards. The FSBPT owns the National Physical Therapy Examinations and through a vote of its members, in 2017 will require each exam candidate to pass the TOEFL with the following passing scores:

TOEFL SECTION	MINIMUM SCORE	
Reading Comprehension	21	Total of 63
Listening Comprehension	18	
Writing	24	
Speaking	26	

The federal regulations allow applicants to use passing scores from multiple sittings/administrations of the exam; however, FSBPT will require applicants to pass all four sections in one sitting and applicants must pass each section with a minimum score.

The FSBPT reasons there is an established *minimum* standard for each scale reflecting different abilities with respect to English proficiency and demonstrating qualifications in each of the categories in a single setting better ensures the individual will be minimally competent to practice physical therapy in the United States. They further reason that since these aren't long tests (4.5 hours each) and since there are frequent retake opportunities (every 12 days), it could be quite easy to string together a few better-than-expected performances on each section and achieve a passing score.

Because FSBPT's rationale suggests a high degree of likelihood an applicant will be able to practice physical therapy in English and demonstrating qualifications in each of the categories in a single setting better ensures the individual will be minimally competent to practice physical therapy in the United States, the Board proposes to adopt minimum scores consistent with the FSBPT minimum scores for each section during a single administration of the examination.

The Board further rationalizes that adopting the federal regulations composite score of 63 for reading, writing and listening would not be in the best interest of public protection since an applicant could get a high score in writing and reading comprehension and a very low listening comprehension score, yet still pass the examination. Also, it appears that allowing the combining of scores was to address the transition to the new TOEFL exam format to be compliant with the current federal regulation, which is anticipated to be changed in the future. Another consideration is thirty three of the thirty four states requiring English proficiency have adopted the score pass point established by the FSBPT.

Federal regulation also provides an exemption for individuals who studied in countries where English is not a foreign language. Code of Federal Regulations (CFR), Title 8, § 212.15, subdivision (g)(2)(ii), states, "*The following aliens are exempt from the English language requirements: Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, or the United States.*"

Additionally, CFR, Title 8, § 212.15, subdivision (h)(4)(i)(3), states: "*Physical therapists. An alien physical therapist who has graduated from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA) is exempt from the educational comparability review and English language proficiency testing.*"

Therefore, the Board proposes to cross reference the CFR, so individuals who studied in a country where English was not a foreign language, are exempt from the TOEFL requirement. Such exemption is also consistent with the purpose of the statute, to test those for whom English is a foreign language.

The proposed language requires approved credential evaluation services (CES) to report on the evaluation: 1) either the applicant's compliance on, or exemption of, the TOEFL examination and 2) the score was achieved in a single administration. While the CES at this time have agreed to report TOEFL scores on the credential evaluation report there is no mandated requirement.

**UNDERLYING DATA:**

1) Title 8, Code of Federal Regulations, section 212.15, subdivision (g).

**BUSINESS IMPACT:**

The Board has made the initial determination that the proposed regulation would not have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other States. The initial determination is based on the fact that 1) according to the median salary of both a physical therapist and physical therapist assistant, as cited by the Employment Development Department, the increase in fees is less than 1% of the licensee's salary; 2) the California based approved CES was consulted and provided favorable input on the proposal along with those located nationwide.

**ECONOMIC IMPACT ASSESSMENT:**

This regulatory proposal will not create or eliminate jobs within the State of California because those applicants applying for licensure pursuant to BPC §2653 have been complying with the requirement since January 1, 2014. These applicants have also been required to meet the TOEFL requirements of USCIS for quite some time in order to immigrate into the United States.

It will not create new business or eliminate existing businesses within the State of California because this proposal will not affect businesses other than adding to the already existing reporting criteria of the California based CES.

This regulatory proposal would not affect the expansion of businesses currently doing business within the State of California because the California based CES already provides reports to the Board on behalf of select applicants.

This regulatory proposal benefits the health and welfare of California residents by assuring a physical therapy practitioner is proficient in English and is capable of communicating effectively with not only the patient, but other health care professionals, insurance companies, etc. is a benefit to the consumer and meets the Board's consumer protection mandate.

This regulatory proposal does not affect worker safety because this proposal is not relative to worker safety.

This regulatory proposal does not affect the state's environment because this proposal is not relevant to the state's environment.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT:** This regulation does not mandate the use of specific technologies or equipment.

**CONSIDERATION OF ALTERNATIVES:**

There is no reasonable alternative that would be either more effective than or as effective as and less burdensome on affected private persons than the Board's proposed regulation for the following reasons:

### 1398.26.3

The Board is mandated to define in regulation requirements for satisfying English proficiency. The definition could continue to defer to federal regulation; however, the Board has made the determination the standards set in federal regulation are outdated and insufficient for consumer protection.

### 1398.25

Remain as is – However, if the Board doesn't require the CES to report whether the applicant met the English proficiency requirements, the CES could at any time discontinue doing so.