

PHYSICAL THERAPY BOARD OF CALIFORNIA

ADDENDUM TO INITIAL STATEMENT OF REASONS

SUBJECT MATTER OF PROPOSED REGULATIONS: English proficiency requirements and credentials evaluation services reports

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

INTRODUCTION:

The Physical Therapy Board of California (Board) is the State agency that regulates the practice of physical therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety, and welfare of California's consumers. The Board administers, coordinates, and enforces the provisions of the laws and regulations pertaining to the practice of physical therapy.

A. SPECIFIC PURPOSE OF THE PROPOSED REGULATIONS

1. Clarifying Existing Statutory and Regulatory Authority

Business and Professions Code Section (BPC) section 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 section 2653 authorizes the Board to adopt regulations specifying examination requirements for satisfying English proficiency and authorizes the Board to require a foreign-educated physical therapist (PT) licensing applicant to submit documentation of his or her education to an approved credentials evaluation service (CES) for review and submission of a report to the Board. California Code of Regulations (CCR), Title 16, Division 13.2, Section 1398.25 (16 CCR § 1398.25) specifies the CES documentation criteria.

SB 198 (2013) repealed, revised, and recast the Physical Therapy Practice Act, and, among other things, revised BPC section 2653 to require an applicant for a license as a PT, who has graduated from a PT education program that is not approved by the Board and is not located in the United States, to 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. The corresponding regulation, 16 CCR § 1398.25, needs to be updated to incorporate this additional statutory requirement.

Additionally, the Board has determined that a separate regulation is necessary to clarify the scores required to be achieved on the TOEFL in one sitting. As specified in further detail below, this regulatory proposal would establish these requirements.

2. Description of Proposed Regulations

The Board proposes to amend 16 CCR § 1398.25 and adopt section 1398.26.3 into the CCR, Title 16, Division 13.2, to clarify English proficiency requirements for PT licensing applicants who have completed a non-approved PT program outside of the United States. Specifically, the proposed regulations would: (1) set passing scores on the TOEFL, (2) require the exam to be passed in one sitting; and, (3) require a CES to evaluate and report on the foreign-educated licensing applicant's compliance with the statutory English proficiency requirements.

3. Additional Reasoning for Proposed Regulation Changes – ETS Study

Since enactment of the TOEFL requirement under SB 198, the Board has deferred to the minimum English proficiency scores required pursuant to federal regulation by the United States Citizenship and Immigration Services (USCIS) for PT applicants seeking to work in the United States. (CFR § 212.15(g)(4)(i).) However, the federal minimum scores are outdated and do not reflect the current administration of the TOEFL. Although federal law refers to the prior English proficiency exam (Test for Spoken English (TSE)), the USCIS-approved Foreign Credentialing Commission on Physical Therapy (FCCPT) issues certifications for English proficiency based on the following minimum scores:

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)*

On the other hand, the Federation of State Boards of Physical Therapy (FSBPT), which is a member organization of physical therapy state licensing boards that develops and administers the National Physical Therapy Examination (NPTE), requires different minimum TOEFL scores. The NPTE is the exam all PT applicants are required to pass in order to become licensed to practice physical therapy in California. In order to sit for the NPTE, a foreign-educated PT applicant must first satisfy FSBPT's TOEFL requirements, unless the applicant is exempt under the federal regulation for English proficiency (CFR § 212.15(g)(2)(ii)).

Recently, FSBPT reviewed the recommended standard of the FSBPT for English proficiency for licensing physical therapists. Accordingly, FSBPT requested the Education Testing Services (ETS) perform a study of the TOEFL score minimums. ETS is the publisher of the TOEFL and the federally-approved English language testing service for foreign PT applicants seeking admission into the United States.

ETS established a 22-panelist group comprised of PTs and physical therapy assistants (PTAs) to review the minimum score standards for the TOEFL. The group represented a broad range of practice settings, areas of expertise, and geographic locations. Approximately half of the panel was educated outside of the United States.

ETS led the panelists through a process orienting them through the TOEFL and provided examples of TOEFL questions from each of the four TOEFL sections (Reading, Writing, Listening, and Speaking). For each TOEFL section, the panelists reviewed performance examples and then developed detailed descriptions of minimally acceptable English proficiency relevant to that section. The final versions of these descriptions are included in FSBPT’s Technical Memorandum: 2016 Update of the FSBPT TOEFL Standard, Summary Sheet: 2016 TOEFL Standard Setting for Licensing Physical Therapists and Physical Therapist Assistants, and Appendix A: Description of minimal proficiency in language skills necessary for physical therapists and physical therapist assistants, attached hereto and described in the Documents Added to File section below. As no other recent TOEFL study has been performed, the Board relied on these minimal proficiency descriptions when drafting this regulation proposal.

Using the description of minimal proficiency, the panelists rated whether each example from the TOEFL was consistent with the description or exceeded the definition of minimal proficiency. From these ratings, ETS set initial section score recommendations as follows: Reading Comprehension, minimum score 22; Listening Comprehension, minimum score 21, Writing, minimum score 22; Speaking, minimum score 24. These minimum scores add up to a total of 65 for a minimum passing score of the TOEFL.

In accordance with the ETS study, as of 2018, FSBPT will require each foreign-educated NPTE exam candidate (unless otherwise exempt per USCIS regulations) to pass the TOEFL with the new minimum section scores.¹ The chart below demonstrates the current minimum TOEFL section scores (in strike through) required by FSBPT for an exam candidate to qualify to take the NPTE and the 2018 minimum TOEFL section scores (underlined):

TOEFL SECTION	MINIMUM SCORE	
Reading Comprehension	21 <u>22</u>	Total of 63 <u>65</u>
Listening Comprehension	18 <u>21</u>	
Writing	24 <u>22</u>	
Speaking	26 <u>24</u>	

The Board, having considered the ETS study and FSBPT’s new requirements of foreign-educated licensing applicants applying to take the NPTE, has determined these new minimum scores are appropriate and consistent with the statutory requirement to demonstrate English proficiency.

¹ In July 2016, after the Board’s submission of the Final Statement of Reasons for this regulation proposal, FSBPT members voted to revise the minimum TOEFL scores previously set for 2017 implementation. This Addendum reflects the latest revisions to the minimum TOEFL scores set for 2018 implementation.

B. DIFFERENCES BETWEEN THE ORIGINALLY PROPOSED LANGUAGE AND THE SECOND MODIFIED TEXT

1. Second Modified Text:

a. Proposed Amendment to Section 1398.25: The Board has revised the proposed changes to section 1398.25 to delete the references to the minimum TOEFL scores and exemption to instead provide that the report of the CES shall document whether the foreign applicant has demonstrated English proficiency in accordance with the new proposed regulation, section 1398.26.3. Existing statutory law, BPC section 2653, subdivision (a), authorizes the Board to require a foreign-educated licensing applicant to submit documentation of his or her education to a CES for review and a report to the Board. This statutory authorization is further clarified in 16 CCR § 1398.25, which provides that the Board will accept reports from CESs that document: (1) the equivalent professional degree the foreign applicant would have received from an accredited PT education program located in the United States; and (2) whether completion of the foreign applicant's PT education and training entitles the foreign applicant to practice as a PT in the country where the education and training was completed.

By requiring the applicant to document his or her credentials through a CES, the Board is able to receive a summary of a large amount of information, verified by the CES, in order to timely process PT applications. For this same reason, the Board has determined that it is necessary to have a CES document and report to the Board whether the foreign applicant has demonstrated English proficiency. The proposed revisions to section 1398.25 will accomplish this need.

b. Proposed Section 1398.26.3(a) – TOEFL score minimums: The proposed language was amended to reflect FSBPT's 2018 minimum TOEFL requirements and establishes the minimum TOEFL scores to be achieved as follows: (1) Reading Section – 22; (2) Listening Section – 21; (3) Writing Section – 22; and (4) Speaking Section – 24.

As discussed above, ETS, the USCIS-recognized TOEFL developer and administrator, performed a study to determine the relevance of the existing minimum TOEFL scores. The Board is not aware of any other recent study of minimum TOEFL scores. Using the description of minimal proficiency established by the ETS-study panelists, ETS set initial section score recommendations.

FSBPT, who develops, maintains, and administers the NPTE, recently revised its minimum TOEFL scores to reflect the ETS-study section scores. As there is no other study on which to rely, the Board, when establishing the minimum TOEFL scores in this proposed regulation submission, also relied upon the ETS study, discussed further in the Technical Memorandum: 2016 Update of the FSBPT TOEFL Standard, Summary Sheet: 2016 TOEFL Standard Setting for Licensing Physical Therapists and Physical Therapists Assistants, and Appendix A, submitted herewith as Documents Added to the File. As of 2018, all foreign-educated NPTE applicants will be required by FSBPT to demonstrate English proficiency by either passing the TOEFL with the updated

minimum scores or claiming an exemption by establishing graduation from a PT education program in an English-speaking country.

All physical therapist applicants seeking licensure in California are required to take the NPTE. Because the minimum TOEFL scores are being revised by the developer and administrator of the NPTE (FSBPT), the Board finds that the minimum TOEFL scores used by the Board to determine English proficiency of a foreign-educated licensing applicant need to be updated to maintain consistency for applicants, as well as to better reflect the minimum English proficiency standards that resulted from the ETS study. The Board also notes that the updated minimum English proficiency standards would provide better consumer protection by establishing the foreign-educated licensing applicant's ability to communicate effectively with California patients.

c. Proposed Section 1398.26.3(a) – TOEFL Passage in One Sitting: Proposed section 1398.26.3 would require a foreign-educated licensing applicant to pass all four sections of the TOEFL in one sitting. The Board's second modified text moves this requirement from proposed section 1398.25, subdivision (c)(3), to the proposed section 1398.26.3. Currently, the Board defaults to the requirements in federal regulation that allows applicants to use passing scores from multiple sittings/administrations of the TOEFL. Because federal regulation relies on minimum scores required to be achieved on an English proficiency exam that is no longer used (Test of Spoken English (TSE)), the passing scores of the TOEFL are converted into the following minimum requirements to correspond with the minimum scores on the old TSE: Composite of Reading Comprehension, Listening Comprehension, and Writing – 63 (equivalent to USCIS computer-based exam score of 220); Speaking – 26 (equivalent to TSE score of 220); Total minimum score – 89. These scores were combined to address the transition from the old TSE minimum score requirements to the new TOEFL scores.

However, FSBPT, who is maintaining the existing one-sitting passage requirement in order to qualify to take the NPTE, found that there is an established minimum standard for each scale reflecting different abilities with respect to English proficiency. According to FSBPT, requiring applicants to demonstrate qualifications in each of the four TOEFL sections in a single sitting better ensures the individual will be minimally competent to practice physical therapy in the United States. FSBPT notes that it could be quite easy to string together a few better-than-expected performances on each section and achieve a passing score.

Since the goal of this regulatory package is to clarify the requirements of English proficiency for foreign applicants, the Board determined it necessary to also clarify in regulation the one-sitting requirement that will be necessary in order for the foreign applicant to qualify to take the NPTE administered by the FSBPT.

d. Proposed section 1398.26.3 (b) – TOEFL exemptions: The proposed language is stricken from the originally proposed language since the Board has determined BPC 2653, the statute requiring a foreign-educated applicant seeking licensure by the Board to demonstrate English

proficiency, does not contain any language permitting the Board to exempt specific applicants from demonstrating English proficiency.

The proposed regulation section 1398.26.3 now only specifies the scores required to be obtained in order to pass the TOEFL in one sitting and requires the credentials evaluation services to report to the Board the foreign applicant's demonstration of English proficiency.

C. SIGNIFICANT ADVERSE ECONOMIC IMPACT

The Board has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses and/or employees. This initial determination is based on the absence of testimony to that effect during the development of the proposed regulation, which occurred over several months. Additionally, the Board has determined this proposed regulation does not have a significant adverse economic impact since TOEFL is 1) required by USCIS for immigration; 2) required by FSBPT for taking the NPTE, the examination required for licensure; and, 3) is a statutory requirement.

D. UNDERLYING DATA:

The specific documents upon which the Board relied when promulgating this regulatory proposal are as follows: (1) Technical Memorandum: 2016 Update of the FSBPT TOEFL Standard; (2) Summary Sheet: 2016 TOEFL Standard Setting for Licensing Physical Therapists and Physical Therapist Assistants; and (3) Appendix A.

In determining the appropriate minimum TOEFL scores to be specified in the proposed regulation, the Board relied on data compiled and interpreted by ETS, the TOEFL publisher and administrator. ETS performed a recent study of the TOEFL exam sections in which the study panelists reviewed performance examples and then developed detailed descriptions of minimally acceptable English proficiency relevant to that section. The final versions of these descriptions are included in Appendix A, attached hereto. To the Board's knowledge, no other recent study of TOEFL minimum English proficiency standards has been performed. Accordingly, the Board relied on ETS's minimal proficiency descriptions when drafting this regulation proposal.

E. CONSIDERATION OF ALTERNATIVES:

To promulgate a regulation that would set the minimum TOEFL standards, the Board had two alternatives: (1) adopt into regulation the federal minimum standards used by USCIS for migrant worker entry into the United States; or (2) adopt minimum TOEFL standards being used nationally. As discussed in more detail above, the federal TOEFL standards required of individuals seeking entry into the United States are outdated and rely on an exam no longer offered. The Board has been informed that the federal standards may be updated in the near future, but no date is imminent. The national TOEFL standards are set by FSBPT, the member-organization of physical therapy state licensing boards that develops and administers the National Physical Therapy Examination (NPTE). FSBPT recently notified the state licensing

boards that as of 2018, it will adjust its minimum TOEFL score requirements to obtain entry into the NPTE in accordance with the findings from the recent ETS study of minimum TOEFL scores. ETS is the developer and administrator of TOEFL.

The Board reviewed the ETS study results and concluded that the most accurate and consumer-protective assessment of English proficiency was reflected in the minimum standards that came out of the ETS study, which are also being adopted by FSBPT. Additionally, the Board reasoned that setting the minimum TOEFL standards at the same level as FSBPT, who will require the same minimum TOEFL scores for entry into the NPTE, is also the least burdensome method on foreign-educated licensing applicants. In this way, these applicants would only have to satisfy one set of minimum TOEFL scores to both sit for the NPTE and qualify for California licensure.

DOCUMENTS ADDED TO THE FILE

The Board is adding to the rulemaking file (1) Technical Memorandum: 2016 Update of the FSBPT TOEFL Standard, (2) Summary Sheet: 2016 TOEFL Standard Setting for Licensing Physical Therapists and Physical Therapist Assistants, and Appendix A, which represent the results of a recent study performed by the Education Testing Services (ETS).