

HEARING DATE: May 13, 2015

SUBJECT MATTER OF PROPOSED REGULATION: Physical Therapy Fees

SECTION(S) AFFECTED: California Code of Regulations, Title 16, Division 13.2, Adopt sections 1399.50 and 1399.52

SPECIFIC PURPOSE OF THE PROPOSED CHANGES:

The Physical Therapy Board of California (Board) proposes to adopt previously repealed California Code of Regulations, Title 16, Division 13.2, Section 1399.50 and 1399.52 increasing fees assessed to physical therapists and physical therapist assistants for application, initial licensure and biennial licensure renewal. Specifically, the Board is proposing the following:

- Adopt Section 1399.50 to increase the physical therapist application fee from \$125 to the statutorily authorized maximum of \$300, the physical therapist application fee submitted under Section 2653 from \$200 to the statutorily authorized maximum of \$300; the physical therapist initial license fee from \$100 to the statutorily authorized maximum of \$150; and the biennial renewal fee for physical therapists from \$200 to the statutorily authorized maximum of \$300.
- Adopt Section 1399.52 to increase the physical therapist assistant application and initial license fee from \$125 to \$300; the physical therapist assistant application submitted fee under Section 2653 from \$200 to the statutorily authorized maximum of \$300; and, the biennial license renewal fee for physical therapist assistants from \$200 to the statutorily authorized maximum of \$300.

The proposed increase in fees will enable the Board to effectively sustain operations necessary for protecting consumers through its licensing and enforcement functions.

FACTUAL BASIS/RATIONALE:

Business and Professions Code Section (BPC §) 163.5 establishes the criteria to determine the delinquency fee for any licensee within the Department of Consumer Affairs.

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 § 2644 specifies that every person practicing physical therapy in California shall pay a biennial renewal fee.

BPC § 2648 -2648.7 identifies those licensees who are exempt from payment of renewal fees.

BPC § 2682 provides that the funds received by the Treasurer under the authority of the Act, shall be placed in the Physical Therapy Fund.

Pursuant to BPC § 2602.1, protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

The Board primarily achieves this mandate by processing applications and issuing and renewing licenses to eligible physical therapist and physical therapist assistant applicants; investigating complaints; taking administrative action against licensees for substantiated violations of the Physical Therapy Practice Act (Act); monitoring licensees whose licenses have been placed on probation; and managing the Substance Abuse Recovery Program for licensees whose practice may be impaired due to abuse of drugs or alcohol.

Existing law authorizes the Board to assess fees associated with these duties and responsibilities, enabling the Board to carry out its mandate of consumer protection. BPC § 2688 sets the physical therapist and physical therapist assistant initial license application fee at \$125 and authorizes the board to increase the amount for administering the application process to no more than \$300; sets the fee for an application for licensure as a physical therapist and physical therapist

assistant submitted under BPC § 2653 at \$200 and authorizes the board to increase the amount for administering the application process for those applications submitted under BPC § 2653 to no more than \$300; sets the physical therapist initial license fee at \$100 and authorizes the board to increase the amount to no more than \$150; sets the physical therapist/physical therapist assistant renewal fee at \$200 and authorizes the board to increase the amount to no more than \$300; and, sets the delinquency fee at 50% of the renewal fee. There is no physical therapist assistant initial license fee.

The Board's existing application, initial licensure and biennial renewal fees have been in effect since March 1, 2009 but will soon become insufficient for supporting the Board in its mandated mission. Through this rulemaking, the Board will ensure sufficient resources to maintain current Board operations to meet its mandate of consumer protection until such time it can seek legislative authority to increase the caps imposed in current statutory language.

Problem:

A review of the Board's fund condition report (included as underlying data) demonstrates, since the last fee increase (2009), the overall revenue for the Board has increased by \$905,000 (38%), yet expenditures have increased by \$1,541,000 (83%). This creates a structural imbalance that is unsustainable without a fee increase. To emphasize this point, it is estimated that absent a fee increase, the Board's fund condition will be reduced to a deficit of 0.7 months in reserve by the end of fiscal year 2017/18. There are several factors attributing to this structural imbalance, one is the Physical Therapy Fund Loan to the General Fund. During fiscal year 2010/11, \$1.5 million was transferred to the General Fund from the Physical Therapy Fund. Currently, there is an outstanding repayment remaining of \$1.5 million, which is expected to be repaid during fiscal year 2015/16 since the Physical Therapy Fund will become insolvent. This repayment delays the Board's insolvency from fiscal year 2015/16 to 2017/18 fiscal year. It was the Legislature's intent that the loan repayment be made to ensure that the programs supported by this fund are not adversely affected through reduction in services or increased fees. Therefore, based on this provision, the loan is scheduled to be repaid in full before the Board implements this proposal.

Additional factors attributing to the structural imbalance of the Physical Therapy Fund are the costs the Board incurs to deliver its services but most notable are Enforcement, Pro Rata and Personnel costs. A comparison of detail expenditures between fiscal year 2008/09 (the last implementation of a fee increase) and fiscal year 2013/14 reveal an overall increase in expenditures of 83%.

The Board's enforcement-related cost has grossly increased from \$371,731 in fiscal year 2008/09 to \$1,339,997 (260%) in fiscal year 2013/14 and a projected increase to \$1,450,456 (290%) in fiscal year 2017/18. These escalating costs are partially attributed to the increase in the number of cases referred to the Department of Consumer Affairs' Division of Investigation (DOI). The expenditures for DOI investigations increased from \$134,683 in fiscal year 2008/09 to \$407,977 (203%) in fiscal year 2013/14. In 2014/15 the Board's DOI expenditures increased from \$146,809 to \$554,786 (36%). The Board projects DOI costs to increase to \$588,742 (337%) in 2017/18. The Office of Attorney General (AG) expenditures increased from \$138,496 in fiscal year 2008/09 to \$660,744 (391%) in fiscal year 2013/14 and a projected increase to \$715,210 (416%) in fiscal year 2017/18. The deficit in the AG allocation has required the Board to file a budget augmentation for the last four fiscal years. Lastly, the Office of Administrative Hearings costs increased from \$21,167 in fiscal year 2008/09 to \$87,970 (316%) in fiscal year 2013/14. These costs are projected to increase to \$95,221 in fiscal 2017/18 (350%).

The Board's pro rata cost assessed for services from the Department of Consumer Affairs has significantly increased from \$229,447 in fiscal year 2008/09 to \$422,877 (84%) in fiscal year 2013/14, with a projected increase in fiscal year 2017/18 to 575,972 (151%).

The Board's personnel expenditures increased from \$955,024 in fiscal year 2008/09 to \$1,340,967 (40%) in fiscal year 2013/14 and to 1,673,117 (75%) in fiscal year 2014/15. As the Board's application and licensing requirements have

increased over the past several years, the Board has required additional staffing levels. The Board is projecting an increase in personnel services to \$1,775,524¹ (86%)² in fiscal year 2017/18.

Another area of fund insufficiency, arose with the enactment of SB 198 (Chapter 389, Statutes of 2013), effective January 1, 2014, which amended the Physical Therapy Practice Act to allow a license fee exemption of those licensees in the military, disabled, volunteer and retired. This created a revenue loss of \$8600 in current fiscal year; however, it is possible there is a large percentage of retired licensees who are unaware of the exemption. A Gallup Poll done in 2013 determined 61 as the average age for retirement which is consistent with an unpublished article found in the Physical Therapy Journal. Retired member eligibility with the APTA starts at 55. There are approximately 7,500 licensees who will reach the age of 61 by 2017/18. The caveat to this statutory exemption is the Board absorbs the cost of these licensees since the licensee in retired status continues to be regulated by the Board. Therefore, for example, if the licensee in retired status were to sustain a criminal conviction, the costs of investigating and adjudicating would be absorbed by the Board.

In addition, the Board anticipates additional costs for the implementation of BreEZe, the Department of Consumer Affairs online enterprise licensing and enforcement solution established to improve services to the Board's stakeholders, the Fund condition will be even more foreboding.

The Board's application, licensure and renewal fees have been in effect since 2009, as a result of the last fee increase pursuant to AB 2111 (Chapter 301, Statutes of 2008). The Board has relied on those statutory fees since their enactment. However, if the Board does not increase the application processing, initial licensure and biennial renewal fees, the Board's operations will suffer and consequently the consumers of physical therapy will suffer as well. Lacking adequate funding to the Board's application processing and licensing program would delay applicants from obtaining a license. Subsequently, this would delay them from entering into the marketplace, inhibiting their ability to begin repayment of accumulated debt from higher education and most importantly, delaying consumer access to physical therapy.

Additionally, the Board's enforcement program would suffer from reductions in resources which would delay processing consumer complaints, conducting investigations, and referring egregious cases to the Attorney General's Office for prosecution. These types of delays would ultimately prevent the Board from efficiently and effectively protecting the public.

The revenue generated from these fees is placed in the Physical Therapy Fund and is utilized by the Board to carry out its responsibilities as required by the Physical Therapy Practice Act.

UNDERLYING DATA:

- (1) Physical Therapy Board of California Analysis of Fund Condition – Governor's Budget 14-15
- (2) Physical Therapy Board of California Analysis of Fund Condition – Governor's Budget 15-16 with Proposed Fees
- (3) Estimated Workload and Revenue with current fees.
- (4) Estimated Workload and Revenue with proposed fees.
- (5) Budget Augmentation Request for Fiscal Year's 2011/12, 2012/13 and 2013/14.

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.

¹ This projection is based on a .02% annual increase and applies throughout the document.

² The percentage in increase is from fiscal year 2008/09 to 2017/18. This follows throughout the document.

The Board has determined that the following types of businesses may be affected by the proposed fee increase:

- Businesses owned by licensees of the Board that elect to pay for the licensure and renewal fees of its owners or employees.

Although businesses owned by licensees of the Board and businesses that employ licensees of the Board may be impacted, the Board estimates that the fiscal impact would be minor and absorbable to those businesses. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. Accordingly, the initial or ongoing costs for a business owned by a licensee that pays for the licensure and renewal fees of its physical therapist business owners and employees cannot be projected.

The proposed fee increase would impact individual licensees; however, the Board determined it would be minor and absorbable to the licensee since it would be less than 1% of a physical therapist or physical therapist assistant's annual income as estimated by the State of California, Employment Development Department (EDD).

ECONOMIC IMPACT ASSESSMENT:

This regulatory proposal will not create or eliminate jobs within the State of California because this proposed fee increase will not be of sufficient amount to have the effect of creating or eliminating jobs. It will not create new business or eliminate existing businesses within the State of California because this proposed fee increase will not be of a sufficient amount to have the effect of creating or eliminating business.

This regulatory proposal will not affect the expansion of businesses currently doing business within the State of California because the proposed fee increase will not be of a sufficient amount to have the effect of limiting or furthering the expansion of businesses.

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.

This regulatory proposal will correct the structural imbalance between the Board's revenue and expenditures and will allow the Board to maintain its current operating structure to provide consumer protection. The proposed fee increases will support the Board's licensing program so that it may continue to license qualified applicants to provide physical therapy care services to consumers. Additionally, the proposed fee increase will support the Board's enforcement program so that it may continue to process and investigate consumer complaints efficiently and effectively in the interest of patient/public consumer protection.

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

CONSIDERATION OF ALTERNATIVES:

1 – Keep the fees at their current level. However, as evidenced by the analysis of the Fund Condition, this would create a significant deficit for the Board and would prevent the Board from fulfilling its consumer protection mandate.

2 – Minimize enforcement, pro rata and personnel services. This would have a significant adverse impact in several areas of the Board operations affecting both licensees and consumers. Reductions in these services would delay processing consumer complaints, applications and licenses, preventing the Board from efficiently and effectively protecting the public. Pro rata costs are determined by control agencies and the Board lacks the ability to negotiate saving in these areas.

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.