

TITLE 16. PHYSICAL THERAPY BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the PHYSICAL THERAPY BOARD OF CALIFORNIA (PTBC) 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 the:

Loma Linda University
Randall Visitors Center
11072 Anderson St,
Loma Lind, CA. 92350

May 10, 2012

8:30 am

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 PTBC at its office not later than 5:00 P.M. on May 7, 2012, or must be received by the PTBC at the hearing. The PTBC, 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 144, 480, 490, 802, 2615, 2632, 2655.92, of the Business and Professions (B&P) Code; Government Code section 6157 and Penal Code section 11105; the PTBC is considering changes to Division 13.2 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 2615 and 2655.92 permits the PTBC to adopt, amend or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Physical Therapy Practice Act. The PTBC is proposing the following changes:

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;). 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.

(7) specify that failure to comply 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,

(8) 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 or whether they have complied with the reporting requirements of B&P Code section 802.

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 in the event DOJ cannot locate a licensee's fingerprints or if the PTBC audits licensees.

Add Section 1399.80(b)

This Section would mandate that if a licensee has plead guilty, plead nolo contendere or has been 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, disclose any settlement, judgment or arbitration award of over \$3000, pursuant to Business and Professions Code Section 802.. 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).

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 necessary 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. The application language mentioned below 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 for submission of disclosure of whether, since the licensee last applied for renewal, he or she has plead guilty, plead nolo contendere, convicted of a crime, 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, disclose any settlement, judgment or arbitration award of over \$3000, pursuant to Business and Professions Code Section 802.
- A requirement that the applicant certify under penalty of perjury to the truth and correctness of the information provided, and sign and date the application;

A requirement that the applicant attach evidence that he or she has completed the required number of approved continuing education courses within the last two years preceding this application, as required by the Physical Therapy Practice Act.

CONSISTENCY WITH EXISTING STATE REGULATIONS

The PTBC does not believe that the proposed regulation is 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: There were approximately 23,000 Physical Therapist licenses and 5,000 Physical Therapy Assistant licenses issued since the 1998, for a **potential** impact of 28,000 licensees that will need a Livescan submission. This will create an increased work load for the Department of Justice, as well as the Federal Bureau of Investigation. The cost of this service will be paid by the licensee directly to the Livescan vendor.

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 PTBC 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:

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 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.

Impact on Jobs/New Businesses: The PTBC has determined that this regulatory proposal will not have a significant 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.

Cost Impact on Representative Private Person or Business: Physical Therapists and Physical Therapy Assistants who have not previously been fingerprinted for the PTBC, for whom a fingerprint record no longer exists, will be required to be fingerprinted at the time of their license renewal, reactivation, or reinstatement. The cost for a person to get fingerprinted is approximately \$63.00. Of this fee, \$49.00 goes to the Department of Justice and the Federal Bureau of Investigation for conducting the background check and providing criminal record reports to the PTBC; an average of \$14.00 goes to the vendor for fingerprinting the individual. The vendor's fee ranges from \$5.00 to \$45.00 with the average fee being \$14.00. An individual licensee would pay an average of \$63.00 to comply with this regulation over its lifetime, since it is a one-time requirement.

Effect on Housing Costs: None

RESULT OF ECONOMIC IMPACT ANALYSIS

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

EFFECT ON SMALL BUSINESS

The PTBC has determined that the proposed regulations would not have a significant economic impact on small businesses. There are approximately 750 vendors statewide, including small businesses, which 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.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

CONSIDERATION OF ALTERNATIVES

The PTBC must determine 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

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 PTBC 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 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 PTBC at 2005 Evergreen Street Suite 1350, Sacramento, California 95815.

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 website listed below.

CONTACT PERSON

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

Name: Jason Kaiser
Address: 2005 Evergreen Street Suite 1350
Sacramento, California 95815

Telephone No: (916) 561-8278
Fax No: (916) 263-2560
E-Mail Address: jason.kaiser@dca.ca.gov

The backup contact person is:

Name: Elsa Ybarra
Address: 2005 Evergreen Street Suite 1350
Sacramento, California 95815

Telephone No: (916) 561-8262
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E-Mail Address: elsa.ybarra@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.ptbc.ca.gov

(3/13/2012)