

**Physical Therapy Board of California
Department of Consumer Affairs**

INITIAL STATEMENT OF REASONS

HEARING DATE: May 10, 2012

SUBJECT MATTER OF PROPOSED REGULATIONS:

Retroactive Fingerprinting and Disclosure Requirements, Response to Board Inquiries for Physical Therapists (PT) and Physical Therapist Assistants (PTA).

SECTIONS AFFECTED: Amend Title 16 California Code of Regulations as follows:

- Add Sections 1398.14 (General Provisions)
- Add Sections 1399.80 (Continuing Competency and Inactive License Status)
- Amend Sections 1399.98 (Continuing Competency and Inactive License Status)

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

The main purpose of the proposed language is to establish requirements that a licensee must furnish a full set of fingerprints to the Department of Justice (“DOJ”) as a condition of renewal with the Physical Therapy Board of California (“PTBC”) if the licensee was initially licensed prior to 1998 or if an electronic record of the fingerprint submission no longer exists. Generally, this proposal would:

1. set requirements and time frames for when the licensee would be required to submit criminal history information and other related records to the PTBC;
2. specify the conditions and the purpose for which a full set of fingerprints would be required;
3. establish that the licensee would be responsible for paying the costs associated with furnishing fingerprints and conducting criminal offender record searches;
4. require a licensee to certify compliance with this new fingerprinting requirement on his or her renewal form and maintain records of his or her compliance for at least 3 years;
5. authorize a waiver of these new fingerprinting requirements for licensees who are inactive or actively serving in the military outside of the country;
6. mandate that licensees disclose on the renewal form whether the licensee has been convicted of a crime, as defined, or had any disciplinary actions taken against any other license he or she holds;
7. mandate that licensees disclose on the renewal form whether the licensee has been required to report any settlement, judgment or arbitration award pursuant to B&P Code section 802
8. specify that failure to comply with these requirements or submit a full set of fingerprints to DOJ renders any application for renewal incomplete and is grounds for discipline by the PTBC; and,
9. add a new form and application requirement for activating or inactivating a license.

Proposed changes, by section, are more specifically identified as follows.

1. Add Sections 1398.14 Response to Board Inquiry

This Section heading and text would provide that if the PTBC asks a licensee to provide criminal history information, the licensee must respond to the request within 30 days by making available all documents and other records requested, and specifies that the information provided must be accurate. This Section would establish the timeframe for a licensee's compliance with such PTBC inquiries and would ensure that accurate information is received from the licensee. This Section would protect consumers by assisting the PTBC's Enforcement staff in the information gathering and investigative process for determining whether a licensee is in compliance with the Physical Therapy Practice Act.

2. Add Sections 1399.80 Fingerprint and Disclosure Requirements for Renewal of License title and new Section.

This heading text would inform licensees that the Sections that follow relate to fingerprinting and disclosure requirements for the renewal of a license.

Add Section 1399.80(a)

This Section would establish requirements that a licensee must furnish a full set of fingerprints to the Department of Justice ("DOJ") as a condition of renewal with the Physical Therapy Board of California ("PTBC") if the licensee was initially licensed prior to 1998 or if an electronic record of the fingerprint submission no longer exists. Licensees need to be made aware that certain groups of licensees will be required to be fingerprinted as a condition of license renewal, and this regulation would authorize the PTBC to require fingerprinting of these licensees. This Section would protect consumers by giving the PTBC access to currently available DOJ information relative to criminal arrests and convictions and would enable the PTBC to determine if violations of the Physical Therapy Practice Act have occurred.

Add Section 1399.80(a)(1)

This Section would establish that the cost of fingerprinting and conducting the criminal history record check must be paid by the licensee. This regulation is necessary to authorize assessment of costs to licensees, which is consistent with fingerprinting and record check costs that have been paid by every other licensee or applicant since 1998.

Add Section 1399.80(a)(2)

This Section would establish that as part of the renewal process, each licensee will be asked to certify on his or her renewal form whether or not they have submitted fingerprints to the Department of Justice as required.

Add Section 1399.80(a)(3)

This Section would establish an exemption from or waiver of the fingerprinting requirement if the license is on an inactive status or if the licensee is actively serving in the military outside the country.

Add Section 1399.80(a)(4)

This Section would require affected licensees to retain a receipt, as specified, of compliance with the fingerprinting requirement for a period of at least three years. This requirement is necessary to provide evidence that a licensee has complied with the fingerprinting requirement.

Add Section 1399.80(b)

This Section would mandate that if a licensee pleads guilty, pleads nolo contendere or is convicted of any violation of the law during the prior renewal cycle, the licensee must disclose that fact to the PTBC, with infractions specified that may be omitted. This reporting requirement is necessary for consumer protection and enforcement of the Physical Therapy Practice Act.

Add Section 1399.80(c)

This section would require that a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country. Many licensees hold other licenses either in California or in other states. This language would assist the PTBC in obtaining information relative to discipline taken by other corresponding state or government licensing entities. This information is necessary to determine if disciplinary action is warranted pursuant to the PTBC's authority (e.g., Sections 141 and 2660 of the Business and Professions Code). This section would also mandate disclosure of a settlement, judgment or arbitration award of over \$3000 to the PTBC pursuant to B&P Code section 802. Currently, there is no administrative consequence for a licensee failing to inform the PTBC of such an award; and, therefore, most licensees do not disclose. Disclosure would aid the PTBC in its enforcement efforts since often times patients are aware there is a complaint process for violations of the statutes governing the practice of physical therapy.

Add Section 1399.80 (d)

This Section would establish that failure to comply with these requirements would result in non-renewal of the license until the licensee complies with all of the requirements of this Section (e.g., fingerprinting, disclosure or record-keeping requirements). This requirement is needed to ensure compliance with the unprofessional conduct statutes of the Physical Therapy Practice Act and prevents possible renewal of a license for a licensee who has violated the law.

Add Section 1399.80(e)

This Section would provide that failure to furnish a full set of fingerprints as required is grounds for discipline by the PTBC. The PTBC must have the ability to enforce the requirements of the section by disciplining the license of a licensee who refuses to comply with the requirements for fingerprinting. The licensee could be in violation of the law or potentially cause patient harm if the PTBC does not have the ability to verify the criminal history of its licensees through the DOJ or take action for non-compliance.

Article 13. Requirements for Renewal
Section 1399.98 Inactive Status
Amend Section 1399.98(b)

This Section would be amended to require the licensee to fill out an application, prescribed by the PTBC, to restore and inactive license. This new application would ensure consistency and specificity in the application of the PTBC's requirements for categories of persons who wish to restore their inactive license.

The application would contain the following:

- A requirement for submission of the name of the licensee;
- A requirement for submission of license type;
- A requirement for submission of license number;
- A requirement for submission of license expiration date;
- A requirement for submission of a request to restore an inactive license;
- A requirement that the applicant certify under penalty of perjury under the laws of the State of California to the truth and correctness of the information provided, and sign and date the application;

FACTUAL BASIS/RATIONALE:

Proposed Adoption of Section 1398.14 of Division 13.2 of Title 16 of the California Code of Regulations

This proposal would require a licensee to provide timely and accurate responses to inquiries and provide necessary documents needed by the PTBC to investigate and take appropriate actions against a licensee convicted of a criminal offense that is substantially related to the practice of physical therapy.

To conduct an investigation on whether a conviction is substantially related to a licensee's scope of practice, the PTBC must review "certified" police reports, "certified" court documents and review documentation that substantiates compliance with probationary terms and rehabilitation efforts. Without this information the PTBC, staff will be forced to expend more resources in order to make a final determination as to the appropriate action. This proposed language would enable the PTBC to take appropriate enforcement action for failure to provide the necessary documentation in a timely manner. Due to the enormous volume of conviction documents that must be obtained from the various court houses throughout California and other states, it is critical that the licensee provide accurate court and case number information to the PTBC. This regulatory proposal would assist in ensuring that such information is provided.

Proposed Adoption of Section 1399.80 of Division 13.2 of Title 16 of the California Code of Regulations

Business and Professions Code Section 2602.1, 2634 provides the authority for the PTBC to investigate each and every applicant for a license, before a license is issued, in order to determine whether or not the applicant has in fact the qualifications required by the Physical Therapy Practice Act. Furthermore, Business and Professions Code

Section 2635 allows the PTBC to require the applicant to disclose any criminal history that would give cause for denial of licensure as defined in section 480 of the Business and Professions Code. Currently, the PTBC, along with other boards and bureaus, requires applicants to provide fingerprints for a background check before issuance of a license.

Recently, the Board of Registered Nursing has been the subject of a Los Angeles Times article regarding nurses who have a criminal background or are incarcerated and continue to hold a California license. Although the PTBC has always had a fingerprint requirement, it was not always an electronic submission; therefore, there may be licensees who have committed criminal acts that have not come to the attention of the PTBC. This regulation will insure that every licensee has an electronic submission on file.

Proposed Amendments to Section 1399.98 of Division 13.2 of Title 16 of the California Code of Regulations

Existing regulations specify that if a licensee wants to activate an inactive license, the licensee must submit an application to the PTBC, accompanied by evidence that the licensee has completed the required number of hours of approved continuing competency in compliance within the last two years preceding the application for activation. This proposal is necessary to require, in addition to the above-mentioned requirement, that a licensee who was never fingerprinted by the PTBC or for whom a fingerprint record no longer exists, furnish a full set of fingerprints as a condition of activating an inactive license. Further, this regulation is necessary for the PTBC to standardize, implement or make specific the requirements for processing requests for inactivation of a license or for restoration of a license per Business and Professions Code sections 700-704.

A form prescribed by the PTBC, "APPLICATION – INACTIVE TO ACTIVE STATUS" will be required.

The form's contents are necessary for the following reasons:

Name of Licensee

This information is necessary so that staff knows the identity of the person whose license is being activated or inactivated.

License Type and Number

This information is necessary so that staff may apply the change to the appropriate record in the PTBC database.

License Expiration

This information is used as additional confirmation of the identity of the licensee.

A request to restore an inactive license

This information is required from a licensee to activate a license. By making this request the licensee informs staff of the change to restore an inactive license. This also places the applicant on notice that the request must be accompanied by evidence of continuing competency before the license can be restored, and that the continuing competency courses must have been completed within the two years preceding the application. This

is the standard for renewal of licenses and must be completed before license reactivation according to existing law, Title 16, California Code of Regulations Section 1399.98

Certification and Signature of licensee and date

This information is required to ensure that the individual submitting the form is in fact the licensee and certifies under penalty of perjury that the information contained in the form is true and correct. If it is determined at a later date that this is not the case, this enables the PTBC to take disciplinary action.

DOCUMENT RELIED UPON

1. Economic Impact Assessment

UNDERLYING DATA

1. A memorandum from the DCA Deputy Director of Legal Affairs, Doreathea Johnson, regarding retroactive fingerprinting was sent on January 16, 2009.
2. A memorandum from the DCA Director, Carrie Lopez, regarding retroactive fingerprinting was sent on November 5, 2008.

BUSINESS IMPACT

The PTBC does not believe that this regulation will have a significant adverse economic impact on businesses. There are approximately 750 vendors statewide, including small businesses that provide fingerprinting services. There should be no initial or ongoing cost impact upon the vendors because they are already equipped to provide the service and the fingerprinting of the applicable licensees will be extended over a two-year period. Additionally, this proposed regulation would only affect individuals for whom an electronic record of his or her fingerprints does not exist in the DOJ criminal offender record identification database and those licensees that do not comply with the proposed regulation. An individual licensee would pay an average of \$63.00 to comply with the fingerprinting requirement over its lifetime, since it is a one-time requirement.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The regulatory proposal indirectly requires the use of Live Scan because state law requires DOJ to require electronic transmission for submission of prints pursuant to Penal Code section 11077.1. Live Scan is a well-established and readily available technology for submission of fingerprints.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulations 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 regulations.