

JUNE
20 & 21, 2018
BOARD MEETING

Western University
Rodney P. Wineburg Center (RWC)
Cooper Hall
309 East 2nd Street
Pomona, CA 91766



Physical Therapy Board of California

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY – GOVERNOR EDMUND G. BROWN JR.

THE PHYSICAL THERAPY BOARD OF CALIFORNIA

2005 Evergreen St. Suite 1350, Sacramento, California 95815

Phone: (916) 561-8200 Fax: (916) 263-2560

www.ptbc.ca.gov

PHYSICAL THERAPY BOARD OF CALIFORNIA NOTICE OF PUBLIC MEETING

June 20, 2018 9:00 a.m.

June 21, 2018 9:00 a.m.

Western University
Rodney P. Wineburg Center (RWC)
Cooper Hall
309 East 2nd Street
Pomona, CA 91766

Action may be taken on any agenda item.
Agenda items may be taken out of order.

Unless otherwise indicated, all agenda items
will be held in **OPEN SESSION. THE PUBLIC
IS ENCOURAGED TO ATTEND.** Please refer
to the informational notes at the end of
the agenda.

BOARD MEMBERS

Alicia K. Rabena-Amen, PT, DPT, *President*

TJ Watkins, *Vice President*

Jesus Dominguez, PT, Ph.D., *Member*

Daniel Drummer, PT, DPT, *Member*

Katarina Eleby, M.A., *Member*

Tonia McMillian, *Member*

BOARD STAFF

Jason Kaiser, *Executive Officer*

Elsa Ybarra, *Manager*

Liz Constancio, *Manager*

Sarah Conley, *Manager*

Brooke Arneson, *Associate Analyst*



Physical Therapy Board of California



Agenda – Wednesday, June 20th

- 1. Call to Order - 9:00 a.m.**
- 2. Roll Call and Establishment of Quorum**
- 3. Special Order of Business – 9:05 a.m.**
 - (A) Petition for Reduction of Penalty – Termination of Probation – Cindy Chunfat, PT
 - (B) Petition for Reinstatement of Revoked License – Natalie Ann Kolbrak
After submission of the matters, the Board will convene in CLOSED SESSION to deliberate on the petitions pursuant to Government Code section 11126(c)(3).
- 4. Closed Session**
 - (A) Pursuant to Government Code section 11126(c)(3), the Board will convene to Deliberate on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceedings
 - (B) Pursuant to Government Code section 11126(a)(1), the Board will convene to Consider the Evaluation of Performance of the Executive Officer
- 5. Reconvene Open Session**
- 6. Review and Approval of March 22-23, 2017 Meeting Minutes – Brooke Arneson**
- 7. President's Report –Alicia Rabena-Amen**
 - (A) 2018 Adopted Meeting Calendar
 - (B) 2019 Proposed Meeting Calendar
- 8. Executive Officer's Report – Jason Kaiser**
 - (A) Administrative Services
 - (B) Applications
 - (C) Licensing/Continuing Competency
 - (D) Consumer Protection Services
 - (E) Animal Rehabilitation
 - (F) DCA Internal Audit
 - (G) Outreach
 - (H) PTBC Relocation
- 9. Discussion and Possible Board Action Regarding the Strategic Plan – Jason Kaiser**
- 10. Public Comment on Items Not on the Agenda**

Please note that the Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. (Government Code sections 11125, 11125.7(a).)

11. Recess

Agenda – Thursday, June 21st

12. Call to Order - 9:00 a.m.

13. Roll Call and Establishment of Quorum

14. Legislation Report – Brooke Arneson

(A) Discussion and Possible Board Action Regarding the 2017/18 Legislative Session Summary

- i. Discussion and Possible Board Action Regarding [AB 2078](#) (Daly) Sex Offenses: Professional Services
- ii. Discussion and Possible Board Action Regarding [AB 2138](#) (Chiu & Low) Licensing Boards: Denial of Application: Criminal Conviction
- iii. Discussion and Possible Board Action Regarding [AB 2221](#) (Bloom) Occupational Therapy Practice Act
- iv. Discussion and Possible Board Action Regarding [AB 2386](#) (Rubio) Teacher Credentialing: Services Credential with a Specialization in Occupational Therapy or Physical Therapy Services
- v. Discussion and Possible Board Action Regarding [AB 2423](#) (Holden) Physical Therapists: Direct Access to Services: Plan of Care Approval
- vi. Discussion and Possible Board Action Regarding [AB 3013](#) (Chu) Veterinary Medicine: Animal Physical Rehabilitation
- vii. Discussion and Possible Board Action Regarding [AB 3110](#) (Mullin) Athletic Trainers
- viii. Discussion and Possible Board Action Regarding [SB 1298](#) (Skinner) The Increasing Access to Employment Act
- ix. Discussion and Possible Board Action Regarding [SB 1448](#) (Hill) Healing Arts Licensees: Probation Status: Disclosure

15. Rulemaking Report – Brooke Arneson

- (A) Discussion and Possible Board Action Regarding the 2018 Rulemaking Update
- (B) Discussion and Possible Board Action Regarding Examination Passing Standard/Setting Examination Score
- (C) Discussion of Issues and Possible Board Action Regarding Guidelines for Issuing Citations and Imposing Discipline, 6th Edition
- (D) Discussion of Issues and Possible Board Action Regarding Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant/Coursework Tool

16. Consumer and Professional Associations and Intergovernmental Relations Reports

- (A) Federation of State Boards of Physical Therapy (FSBPT)
- (B) Department of Consumer Affairs (DCA) – *Executive Office*
- (C) California Physical Therapy Association (CPTA)

17. Closed Session

(A) Pursuant to Government Code section 11126(c)(3), the Board will convene to Deliberate on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceedings

(B) Pursuant to Government Code section 11126(a)(1), the Board will convene to Consider the Evaluation of Performance of the Executive Officer

18. Reconvene Open Session

19. Administrative Services Report – Liz Constancio

(A) [Budget](#)

(B) [Outreach](#)

20. [Application Services Report](#) – Sarah Conley

21. [Licensing Services Report](#) – Sarah Conley

(A) [Continuing Competency Report](#)

(B) Discussion and Possible Board Action on Removal of Continuing Competency Approval Agency Recognition

i. [ABA Physical Therapy Associates](#)

ii. [Boehme Workshops, Inc.](#)

iii. [CHA Hollywood Presbyterian Medical Center](#)

iv. [Encompass Consulting and Education, LLC](#)

v. [Evidence in Motion](#)

vi. [Medical Consulting Media, Inc.](#)

vii. [Online EUs.com, Inc](#)

viii. [Rehab eLearn](#)

ix. [Saint Francis Memorial Hospital](#)

x. [Sonoma Psycho-Oncology](#)

22. Presentation and Discussion of Application Process for Graduates of Non-Accredited Programs Located Outside of the United States – Sarah Conley

23. [Consumer Protection Services Report](#) – Elsa Ybarra

24. [Probation Monitoring Report](#) – Monny Martin

25. Public Comment on Items Not on the Agenda

Please note that the Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. (Government Code sections 11125, 11125.7(a).)

**26. Agenda Items for Future Meeting – September 13 & 14, 2018
Sacramento, CA**

27. Adjournment

Informational Notes:

Times stated are approximate and subject to change. Agenda order is tentative and subject to change at the discretion of the Board; agenda items may be taken out of order and items scheduled for a particular day may be moved or continued to an earlier or later day to facilitate the effective transaction of business. Agenda discussions and report items are subject to action being taken on them during the meeting by the Board at its discretion.

In accordance with the Bagley-Keene Open Meeting Act, all Board meetings are open to the public. Pursuant to Government Code section 11125.7, the Board provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Total time allocated for public comment on particular issues may be limited. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on any matter not included in this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code sections 11125, 11125.7(a)).

The Board plans to webcast this meeting on its website at www.ptbc.ca.gov. Webcast availability cannot, however, be guaranteed due to limited resources or technical difficulties. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification to participate in the meeting may make a request by contacting Brooke Arneson at (916) 561-8260, e-mail: brooke.arneson@dca.ca.gov, or send a written request to the Physical Therapy Board of California, 2005 Evergreen Street, Suite 1350, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodations. TDD Line: (916) 322-1700.

Roll Call

Western University, Pomona, CA

June 20, 2018

	Present	Absent
Alicia Rabena-Amen, PT, DPT, President		
TJ Watkins, Vice-President		
Debra J. Alviso, PT, DPT		
Jesus Dominguez, PT, Ph.D.		
Daniel Drummer, PT, DPT		
Katarina Eleby		
Tonia McMillian		

June 21, 2018

	Present	Absent
Alicia Rabena-Amen, PT, DPT, President		
TJ Watkins, Vice-President		
Debra J. Alviso, PT, DPT		
Jesus Dominguez, PT, Ph.D.		
Daniel Drummer, PT, DPT		
Katarina Eleby		
Tonia McMillian		

Agenda Item 2 – Roll Call



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Board Members

President

Alicia Rabena-Amen, PT, DPT

Vice-President

TJ Watkins

Members

Debra Alviso, PT, DPT

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Katarina Eleby

Tonia McMillian

Physical Therapy Board of California

DRAFT Meeting Minutes

March 22, 2018 9:00 a.m.

March 23, 2018 9:00 a.m.

Department of Consumer Affairs

Hearing Room

2005 Evergreen Street,

Sacramento, CA 95815

Board Staff

Jason Kaiser, Executive Officer

Sarah Conley, Manager

Liz Constancio, Manager

Elsa Ybarra, Manager

Brooke Arneson, Associate

Analyst

For the sake of clarity, agenda items discussed during the meeting follow their original order on the agenda in these minutes though some agenda items may have been taken out of order during the meeting.

Thursday, March 22, 2018

1. Call to Order

The Physical Therapy Board of California (Board) meeting was called to order by President Dr. Rabena-Amen at 9:08 a.m. and recessed at 2:55 p.m. on March 22, 2018. The Board reconvened at 9:01 a.m. and adjourned at 5:20 p.m. on March 23, 2018.

2. Roll Call and Establishment of Quorum

Alviso – Present

Dominguez- Present

Drummer – Present

Eleby – Present

McMillian – Present

Rabena-Amen - Present

Watkins – Present

All members were present, and a quorum was established. Also present at the meeting were: Salwa Bojack, Legal Counsel; Jason Kaiser, Executive Officer; Liz Constancio, Elsa Ybarra, Sarah Conley, Brooke Arneson and Monny Martin, Board staff.

3. Special Order of Business – 9:05 a.m.

(A) Petition for Reinstatement of License – Natalie Ann Kolbrak

30 *After submission of the matters, the Board will convene in CLOSED SESSION to*
31 *deliberate on the petitions pursuant to Government Code section 11126(c)(3).*
32

33 The petitioner, Natalie Kolbrak asked for a continuance and to seek legal counsel in
34 this case.
35

36 **MOTION:** To approve the continuance of Natalie Kolbrak Petition for Reinstatement
37 of License.

38 **M/S:** Eleby/Alviso

39 **VOTE:** Alviso – Aye
40 Dominguez- Aye
41 Drummer – Aye
42 Eleby – Aye
43 McMillian – Aye
44 Rabena-Amen - Aye
45 Watkins - Aye
46 7-0 Motion carried
47

48 **4. Closed Session**

49 (A) Pursuant to Government code section 11126(c)(3), the Board will convene to
50 Deliberate on Disciplinary Actions and Decisions to be Reached in Administrative
51 Procedure Act Proceedings

52 (B) Pursuant to Government code section 11126(a)(1), the Board will convene to
53 Consider the Evaluation of Performance of the Executive Officer.
54

55 The Board went into closed session at 9:51 a.m. and reconvened at 11:53 a.m.
56

57 **5. Reconvene Open Session**

58
59 The Board reconvened at 11:53 a.m. after going into closed session at 9:51 a.m.
60

61 **6. Review and Approval of November 15-16, 2017 Meeting Minutes – Brooke Arneson**

62
63 Ms. Conley presented the draft November minutes on Ms. Arneson's behalf. Dr. Alviso
64 commented that under Agenda Item #18, the date should be changed from 2018 to
65 2017.
66

67 Mr. Kaiser solicited the Board for their feedback on how the votes for the elections were
68 captured and if the Board agreed with the level of detail and formatting of the meeting
69 minutes. Board members commented that the level of detail is probably not required for

external and public review; however, it is very helpful to the Board to refresh and visualize the Board's discussions from previous meetings.

Mr. Kaiser informed the Board that staff are looking at potentially providing some updates to the meeting minutes. These updates include clickable links and bookmarks in the meeting minutes which would refer to the webcast; and posting to the Board's website, action minutes to provide motions and highlights of the meeting to the public immediately after the meeting.

The Board agreed that action meeting minutes provided would be helpful. Mr. Kaiser questioned Ms. Bojack if the action meeting minutes would need to be adopted by the Board at the end of the meeting. Ms. Bojack stated that the proposed publication may not require a Board vote if precautions were taken to distinguish it from the official meeting minutes. Ms. Bojack also stated that she would work with Board staff to provide legal review of the proposed publication.

The Board directed staff to amend the meeting minutes for the elections at the November 2017 meeting to ensure clarity and transparency. Board staff will amend each of the election votes to include who was elected and by what margin.

MOTION: To approve the November 15-16, 2017 minutes as amended.

M/S: Watkins/Dominguez

VOTE: Alviso – Aye
Dominguez- Aye
Drummer – Aye
Eleby – Abstain
McMillian – Aye
Rabena-Amen - Aye
Watkins - Aye
6-0 Motion carried, 1 abstention

7. President's Report – Alicia Rabena-Amen (A) 2018 Adopted Meeting Calendar

Ms. McMillian and Dr. Rabena-Amen questioned what event was on the calendar for June 27-30th as it was not identified at the bottom of the calendar. Dr. Drummer confirmed that it was the American Physical Therapy Association (APTA) NEXT Annual Meeting in Orlando, Florida. Dr. Rabena-Amen asked that the dates for both the FSBPT Leadership Issues Forum (LIF) and the 2018 Annual Meeting and Delegate Assembly be confirmed. Dr. Drummer confirmed that FSBPT 2018 LIF meeting is

scheduled for July 14-15, 2018 in Alexandria, Virginia and the 2018 Annual Meeting Delegate Assembly is October 25-27, 2018 in Reston, Virginia. Mr. Kaiser assured the Board that the 2018 calendar would be updated with the above amendments.

MOTION: To adopt the 2018 calendar as amended.

M/S: Eleby/Watkins

VOTE: Alviso – Aye
Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins - Aye
7-0 Motion carried

8. Presentation of Certificate of Appreciation to Debra Alviso – Alicia Rabena-Amen

President Dr. Rabena-Amen expressed gratitude for Dr. Alviso's many years of public service to the Board and presented her with a Certificate of Appreciation.

9. Executive Officer's Report – Jason Kaiser

Mr. Kaiser discussed that the Administration Services Program recently hired a new Outreach Coordinator, Alycia Miller, to help the Board disseminate information to its stakeholders. Mr. Kaiser stated that the Board has already made progress in outreach efforts in the short time Ms. Miller has been with the Board. Ms. Miller has already attended the Board's outreach events at Fresno State and Sac City College PTA program. He discussed that outreach efforts have increased with the publication of the "About Us" brochure and a rebrand of the social media pages. Mr. Kaiser reported that the next outreach project is overhauling the Board's website to create fluidity and more appropriate internet protocols and etiquette, so stakeholders can find information more easily.

Mr. Kaiser reported that the Department of Consumer Affairs (DCA's) SOLID received quite a bit of feedback regarding the Board's strategic planning session scheduled for April 12, 2018. The Board surveyed close to 30,000 people which took SOLID longer than expected to collect the data and create the environmental analysis. Mr. Kaiser stated that SOLID is almost done with the analysis and upon completion it will be provided to Board staff. Mr. Kaiser assured the Board that staff will create a draft of the plan for distribution to Board members ahead of the April 12th planning session.

150 **10. Legislation Report – Brooke Arneson**

151
152 (A) Discussion and Possible Board Action Regarding the 2017/18 Legislative Session
153 Summary

154
155 Ms. Arneson referred the members to the legislative summary report included in the
156 agenda book.

157
158 i. Discussion and Possible Board Action Regarding AB 2078 (Daly) Sex
159 Offenses: Professional Services

160
161 Ms. Arneson provided a brief overview and update on the status of AB 2078 to
162 the Board.

163
164 ii. Discussion and Possible Board Action Regarding AB 2138 (Chiu & Low)
165 Licensing Boards: Denial of Application: Criminal Conviction

166
167 Ms. Arneson provided a brief overview and update on the status of AB 2138 to
168 the Board. Mr. Kaiser stated that the Board has seen language like this bill in
169 prior legislative sessions that would lessen the Board's ability to take any kind of
170 action on a sole conviction and in this case, as far down as nonviolent crime. Mr.
171 Kaiser urged the Board to watch this bill as it would hinder the ability of the
172 Board's Enforcement Program to investigate something that could be extremely
173 egregious that the Board may consider to be a harm to consumer protection.

174
175 iii. Discussion and Possible Board Action Regarding AB 2221 (Bloom)
176 Occupational Therapy Practice Act

177
178 Ms. Arneson provided a brief overview and update on the status of AB 2221 to
179 the Board. Ms. Stacy DeFoe, CPTA Executive Director, reported that CPTA has
180 not taken a formal position on this bill; however, CPTA has been in
181 communication with the author and language will be forthcoming with substantive
182 changes to modernize the Occupational Therapy Practice Act.

183
184 iv. Discussion and Possible Board Action Regarding AB 2386 (Rubio) Teacher
185 Credentialing: Services Credential with a Specialization in Occupational Therapy
186 or Physical Therapy Services

187
188 Ms. Arneson provided a brief overview and update on the status of AB 2386 to
189 the Board. Ms. DeFoe, CPTA Executive Director, reported that CPTA is one of
190 the sponsors of this bill along with the Occupational Therapy Association of

California. Ms. DeFoe clarified that this bill would give Occupational Therapists and Physical Therapists working in the school system, an opportunity to have a career and to have more of an impact on policy and policy changes in the school system.

v. Discussion and Possible Board Action Regarding AB 2423 (Holden) Physical Therapists: Direct Access to Services: Plan of Care Approval

Ms. Arneson provided a brief overview and update on the status of AB 2423 to the Board. Ms. DeFoe, CPTA Executive Director, reported that CPTA is sponsoring this bill to provide for an exemption of physical therapy services as part of an individualized education program (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA) from the direct access limitation that prohibits physical therapists from continuing treatment beyond 45 calendar days or 12 visits, whichever occurs first, without first receiving a physicians signed approval of the physical therapist's plan of care.

MOTION: To take a support position on AB 2423 and direct staff to draft and deliver a letter of support on behalf of the Board to the author.

M/S: Eleby/Drummer

VOTE: Alviso – Aye
Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins - Aye
7-0 Motion carried

vi. Discussion and Possible Board Action Regarding AB 3013 (Chu) Veterinary Medicine: Animal Physical Rehabilitation

Ms. Arneson provided a brief overview and update on the status of AB 3013 to the Board and provided a handout of recent proposed amendments to the bill. Mr. Kaiser questioned what role the Board would provide to determine the qualifications necessary for the specialized certificate. Ms. DeFoe, CPTA Executive Director, clarified that the language is still being worked on; however, the intent was to remove animal from the Physical Therapy Practice Act. Mr. Kaiser added that he has an appointment with the author to get additional clarity. Karen Atlas, PT, President of California Association of Animal Physical

Therapists and sponsor of this bill stated that the reason they would like to have the Board's cooperation with Veterinary Medical Board (VMB) is to determine competency standards because it has been shown that there is not an in depth understanding by the VMB on PT competency and education and it would be in the best interest to the consumer to have the two Boards work together. Ms. Atlas also stated that the chief consultant from the Senate B&P Committee recommended the VMB and Board work collaboratively.

Ethan Mathis, Executive Officer of the VMB stated that the Board is aware of the new language and has concerns. Mr. Mathis informed the Board that the VMB had previously worked on proposed language specifying that the Physical Therapist would work in cooperation with the veterinarian and the VMB determined that direct supervision would be required for a Physical Therapist; which this new proposed language is in direct conflict with.

vii. Discussion and Possible Board Action Regarding AB 3110 (Mullin) Athletic Trainers

Ms. Arneson provided a brief overview and update on the status of AB 3110 to the Board. Ms. DeFoe, CPTA Executive Director reported that CPTA currently has an opposed position on this bill as written. Ms. DeFoe stated that this bill has come forward in previous legislative sessions and the language is overly broad and that title protection is more appropriate.

Ms. Eleby commented that this bill, as currently written, is riddled with public protection issues and would like to watch this bill to see how it unfolds during the legislative session.

MOTION: To take a watch position on AB 3110
M/S: McMillian/Dominguez
VOTE: Alviso – Aye
Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins - Aye
7-0 Motion carried

271 **11. Rulemaking Report – Brooke Arneson**

272 (A) Discussion and Possible Board Action Regarding the 2018 Rulemaking
273 Update

274
275 Ms. Arneson referred the Board to the rulemaking tracking form included in the
276 agenda materials and advised on the status.

277
278 (B) Discussion and Possible Board Action Regarding Examination Passing
279 Standard/Setting Examination Score

280
281 Ms. Arneson referred the Board to the rulemaking tracking form included in the
282 agenda materials and advised on the status.

283
284 (C) Discussion of Issues and Possible Board Action Regarding Guidelines for
285 Issuing Citations and Imposing Discipline, 6th Edition.

286
287 Ms. Ybarra presented two final revisions to the regulatory language of the
288 Guidelines for Issuing Citations and Imposing Discipline included by reference in
289 section 139915 of Article 8, Division 13.2, Title 16 of the California Code of
290 Regulations. Specifically, the definition of Substance Abuse Rehabilitation
291 Programs has been amended to delete the reference to “diversion program”
292 since it no longer exists pursuant to the current statutes, and Business and
293 Professions Code (BPC) section 480 has been amended to include the minimum
294 and maximum disciplines pursuant to each of the specific subsections as
295 specified in BPC section 480. Ms. Bojack described the rationale behind the
296 proposal of including each of BPC section 480’s subdivisions in the Guidelines.
297 Mr. Kaiser agreed that there was value in this proposal to give guidance to
298 applicants, though overall the Guidelines are directed towards licensees.

299
300 The Board reviewed the proposed amendments, discussion pursued, and the
301 Board revised the proposed amended language.

302
303 **MOTION:** To approve the proposed modified text presented and amended
304 today and incorporate these changes to the existing rulemaking
305 packet approved at the November 2017 Board Meeting. Direct the
306 Executive Officer to take all steps necessary to initiate the
307 rulemaking process, authorize the Executive Officer to make any
308 technical or non-substantive changes to the rulemaking package,
309 notice the proposed text for a 45-day comment period, and if no

adverse comments are received and no hearing is requested, adopt the proposed regulatory changes, as modified.

M/S: Eleby/McMillian

VOTE: Alviso – Aye
Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins - Aye
7-0 Motion carried

(D) Discussion of Issues and Possible Board Action Regarding Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant/Coursework Tool

Ms. Arneson referred the Board to the rulemaking tracking form included in the agenda materials and advised on the status.

12. Public Comment on Items Not on the Agenda

Please note that the Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code sections 11125, 11125.7(a).]

During Agenda Item 11(A), Mr. Michael Skates, California Physical Therapist, and Ms. Stacey Orosco, owner and operator of Contra Costa Medical Career College asked the Board to exercise its authority to approve the Contra Costa Medical Career College Physical Therapy Assistant Program so that it can begin matriculating students. Mr. Skates informed the Board that Ms. Orosco was unsuccessful in receiving approval authority from CAPTE due to CAPTE's two-year backlog.

13. Recess

The Board recessed at 2:55 p.m. on Thursday, March 22, 2018 – Day one

Friday, March 23, 2018

14. Call to Order

The Physical Therapy Board of California (Board) reconvened at 9:01 a.m. and adjourned at 5:20 p.m. on March 23, 2018.

15. Roll Call and Establishment of Quorum

Alviso – Present
Dominguez- Present
Drummer – Present
Eleby – Present
McMillian – Present
Rabena-Amen - Present
Watkins – Present

All members were present, and a quorum was established. Also present at the meeting were: Salwa Bojack, Legal Counsel; Jason Kaiser, Executive Officer; Liz Constancio, Elsa Ybarra, Sarah Conley, Brooke Arneson and Monny Martin, Board staff.

16. Discussion and Possible Board Action for the Increase in Board Level and Exempt Status of the Executive Officer – *Alicia Rabena-Amen*

Dr. Rabena-Amen shared with the Board that the request for the increase in Board level and exempt status of the Executive Officer was approved at the exempt level N; not L as the Board requested; she stated that she is still concerned that the Board will not have the ability to meet its goals of an Assistant Executive Officer and additional growth of the Board.

Mr. Castrillo, Deputy Director of Board and Bureau Services reported that the Executive Officer level increase was approved effective February 22, 2018 at exempt level N; which was a 4.9% increase in the Executive Officer's salary. Mr. Castrillo stated that he and Mr. Kaiser have been engaging in conversations with DCA's Human Resources team on how to address the growth and goals of the Board.

Board members shared their frustrations with Mr. Castrillo on not being provided any additional information and justification on why the Board's request was denied for exempt level L and the lack of transparency in the approval process and asked for an explanation on why the request was not approved at the level the Board requested. Mr. Kaiser thanked Mr. Castrillo and DCA for their assistance and support during this request process.

394
395 **17. Discussion and Possible Board Action on the Federation of State Boards of**
396 **Physical Therapy's (FSBPT) Performance Evaluation Tool for Foreign Educated**
397 **Physical Therapists Completing a Supervised Clinical Practice in the United**
398 **States Presentation – Alicia Rabena-Amen**
399

400 Dr. Rabena-Amen reported that at the May 2017 meeting, FSBPT provided a
401 presentation on the Performance Evaluation Tool (PET) for Foreign Educated
402 Physical Therapists Completing a Supervised Clinical Practice in the United States
403 and that the Board did not have any further discussion after the presentation and she
404 wanted to bring it back to the Board for further consideration.
405

406 Mr. Kaiser discussed that the Board was considering at the August 2017 meeting, to
407 pursue regulatory change to update the tool currently used by the Board, APTA's
408 paper based Clinical Performance Instrument (CPI), which is outdated and has not
409 been used by APTA in years. Mr. Kaiser stated that APTA uses a new online tool;
410 however, FSBPT has a similar tool, Performance Evaluation Tool (PET) for foreign
411 educated physical therapists. Mr. Kaiser solicited the Board for their feedback on
412 which tool the Board would like to utilize.
413

414 Discussion pursued, and the Board determined that additional research was needed
415 by Board staff and legal counsel to determine what instrument should be used, or to
416 avoid limiting the Board to one specific tool evaluating clinical practice for foreign
417 educated PT's and possibly specify in the regulation that it would be a "tool
418 designated and approved by the Board."
419

420 **MOTION:** To direct the Executive Officer and board staff to develop language
421 for modification of regulations regarding the evaluation of
422 supervised clinical practice of foreign educated physical therapist
423 applicants.

424 **M/S:** Drummer/Dominguez

425 **VOTE:** Alviso – Aye
426 Dominguez- Aye
427 Drummer – Aye
428 Eleby – Aye
429 McMillian – Aye
430 Rabena-Amen - Aye
431 Watkins - Aye
432 7-0 Motion carried
433

434 **18. Closed Session**

435 (A) Pursuant to Government Code section 11126(c)(3), Deliberation on Disciplinary
436 Actions and Decisions to be Reached in Administrative Procedure Act Proceeding
437

The Board entered closed session on day two, March 23, 2018 at 3:49 p.m.

(B) Pursuant to Government Code section 11126(a)(1), Evaluation of Executive Officer

The Board opted to discuss Agenda Item 18(B) during open session. Mr. Castrillo, Deputy Director of Board and Bureau Services provided the Board with additional information regarding the evaluation of the Executive Officer. Ms. Bojack also stated that the Legal Affairs Division would be working with Board and Bureau Services on the logistics of the evaluation of the Executive Officer.

19. Reconvene Open Session

The Board reconvened into open session to adjourn at 5:20 p.m.

20. Consumer and Professional Associations and Intergovernmental Relation Reports

(A) Federation of State Boards of Physical Therapy (FSBPT)

No representatives were present.

(B) Department of Consumer Affairs (DCA) – Executive Office

Karen Nelson, Assistant Deputy Director of Board and Bureau Services advised the Board that DCA has a new Deputy Director of Legislative Affairs, Mr. Dennis Cuevas-Romero, who started with the Department on March 12, 2018. Ms. Nelson also updated the Board on recent and upcoming activities within the Department; DCA recently graduated their inaugural cohort from the Future Leadership Program in early March; Board Member Orientation Training will occur on June 6th, September 18th and December 5th; and on April 30th the Department will hold its Director's quarterly meeting.

Ms. Nelson shared that SOLID will be offering additional training courses and customizable training components geared toward Board members and Board executive staff. Mr. Kaiser questioned what delivery mechanism these training courses would be offered, and Ms. Nelson responded that these trainings could be offered individually to Board members or provided as a training for all members during a Board meeting. The Board inquired of Ms. Bojack whether there would be an Open Meetings Act violation if Board members attended these trainings outside of a Board meeting. Ms. Bojack advised that it depends on the type of training and whether Board members discuss Board issues with each other at the training. Ms. Bojack advised that it was possible not to violate the Open Meetings Act and provided the

Board Member Orientation Training as an example. Ms. Bojack agreed to advise the Board regarding trainings and the Open Meetings Act on a case-by-case basis.

Ms. Nelson reported that the Department would be holding licensing and enforcement workgroups to share best practices for consumer protection. These workgroups will be launched in April and Ms. Nelson encouraged Board staff to participate.

President Dr. Rabena-Amen solicited the Board to provide any training they would be interested in to Mr. Kaiser to include in future meetings.

(C) California Physical Therapy Association (CPTA)

No representatives were present.

21. Board Member Training – Jason Kaiser

(A) Council on Licensure, Enforcement and Regulation (CLEAR) Professional Discipline

The Board found the training to be valuable and applicable to their roles and responsibilities. They encouraged further training at future meetings.

22. Administrative Services Report

(A) Budget– Carl Nelson

i. Fi\$cal– DCA, Budget Office

Mr. Nelson was accompanied by Robert De Los Reyes, DCA Budget Manager and Carl Bierman, DCA Budget Analyst.

Mr. Nelson provided the Board with two corrections to his briefing paper; the total budget authority for CY 2017-18 is \$4,983,000 and the Operating Expense and Equipment budget allotment is \$2,944,000. Mr. Nelson stated that the reason for this correction is that the original report did not reflect reimbursements.

Ms. Eleby questioned what attributed to the decrease in the Division of Investigation (DOI) budget. Mr. De Los Reyes explained that the DOI budget is based on investigative hours that are tracked from DOI. Mr. Kaiser added that the reason for the decrease in the DOI budget is the decrease in the number of complaints received. He added that there is no way to predict the enforcement program and that can change annually.

Mr. De Los Reyes explained the State transitioned to the new accounting system Fi\$cal this fiscal year. He assured the Board that the new system is working; however, it brings a higher level of sophistication and transparency that requires a larger learning curve. Mr. De Los Reyes updated the Board that they are closing out fiscal months 2 and 3, and while they are still significantly backlogged, they

anticipate being caught up by mid-April. Mr. De Los Reyes assured the Board that the Budget Office has been monitoring the spending of the Board by manually tracking information outside of the Fi\$cal system to ensure that the Board is within budget. Mr. Kaiser expressed his appreciation to the DCA Budget Office for providing the budget information to the Board outside of the Fi\$cal system.

(B) Outreach – Alycia Miller

Ms. Miller presented the outreach report to the Board. She noted that there was a decrease in traffic on the Board's Facebook page by 60% for quarter 2 and by 11% year-to-date over last fiscal year (FY 2016-17). Ms. Miller attributed this decrease to the Board only posting 20 Facebook posts this fiscal year compared to 75 posts last fiscal year. Ms. Miller is hoping to increase Facebook posts to increase visitors to the Board's Facebook page.

Ms. Miller informed the Board that additional information will be provided in the outreach briefing paper for future meetings to include outreach presentations and attendance to schools and add the number of CAPTE accredited PT and PTA schools.

Mr. Kaiser encouraged Board members to attend outreach events to provide another perspective to licensees. Dr. Dominguez attended Student Conclave this year in Mr. Kaiser's place and stated it was very enjoyable and drew a large audience.

Dr. Alviso questioned if the Progress Notes were sent out digitally, if that worked well and was complimentary on the presentation both digitally and in print. Mr. Kaiser responded it was sent out successfully digitally and thanked DCA's Publication Design and Editing team for their hard work.

23. Application Services Report – Sarah Conley

(A) Application Process Presentation – Sarah Conley and Eura Trent

Ms. Conley provided a presentation on the application process and directed Board members to the Application Services Report included in the materials and fielded questions regarding the information presented. Board members thanked Ms. Conley for the informative presentation.

Ms. Eleby suggested providing a similar presentation for the foreign educated application process at a future Board meeting.

24. Licensing Services Report – Eura Trent

Ms. Trent stated that the number of active licenses has increased 4% since last year, and the overall number of inactive licenses has decreased 9% since last year. Ms.

569 Trent informed the Board that the number of retired licenses continues to rise with a
570 70% increase over last year. Ms. Trent discussed that since the implementation of
571 BreEZe and online renewal, the number of renewal payments processed in-house has
572 decreased significantly; however, the workload has remained the same. For Quarters 1
573 and 2 of FY 2017/18, 80% of renewals were submitted online and the remaining 19%
574 were processed by DCA.

575 (A) Continuing Competency Report – *Alaysha Crutcher and Veronica Gutierrez*
576

577 Ms. Crutcher and Ms. Gutierrez directed the members to the report included in the
578 agenda book. Ms. Gutierrez informed the Board that the recognized approval agencies
579 on the website has been updated. Ms. Crutcher reported that the Continuing
580 Competency concluded its data collection for approval agencies and plans to audit the
581 approval agencies this next fiscal year to ensure compliance.
582

583 Ms. McMillian questioned why approval agencies ask for removal. Ms. Crutcher
584 responded that some approval agencies do not offer California courses or have sold
585 their business or are under new management and ask to be withdrawn.
586

587 Ms. Eleby questioned what the consequence of not being compliant would be for a
588 licensee and what the process is to bring the licensee into compliance. Ms. Gutierrez
589 responded that the analysts work with the licensee to bring them into compliance and if
590 the licensee does not comply or respond, they are forwarded to the Consumer
591 Protection Services Unit.
592

593 **25. Consumer Protection Services Report – *Cristy Livramento*** 594

595 Ms. Livramento presented the report as included in the agenda materials and informed
596 the Board that the performance measures report, which is provided by the Department,
597 is not included in the materials and they hope to provide that data for the following
598 Board meeting.
599

600 **26. Probation Monitoring Report – *Monny Martin*** 601

602 Mr. Martin reported there are 89 licensees on probation, 79 probationers are practicing
603 in California and 10 probationers are practicing outside of California, which are not
604 currently gaining credit toward the completion of their probation.
605

606 Mr. Martin stated that in Quarter 3, seven (7) licensees completed probation in the
607 quarter and one (1) licensee violated their probation and was referred to the Deputy
608 Attorney General's Office for discipline. Of the 79 probationers, 20 are enrolled in
609 Board's Drug and Alcohol Recovery Monitoring Program equaling about 25% of all
610 licensees on probation. There were no licensees that entered the Drug and Alcohol
611 Recovery Monitoring Program during this quarter.
612

613 **27. Public Comment on Items Not on the Agenda**

614 *Please note that the Board may not discuss or take action on any matter raised during*
615 *this public comment section that is not included on this agenda, except to decide*
616 *whether to place the matter on the agenda of a future meeting. [Government Code*
617 *sections 11125, 11125.7(a).]*

618
619 **28. Agenda Items for Future Meeting –**

620
621 June 20-21, 2018
622 Western University
623 Rodney P. Wineburg Center (RCW)
624 Cooper Hall
625 309 East 2nd Street
626 Pomona, CA 91766
627

628 Agenda Items for Future Meeting: Ms. Eleby requested that a presentation on the
629 Board's foreign educated application process be included at the next meeting, and for
630 the Board to consider adding an agenda item to discuss the request made by
631 Mr. Skates and Ms. Orosco for the Board to exercise its authority to approve the
632 Physical Therapy Assistant Program for Contra Costa Medical Career College.
633

634 **29. Adjournment**

635
636 The meeting adjourned at 5:20 p.m.
637

Physical Therapy Board of California Adopted 2018 Meeting Calendar

[illegible][illegible]

September							October							November							December						
Su	M	T	W	Th	F	S	Su	M	T	W	Th	F	S	Su	M	T	W	Th	F	S	Su	M	T	W	Th	F	S
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2	3	4	5	6	7	8	7	8	9	10	11	12	13	4	5	6	7	8	9	10	2	3	4	5	6	7	8
9	10	11	12	13	14	15	14	15	16	17	18	19	20	11	12	13	14	15	16	17	9	10	11	12	13	14	15
16	17	18	19	20	21	22	21	22	23	24	25	26	27	18	19	20	21	22	23	24	16	17	18	19	20	21	22
23	24	25	26	27	28	29	28	29	30	31				25	26	27	28	29	30		23	24	25	26	27	28	29
30																					30	31					

January		February		March		April	
1	New Year's Day	19	President's Day	17	Student Conclave	1	Easter
10	PTA NPTE	21-24	APTA Sections Meeting Meeting New Orleans, LA	22-23	PTBC Meeting Sacramento, CA	4	PTA NPTE
15	Martin Luther King Jr			31	César Chávez Day	12	Strategic Planning Sacramento, CA
24	PT NPTE					25	PT NPTE

May		June		July		August	
13	Mother's Day	8-10	FSBPT REG Training	4	Independence Day		
28	Memorial Day	17	Father's Day	10	PTA NPTE		
		20-21	PTBC Meeting Pomona, CA	14-15	FSBPT LIF Alexandria, VA		
		27-30	APTA NEXT Orlando, FL	24-25	PT NPTE		
September		October		November		December	
3	Labor Day	3	PTA NPTE	11	Vet	5-6	PTBC Meeting
13-14	PTBC Meeting Sacramento, CA	24	PT NPTE	22	Thanksgiving		TBD, Bay Area, CA
22-23	CPTA Annual Santa Clara, CA	25-27	FSBPT Annual Meeting Reston, VA			25	Christmas
		31	Halloween				

Physical Therapy Board of California Proposed 2019 Meeting Calendar

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19	20	21	22	23	24	25		16	17	18						21	22	23	24	25	26	27		18	19	20	21	22	23	24	
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								30																							

[illegible]

1	New Year's Day	18	President's Day		
21	Martin Luther King Jr				
23-26	APTA Sections Washington, DC		31	César Chávez Day	
29	PT NPTE				
	May	June	July	August	

12	Mother's Day	TBD	FSBPT REG Training	4	Independence Day		
27	Memorial Day	16	Father's Day	9	PTA NPTE		
		19-20	PTBC Meeting Southern CA	24-25	PT NPTE		
		TBD	APT A NEXT Meeting				
	September		October		November		December
2	Labor Day	3	PTA NPTE	TBD	FSBPT Annual Meeting	11-12	PTBC Meeting
19-20	PTBC Meeting Sacramento, CA	24	PT NPTE	11	Veteran's Day		TBD, Bay Area, CA
		31	Halloween	28	Thanksgiving		
TBD	CPTA Annual Meeting						



Physical Therapy Board of California

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY - GOVERNOR EDMUND G. BROWN JR.

Physical Therapy Board of California

2005 Evergreen St. Suite 1350, Sacramento, California 95815

Phone: (916) 561-8200 Fax: (916) 263-2560

Internet: www.ptbc.ca.gov



DATE: May 24, 2018

TO: Physical Therapy Board of California (Board)

SUBJECT: Executive Officer's Report

This report is to update you on the current status of the Board's operations.

ADMINISTRATIVE SERVICES – Due to vacancy the PTBC is currently recruiting for (1) Limited Term, Full Time Staff Service Analyst (SSA) in the Administrative Services Program to serve as the Boards Communication and Education Analyst (previously Outreach Liaison). The Communication and Education Analyst has been designated to address the PTBC's mandates pertaining to publishing newsletters and facilitating an education program for stakeholders (BPC §2605 (g)(i)) as a priority. In addition, the Communication and Education Analyst will serve as the primary point of contact for education and communication through social media, web-site maintenance, publications, forms, educational presentations, etc.

Please refer to Agenda Item 19(A) for a detailed Budget report.

APPLICATIONS SERVICES – Please refer to Agenda Item 20 for a detailed report.

LICENSING SERVICES – Please refer to Agenda Item 21 for a detailed report.

CONSUMER PROTECTION SERVICES – Please refer to Agenda Item 23 for a more detailed report.

ANIMAL REHABILITATION – Please refer to Agenda Item 14 (a)vi for an update on the legislative bill regarding Animal Rehabilitation. The Veterinary Medical Board has appointed Jessica Sieferman as its new Executive Officer, effective July 2, 2018. Ms. Sieferman replaces former Executive Officer Annemarie Del Mugnaio.

DCA INTERNAL AUDIT – PTBC staff has submitted its 180-day response to DCA's Internal Audit Office (IAO). Staff continues to work diligently with the IAO, addressing its findings and making suggested improvements to control systems, operations, policies, and procedures.

OUTREACH – Please refer to Agenda Item 19(B) for a detailed Outreach report.

PTBC Relocation – The PTBC’s lease for the building at its existing location, 2005 Evergreen Street #1350, Sacramento, Ca. 95815 is set to expire in March of 2019. Negotiations to renew the lease have been underway for quite some time. There are 9 other DCA entities at this location. We expect to move from our current location, due to the Boards size, regardless of the lease outcome. The PTBC’s existing suite was designed to accommodate 15 staff. We currently have 26 staff. Staff will be working with DCA and DGS on space planning to determine the appropriate square footage moving forward.

According to the [Department of General Services Ten Year Sequencing Plan](#) (updated 2018), all of Business, Consumer Services and Housing Agency, of which the PTBC is a part, is scheduled to be moved to a central location in northern Sacramento in 2025 (see attached).

Overview

The Ten Year Sequencing Plan provides a roadmap for the renovation or replacement of state office buildings in Sacramento and to address deficiencies in the State Capitol East Annex. This plan, taken together with the department's Portfolio Plan, provides a statewide, strategic, and long-term asset management strategy for DGS' portfolio of office buildings.

A key component of the sequencing plan is the integration of the results from the Facility Condition Assessments completed for the 2015 State Facility Long Range Planning Study (Planning Study). The Planning Study provided the Department of General Services (DGS) with an independent assessment of the DGS-managed office buildings and resulted in an analysis that identified the buildings with the highest need for repair or replacement.

DGS Facility Sequencing Principles

Market conditions, client needs, and fiscal circumstances change over time. Accordingly, this Sequencing Plan is subject to change so DGS may best maximize value to the State as opportunities arise.

Nevertheless, while DGS must be attuned to market conditions and client needs, the department cannot take a reactive approach to office building planning. Rather, DGS must lay out a plan for the future to provide overall direction for the state's office needs. To this end, DGS has developed long-range office facility sequencing principles that will help guide the state irrespective of changing market conditions and specific client preferences.

These ten principles align with three DGS goals – Operational Efficiency, Cost Effectiveness, and Sustainable Communities:

Operational Efficiency

- To generate operational and programmatic efficiencies, the state will aim to consolidate departmental space and co-locate departments within the same agencies and/or similar functions between departments.
- The state will use more standardized office configurations to minimize tenant improvement costs and allow for the greatest flexibility when filling space with state tenants.

Cost Effectiveness

- The state prefers to own buildings in areas with high lease costs in order to reduce space costs for state departments.
- The state shall first consider building on state property before pursuing construction on commercial sites.
- To avoid disruption and minimize costs, DGS will strive to minimize the number of moves a department must make.

- DGS will coordinate its facility sequencing strategy with its review of state leased space to generate more competitive lease rates in private sector facilities.
- DGS will continue to meet the programmatic needs of tenants in state buildings but will not complete significant building improvements in buildings it plans to completely renovate, demolish or sell within the next five years.

Sustainable Communities

- The state will design new construction and renovation projects with a goal towards achieving Zero-Net Energy by incorporating the latest proven materials, designs, technologies, and construction practices.
- The state prefers that new buildings be built in proximity to public transit.
- When feasible, the state will offer mixed use development in new office buildings to better meet our tenant and larger community needs.

These facility sequencing principles will guide the state as we begin to address the long term office building needs and determine which buildings will be retained, renovated, sold, or constructed over the next quarter century.

Initial Projects

The 2016-17 Governor's Budget included a proposal to address the need to improve the safety and capacity of the Capitol Annex building, as well as the most critical state office space deficiencies in Sacramento. With this proposal, employees in three of the five buildings identified in the Planning Study as having the greatest needs will be in new or renovated space within five years. Initial projects in 2016-17 include:

- Demolition of the vacant California Food and Agriculture Annex on O Street and a new building consisting of approximately 255,000 net square feet (NSF), to be occupied by the current tenants of the Bateson Building.
- A new building consisting of approximately 700,000 to 750,000 NSF, to be occupied by the current tenants of the Natural Resources Building and the Bonderson Building.
- A new Capitol Annex or renovation of the existing Capitol Annex to address the significant building systems and accessibility deficiencies.

In addition to projects identified in the current year budget, a parking structure was included in the 2017 Budget Act. It includes:

- Demolition of an existing warehouse and build a new mixed-use parking structure consisting of approximately 800 parking stalls and retail on the first floor. The parking will include monthly state employee parking as well as hourly parking for public use.

This sequencing plan outlines the subsequent projects that will continue with this progress.

Four Stage Approach

DGS's facility sequencing plan proposes more than 4.3 million square feet in new construction or extensively renovated state buildings, which equals one-quarter of all state-owned space in the Sacramento region. There are four stages to this facility sequencing plan. These stages are:

1. High Priority Facilities - 2016-17 Governor's Budget proposal
2. Development of the North Sacramento site
3. Renovation of historic state buildings
4. Additional demolition or renovation of state buildings

The first three stages of the facility sequencing plan will be accomplished over the next 10 years and will address the needs of the state departments housed in nine of the eleven state office buildings in the poorest condition. The following lists the affected facilities and departments within each stage.

High Priority Facilities

The 2016-17 Governor's Budget included a proposal to construct a new facility for the Natural Resources Agency and its departments, which are currently housed in the Resources Building, which was identified as the state office building in the poorest condition. The budget also includes the construction of a new facility for the California Health and Human Services Agency at the site of the vacant California Food and Agriculture Annex Building. Finally, the budget included a proposal to address the safety and capacity issues within the Capitol Annex building.

1. Demo, Construct, and Replace: O Street Building (255,000 NSF)

Design-Build FY 16-17 through FY 20-21, Move-in: March 2021

- Tenants relocating from the Bateson Building
 - ◆ Development Services
 - ◆ Health and Human Services Agency
 - ◆ State Hospitals
- Tenants relocating from other DGS-controlled buildings
 - ◆ Development Services

2. Construct: New Resources Building (700,000-750,000 NSF)

Design-Build FY 16-17 through FY 21-22, Move-in: September of 2021

- Tenants relocating from the California Natural Resources Agency (CNRA) Building the Bonderson Building and leased space, representing a partial consolidation of CNRA. Tenants include:
 - ◆ Water Resources
 - ◆ Parks and Recreation,
 - ◆ Fish and Wildlife
 - ◆ Forestry and Fire Protection
 - ◆ Conservation
 - ◆ Conservation Corps
 - ◆ Wildlife Conservation Board

3. **Construct or Renovate: Capitol Annex (367,000 GSF)**
Planning discussions with the Committee on Joint Rules.
4. **Demo, Construct, and Replace existing warehouse with a new mixed-use parking structure: 805 R Street (7-story, 800 parking stalls and retail on the first floor)**
Design-Build FY 17-18 through FY 19-20, Move-in: Winter 2019

In addition to high priority projects identified in the current budget, a parking structure for state employees was approved in the 2017 Budget Act.

Development of the North Sacramento Site

The Office of the State Printer (OSP) occupies 17 acres of state-owned land in North Sacramento, which is within two miles of the State Capitol. DGS is relocating OSP from this site to commercially leased space in mid-2018. DGS proposes to construct at minimum 1 million NSF of new state office space.

1. **Environmental Assessment/Study, Demolish:**
Environment Assessment FY 16-17. Design-Bid-Build Demolition FY 17-18 through FY 20-21, Ready for Development: January 2021
2. **Construct New Office Complex (1,000,000+ NSF)**
Design-Build FY 18-19 through FY 23-24, Move-in: March 2024

Tenants planned to occupy this site:

- **Business, Consumer Services and Housing (BCSH) Agency and its departments (751,500)**
 - ♦ Business Consumer Services & Housing Agency (4,000)
 - ♦ Housing and Community Development (114,500)
 - ♦ Business Oversight 1515 K Street (44,000)
 - ♦ Department of Consumer Affairs consolidation from various leased locations (545,000)
 - ♦ Board of Chiropractic Examiners (4,000)
 - ♦ Alcoholic Beverage Control consolidate 2 locations (40,000)
- California Department of Tax and Fee Administration (394,000) and Board of Equalization (6,000) 450 N Street **(400,000)**

Renovation of Historic State Buildings

As state departments vacate state buildings in poor condition, DGS will either completely renovate or demolish and construct new state facilities on these sites. DGS proposes that the tenants of these new state facilities will largely be those departments housed in other state buildings listed in poor condition or those departments in commercial space where the state may exercise the option to terminate their lease.

1. Renovate: Bateson Building (215,000 NSF)

Design-Build FY 18-19 through FY 23-24, Move-in: April 2024

Tenants planned to occupy this site:

- California Natural Resources Agency departments not consolidating into the New Resources Building (relocating from leased space):
 - ♦ Water Resources
 - ♦ Parks and Recreation
 - ♦ CalFire
 - ♦ Fish and Wildlife
 - ♦ Conservation
 - ♦ Conservation Corps

2. Renovate: Unruh Building (114,000 NSF)

Design-Build FY 18-19 through FY 23-24, Move-in: January 2024

Tenants planned to occupy this site (STO Headquarters):

- STO from the Bonderson Building (swing space) (108,000)
- STO relocate from State Personnel Building (11,000)

3. Renovate: Resources Building (520,000 NSF)

Design-Build FY 19-20 through FY 24-25, Move-in: June 2024

Tenants planned to occupy this site:

- Employment and Development Department (EDD) (491,000)
 - ♦ EDD Headquarters Building (327,700)
 - ♦ Labor and Workforce Development Agency (7,300)
 - ♦ EDD Solar Building (120,000)
 - ♦ EDD Subterranean Building (36,000)
 - ♦ Vacant (29,000)

**4. Utilize the Bonderson Building as swing space for Unruh tenants (113,000 NSF)
Beginning FY 21-22 and vacating in FY 24-25:**

- Transportation Agency (8,000)
- State Treasurers Office (108,000)
- Government Operations Agency (5,000)
- Business Consumer Services & Housing Agency (4,000)

5. Renovate: Blue Anchor Building (17,000 NSF)

Design-Build FY 20-21 through FY 23-24, Move-in: January 2024

Administration hoteling and meeting space; accommodating staff that are located beyond the Capitol corridor.

Tenants planned to occupy this site:

- Tenants relocating to leased space (17,000)
 - ♦ Governor's Office (6,000)
 - ♦ Office of Planning and Research (11,000)

Demolition or Complete Renovation of State Buildings

With the complete renovation or construction of a new state facility on the site of the current Resources Building and the renovation of the Unruh and Bateson buildings, DGS will have four vacant buildings which it may either renovate or demolish and construct new facilities.

1. Renovate: 450 N Street Building (479,000 NSF)

Design-Build FY 21-22 through FY 26-27, Move-in: June 2026

Tenants planned to occupy this site:

- The Government Operations Agency and its departments with the exception of California Public Employees Retirement System, California State Teachers Retirement System, the California Department of Tax and Fee Administration and the Franchise Tax Board.
 - ♦ Government Operations Agency (5,000)
 - ♦ Dept. of General Services (DGS) 707 3rd Street, W.S. (319,000)
 - ♦ CalHR 1515 S Street (40,000)
 - ♦ SPB (29,000)
 - ♦ Office of Administrative Law 300 Capitol Mall (9,000)
 - ♦ Victims Compensation & Government Claims Board 400 R Street (66,000)
 - ♦ Dept. of Technology 1325 J Street (21,000)
 - ♦ DGS 2525 Natomas Park Dr (4,000)

2. Renovate: EDD Headquarters and Solar (455,000 NSF)

Design-Build FY 21-22 through FY 26-27, Move-in: September 2026

Tenants planned to occupy this site:

- CDCR 1515 K Street (33,000)
- CDCR 1515 S Street (305,000)
- California Energy Commission (124,000)

3. Use EDD Subterranean Building for construction staging and swing space (27,000 NSF)

Beginning January 2018 through FY 29-30

4. Renovate: Warren-Alquist State Energy Building (125,000)
Design-Build FY 24-25 through FY 29-30

Tenants planned to occupy this site:

- Dept. of Managed Health Care 980 9th St (86,000)
- Dept. of Managed Health Care - FTB (34,000)

Conclusion

Initial projects, as identified in the 2016-17 Governor's Budget have received funding through the new State Project Infrastructure Fund. The 2017-18 final budget includes authorization for bond financing for these projects. This significant investment will address the most critical state office space deficiencies in Sacramento. Future projects will be guided by the principles described in this plan.

Physical Therapy Board of California Strategic Plan

2018-2022

Adopted:

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The Physical Therapy Board of California

Alicia K. Rabena-Amen, PT, DPT, *President*

TJ Watkins, *Vice President*

Debra Alviso, PT, DPT, *Member*

Jesus Dominguez, PT, PhD, *Member*

Daniel Drummer, PT, DPT, *Member*

Katarina Eleby, MA, *Member*

Tonia McMillian, *Member*

Edmund G. Brown Jr., *Governor*

Alexis Podesta, *Secretary*, Business Consumer Services and Housing Agency

Dean Grafilo, *Director*, Department of Consumer Affairs

Jason Kaiser, *Executive Officer*, Physical Therapy Board of California

MESSAGE FROM THE PRESIDENT

It is with privilege that the Physical Therapy Board of California (the Board) presents you with our 2018-2022 strategic plan. The process included feedback from the public, licensees, educators, Board members and Board staff, as well as other stakeholders. Thank you to all who contributed thoughtful responses, and to the Board for their valuable collaboration to develop objectives that will help the Board provide enhanced services overall.

This plan will guide the board in planning for efficiencies across our programs while continuing to focus on our mandate of consumer protection. We aim to improve outreach by increasing our efforts to educate the public, licensees and other stakeholders. We also aspire to strengthen our licensing and enforcement programs as we work to meet our mission of protecting the health, welfare and safety of the public.



We are proud to have accomplished most of our goals from our prior strategic plan, and we look forward to using our new objectives to guide us as leaders in consumer protection. As president of the Board, I invite your ideas and contributions to meeting the objectives of this plan. Board meetings are held at least four times a year across the state and publicly noticed in advance. Your presence and participation is most welcome, encouraged, and appreciated.

Sincerely,

Alicia Rabena-Amen, PT, DPT
President, Physical Therapy Board of California

ABOUT THE BOARD

The Physical Therapy Board of California (Board) licenses and regulates physical therapists and physical therapist assistants. The Board is comprised of four licensed members and three public members. The Governor appoints the four licensed members and one public member; the Speaker of the Assembly appoints one public member; and the Senate Rules Committee appoints one public member. The Board's mandate is to protect the public from the incompetent, unprofessional, and fraudulent practice of physical therapy.

To meet this mandate, the Board must ensure that:

- Applicants meet the necessary education, examination, and experience qualifications to obtain licensure;
- Licensees comply with continuing competency requirements to maintain licensure;
- Consumers are informed of their rights and how complaints may be filed with the Board;
- Consumer complaints are processed efficiently;
- Appropriate action is imposed on licensees who are found in violation of the Physical Therapy Practice Act; and
- Laws and regulations uphold the Board's mandate, mission, and vision.

This strategic plan will systematically chart the Board's course for the next four years by establishing its goals and objectives. These goals and objectives are the framework that will tactically guide activities and focus resources to uphold the Board's mandate in the most efficacious manner possible.

STRATEGIC GOALS

1 *ENFORCEMENT*

2 *LICENSING*

3 *COMMUNICATION AND EDUCATION*

4 *ORGANIZATIONAL EFFECTIVENESS*

Mission, Vision, and Values

Mission

To advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act.

Vision

The standard for consumer protection in physical therapy.

Values

*Commitment
Consumer Protection
Innovation
Integrity
Leadership
Service*

GOAL 1: ENFORCEMENT

- *Protect consumers through effective enforcement of laws and regulations governing the practice of physical therapy.*

- 1.1 Identify and implement improvements to the investigation and discipline process to decrease enforcement processing times.
- 1.2 Identify and establish additional position authority for the probation monitoring program to help ensure effective monitoring of probationers.
- 1.3 Facilitate and promote consistent, effective, and efficient communication with enforcement stakeholders to optimize the quality of services.
- 1.4 Review and revise enforcement procedure manuals to reflect current business processes to enhance the quality, consistency, and sustainability of the enforcement program.

GOAL 2: LICENSING

- *Provide effective and efficient application and licensing services while maintaining consumer protection.*

- 2.1 Evaluate and optimize the continuing competency program to determine and improve the effectiveness of the program.
- 2.2 Evaluate and establish position authority for the continuing competency program to help ensure effective operations.
- 2.3 Promote transparency and accessibility of licensing requirements and processes to improve the stakeholder experience.
- 2.4 Analyze the program's operations and modify them, if needed, to provide reasonable processing times while maintaining consumer protection.
- 2.5 Review and revise licensing procedure manuals to reflect current business processes to enhance the quality, consistency, and sustainability of the licensing program.

GOAL 3: COMMUNICATION AND EDUCATION

- *Provide relevant, timely, and accurate information to consumers, licensees, and other stakeholders.*

- 3.1 Identify and establish position authority and resources to enhance the relevant and timely information provided to stakeholders.
- 3.2 Develop and promote an outreach campaign for consumers of physical therapy to enhance awareness and communication for consumer protection.
- 3.3 Collaborate with educational programs to improve understanding about the application process and the role of the Board.
- 3.4 Develop and adopt a communication and education strategy to inform all stakeholders about the regulation of the profession.
- 3.5 Capitalize on the use of existing technologies (e.g. Facebook, website, Twitter, YouTube, e-blast, etc.) to enhance education and communication.
- 3.6 Develop a procedure manual to reflect current business processes to enhance the quality, consistency, and sustainability of the communication and education program.

GOAL 4: ORGANIZATIONAL EFFECTIVENESS

- *Facilitate an exemplary organization through governance, effective leadership, performance, and service.*

- 4.1 Relocate the Board's office to an appropriately sized location to adequately support existing program operations and projected growth.
- 4.2 Establish an Assistant Executive Officer position to correct the structural imbalance faced by the Board and further its mandate of consumer protection.
- 4.3 Establish appropriate position authority to effectively support Board programs and mandates.
- 4.4 Explore and establish effective methods to improve and expedite BreEZe system functionality to enhance efficiency and provide better services to stakeholders.
- 4.5 Explore and develop an effective and consistent system to improve internal communication.
- 4.6 Establish and improve expectations, and methods of communicating and engaging with external stakeholders to strengthen customer service and foster relationships while enforcing the Board's mandate.
- 4.7 Review and revise administrative procedure manuals to reflect current business processes to improve the quality, consistency, and sustainability of the administrative unit.

Strategic Plan Methodology

To understand the environment in which the Board operates and identify factors that could impact its success, the California Department of Consumer Affairs' SOLID unit conducted an environmental scan of the internal and external environments by collecting information through the following methods:

- Interviews conducted with all members of the Board, including the Executive Officer, completed during the months of January and February 2018 to assess the challenges and opportunities the Board is currently facing or will face in the upcoming years.
- Three focus groups with Board staff during the month of January 2018 to identify the strengths and weaknesses of the Board from an internal perspective. Twenty-three Board staff participated.
- An online survey was sent to approximately 27,000 external Board stakeholders in January 2018 to identify the strengths and weaknesses of the Board from an external perspective. A total of 1,825 stakeholders completed the survey.

The most significant themes and trends identified from the environmental scan were discussed by the Board members and management during a strategic planning session facilitated by SOLID on April 12, 2018. This information guided the Board in the development of its mission, vision, and values, while directing the strategic goals and objectives outlined in this 2018 – 2022 strategic plan.



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*This Strategic Plan is based on stakeholder information and discussions
facilitated by SOLID for the Physical Therapy Board of California.*



Physical Therapy Board of California

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY - GOVERNOR EDMUND G. BROWN JR.

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Briefing Paper

Date: May 16, 2018
Prepared for: PTBC Members
Prepared by: Brooke Arneson
Subject: Legislation Report

Purpose:

To provide an update on the 2017/18 Legislative session.

Attachments:

1. [2018 Legislative Calendar](#)
2. [Definition of the Board's Legislative Positions](#)
3. [2017/18 Legislative Summary](#)

Background and Update:

The 2018 Legislative calendar is included in the meeting materials for your reference, along with a copy of the Board's Legislative positions taken from the PTBC's Board Member Administrative Manual.

As noted on the calendar, the legislature reconvened from Spring Recess on March 22nd. May 18th is the last day for policy committees to meet prior to June 4th and May 25th is the last day for fiscal committees to hear and report to the Floor bills introduced in their house. June 1st is the last day for each house to pass bills introduced in that house and August 31st is the last day for each house to pass bills. October 15th is the last day for the Governor to sign or veto bills passed by the Legislature on or before September 15th and in the Governor's possession after September 15th. All statutes will take effect January 1, 2019.

In addition, a 2017/18 Legislative summary is included which notes all bills from the current Legislative session that could potentially impact Physical Therapy practice, regulation or the operation of the Physical Therapy Board.

Action Requested:

No action is needed. This Legislative report is for informational purposes only.

2018 TENTATIVE LEGISLATIVE CALENDAR
COMPILED BY THE OFFICE OF THE ASSEMBLY CHIEF CLERK
Revised 9-20-17

JANUARY							
	S	M	T	W	TH	F	S
Wk. 1		1	2	3	4	5	6
Wk. 2	7	8	9	10	11	12	13
Wk. 3	14	15	16	17	18	19	20
Wk. 4	21	22	23	24	25	26	27
Wk. 1	28	29	30	31			

FEBRUARY							
	S	M	T	W	TH	F	S
Wk. 1					1	2	3
Wk. 2	4	5	6	7	8	9	10
Wk. 3	11	12	13	14	15	16	17
Wk. 4	18	19	20	21	22	23	24
Wk. 1	25	26	27	28			

MARCH							
	S	M	T	W	TH	F	S
Wk. 1					1	2	3
Wk. 2	4	5	6	7	8	9	10
Wk. 3	11	12	13	14	15	16	17
Wk. 4	18	19	20	21	22	23	24
Spring Recess	25	26	27	28	29	30	31

APRIL							
	S	M	T	W	TH	F	S
Wk. 1	1	2	3	4	5	6	7
Wk. 2	8	9	10	11	12	13	14
Wk. 3	15	16	17	18	19	20	21
Wk. 4	22	23	24	25	26	27	28
Wk. 1	29	30					

MAY							
	S	M	T	W	TH	F	S
Wk. 1			1	2	3	4	5
Wk. 2	6	7	8	9	10	11	12
Wk. 3	13	14	15	16	17	18	19
Wk. 4	20	21	22	23	24	25	26
No Hrgs.	27	28	29	30	31		

DEADLINES

- Jan. 1Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 3Legislature reconvenes (J.R. 51(a)(4)).
- Jan. 10Budget must be submitted by Governor (Art. IV, Sec. 12(a)).
- Jan. 12Last day for **policy committees** to hear and report to **fiscal committees** fiscal bills introduced in their house in the odd-numbered year (J.R. 61(b)(1)).
- Jan. 15Martin Luther King, Jr. Day.
- Jan. 19Last day for any committee to hear and report to the **Floor** bills introduced in that house in the odd-numbered year. (J.R. 61(b)(2)). Last day to submit **bill requests** to the Office of Legislative Counsel.
- Jan. 31Last day for each house to pass bills introduced in that house in the odd-numbered year (J.R. 61(b)(3)) (Art. IV, Sec. 10(c)).

- Feb. 16Last day for bills to be **introduced** (J.R. 61(b)(4), J.R. 54(a)).
- Feb. 19Presidents' Day.

- Mar. 22**Spring Recess** begins upon adjournment (J.R. 51(b)(1)).
- Mar. 30Cesar Chavez Day observed.

- Apr. 2Legislature reconvenes from Spring Recess (J.R. 51 (b)(1)).

- Apr. 27Last day for **policy committees** to hear and report to fiscal committees **fiscal bills** introduced in their house (J.R. 61(b)(5)).

- May 11Last day for **policy committees** to hear and report to the Floor **nonfiscal** bills introduced in their house (J.R. 61(b)(6)).
- May 18Last day for **policy committees** to meet prior to June 4 (J.R. 61(b)(7)).
- May 25Last day for **fiscal committees** to hear and report to the **Floor** bills introduced in their house (J.R. 61 (b)(8)). Last day for **fiscal committees** to meet prior to June 4 (J.R. 61 (b)(9)).
- May 28Memorial Day.
- May 29 – June 1**Floor session only.** No committee may meet for any purpose except for Rules Committee, bills referred pursuant to Assembly Rule 77.2, and Conference Committees (J.R. 61(b)(10)).

*Holiday schedule subject to final approval by Rules Committee.

2018 TENTATIVE LEGISLATIVE CALENDAR
COMPILED BY THE OFFICE OF THE ASSEMBLY CHIEF CLERK
Revised 9-20-17

Table with 8 columns (Day of week) and 6 rows (Weeks) for the month of June.

- June 1 Last day for each house to pass bills introduced in that house (J.R. 61(b)(11)).
- June 4 Committee meetings may resume (J.R. 61(b)(12)).
- June 15 Budget Bill must be passed by midnight (Art. IV, Sec. 12(c)).
- June 28 Last day for a legislative measure to qualify for the Nov. 6 General Election ballot. (Elec. Code Sec. 9040)
- June 29 Last day for policy committees to hear and report fiscal bills to fiscal committees (J.R. 61(b)(13)).

Table with 8 columns (Day of week) and 6 rows (Weeks) for the month of July.

- July 4 Independence Day.
- July 6 Last day for policy committees to meet and report bills (J.R. 61(b)(14)). Summer Recess begins on adjournment, provided Budget Bill has been passed (J.R. 51(b)(2)).

Table with 8 columns (Day of week) and 6 rows (Weeks) for the month of August.

- Aug. 6 Legislature reconvenes from Summer Recess (J.R. 51(b)(2)).
- Aug. 17 Last day for fiscal committees to meet and report bills (J.R. 61(b)(15)).
- Aug. 20 – 31 Floor session only. No committee may meet for any purpose except Rules Committee, bills referred pursuant to Assembly Rule 77.2, and Conference Committees (J.R. 61(b)(16)).
- Aug. 24 Last day to amend on Floor (J.R. 61(b)(17)).
- Aug. 31 Last day for each house to pass bills (Art. IV, Sec 10(c), J.R. 61(b)(18)). Final Recess begins on adjournment (J.R. 51(b)(3)).

IMPORTANT DATES OCCURRING DURING FINAL RECESS

- 2018
Sept. 30 Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor's possession on or after Sept. 1 (Art. IV, Sec.10(b)(2)).
- Oct. 1 Bills enacted on or before this date take effect January 1, 2019 (Art. IV, Sec. 8(c)).
- Nov. 6 General Election.
- Nov. 30 Adjournment sine die at midnight (Art. IV, Sec. 3(a)).
- Dec. 3 2019-20 Regular Session convenes for Organizational Session at 12 noon (Art. IV, Sec. 3(a)).
- 2019
Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).

**Legislation - Definition of the
Positions Taken by the Physical
Therapy Board Regarding
Proposed Legislation**

(Board Policy)

The Board will adopt the following positions regarding pending or proposed legislation.

Oppose: The Board will actively oppose proposed legislation and demonstrate opposition through letters, testimony and other action necessary to communicate the oppose position taken by the Board.

Oppose, unless amended: The Board will take an opposed position and actively lobby the legislature to amend the proposed legislation.

Neutral: The Board neither supports nor opposes the addition/amendment/repeal of the statutory provision(s) set forth by the bill.

Watch: The watch position adopted by the Board will indicate interest regarding the proposed legislation. The Board staff and members will closely monitor the progress of the proposed legislation and amendments.

Support, if amended: The Board will take a supportive position and actively lobby the legislature to amend the proposed legislation.

Support: The Board will actively support proposed legislation and demonstrate support through letter, testimony and any other action necessary to communicate the support position taken by the Board.

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
AB 2078 (Introduced 2/7/18) Bill Analysis Bill Text	Daly	<p>Sex Offenses: Professional Services</p> <p>Under existing law, a person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery punishable by imprisonment in a county jail for not more than one year or in the state prison for 2, 3, or 4 years, and a fine not to exceed \$10,000. Under existing law, the crimes of rape, sodomy, oral copulation, and sexual penetration, when the victim was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration or oral copulation served a professional purpose, are punishable by imprisonment in the state prison for 3, 6, or 8 years.</p> <p>This bill would expand the crime of sexual battery to apply to a person who performs professional services that entail having access to another person's body and who touches an intimate part of that person's body while performing those services, and the touching was against the person's will and for the purpose of sexual arousal, sexual gratification, or sexual abuse. The bill would expand the definitions of</p>	No Position	5/30/18	Senate. Pending Referral

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		<p>each of the crimes of rape, sodomy, oral copulation, and sexual penetration to include any of those crimes performed against a victim's will by a professional whose services entail having access to the victim's body, if the conduct is performed by the professional while performing those services. By expanding the scope of these crimes, the bill would impose a state-mandated local program.</p> <p>The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.</p> <p>This bill would provide that no reimbursement is required by this act for a specified reason.</p>			
<p>AB 2138 (Amended 5/25/18)</p> <p>Bill Analysis</p> <p>Bill Text</p> <p>Letter of Opposition</p>	Chiu and Low	<p>Licensing Boards: Denial of Application: Criminal Conviction</p> <p>This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been convicted of a crime only if the applicant or licensee is presently incarcerated or if the conviction, as defined, occurred within the preceding 5 years, except for violent felonies, and would require the crime to be directly and adversely related to the qualifications, functions, or duties of the business or profession. The bill would prohibit a board from denying a person a license based on</p>	Opposed	5/31/18	Senate. Pending Referral.

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		<p>the conviction of a crime, or on the basis of acts underlying a conviction for a crime, if the conviction has been dismissed or expunged, if the person has made a showing of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction. The bill would provide that these provisions relating to denial, revocation, or suspension of a license would supersede contradictory provisions in specified existing law. The bill would require the board to develop criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession. The bill would require a board to find that a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information. This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed. This bill would instead prohibit a board from taking disciplinary action against a licensee or denying a license for professional</p>			

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		<p>misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs or deferred entry of judgment. This bill would additionally authorize a board to grant the license and immediately issue a public reproof. The bill would limit probationary terms or restrictions placed on a license by a board to 2 years or less and would authorize additional conditions to be imposed only if the board determines that there is clear and convincing evidence that additional conditions are necessary to address a risk shown by clear and convincing evidence. The bill would require a board to develop criteria to aid it in considering the imposition of probationary conditions and to determine what conditions may be imposed. The bill would authorize a licensee or registrant whose license or registration has been placed on probation to petition the board for a change to that probation one year from the effective date of the board's decision, would require the board to issue a decision on the petition within 90 days, and would deem the petition granted if the board does not file a decision denying the petition within 90 days.</p>			

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
AB 2221 (Amended 4/5/18) Bill Analysis Bill Text	Bloom	<p>Occupational Therapy Practice Act</p> <p>Existing law, the Occupational Therapy Practice Act, provides for the licensure and regulation of the practice of occupational therapy by the California Board of Occupational Therapy. Existing law defines the “practice of occupational therapy” and specifies that occupational therapy services encompass occupation therapy, assessment, treatment, education, and consultation with individuals referred for those services after diagnosis of a disease or disorder. Existing law prohibits a person from practicing occupational therapy without being licensed under the act and makes a violation of that prohibition a crime.</p> <p>This bill would instead define “occupational therapy” for purposes of the act, and would make conforming changes. The bill would also eliminate the reference to a referral after diagnosis in the description of occupational therapy services. By expanding the scope of a crime, the bill would impose a state-mandated local program.</p> <p>Existing law defines the term “occupational therapist” and specifies that only the occupational therapist is responsible for the occupational therapy assessment of a client and the development of an occupational therapy plan of treatment.</p> <p>This bill would eliminate that limitation and instead specify</p>	No Position	5/30/18	Senate. Pending Referral

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		<p>that the occupational therapist directs the evaluation process and develops the intervention plan.</p> <p>Existing law requires the occupational therapy board to ensure proper supervision of occupational therapy assistants and aides and allows an occupational therapist to supervise no more than 2 occupational therapy assistants at any one time. Existing law provides for aides to be supervised by occupational therapists or occupational therapy assistants and defines the term "aide" for purposes of the act to mean an individual who provides supportive services to an occupational therapist.</p> <p>This bill would increase the number of occupational therapy assistants an occupational therapist may supervise to 3. This bill would also revise the definition of "aide" to conform to the authority for an aide to also be supervised by an occupational therapy assistant. The bill would specify that the occupational therapist is responsible for the overall use and actions of the aide.</p> <p>Existing law authorizes an occupational therapist to provide advanced practices if the therapist, among other things, has demonstrated to the board that he or she has met educational training and competency requirements.</p> <p>This bill would require the therapist to attest to the board under penalty of perjury, rather than</p>			

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		<p>demonstrate to the satisfaction of the board, that he or she has met educational training and competency requirements. The bill would authorize periodic compliance audits of attestations submitted to the board. By expanding the crime of perjury, the bill would impose a state-mandated local program. Existing law requires an occupational therapist providing hand therapy services or using physical agent modalities to demonstrate to the satisfaction of the board that he or she has completed post professional education and training in specified areas.</p> <p>This bill would eliminate the post professional limitation. Existing law requires an applicant for an occupational therapist license to, among other things, complete a specified educational program and pass a specified examination. Existing law requires the board to approve the examinations for licensure and also authorizes the board to adopt rules relating to professional conduct to carry out the purposes of the act. Existing law requires the curriculum for an educational program for occupational therapists to contain the content required or approved by specified organizations, and specifies a list of subjects that must be included in the program. This bill would delete that list of subjects. The bill would also delete the requirement</p>			

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		<p>that authorize, rather than require, the board to approve licensure examinations and would authorize the board to adopt rules necessary to effectuate the purpose of the act.</p> <p>Existing law authorizes the board to establish and require the satisfactory completion of continuing competency requirements as a condition of renewal of a license.</p> <p>The bill would instead require the board to do so, and would authorize only a portion of continuing competence requirements to be fulfilled through competency assessment activities performed in the context of a broader professional development plan. The bill would also provide a definition for the term "continuing competence."</p> <p>Existing law prohibits a person from using specified professional abbreviations and terms intended to represent that the person is authorized to practice occupational therapy or assist in the practice of occupational therapy unless the person is licensed to practice as an occupational therapist or occupational therapy assistant.</p> <p>This bill would revise the list of abbreviations and terms that may not be used without a license. The bill would also delete provisions authorizing terms and abbreviations that may be used by a licensee who has earned a doctoral degree in occupational therapy or in a related area of practice or study.</p>			

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		<p>The bill would replace references to “patient” with “client” throughout the act and would enact other related provisions.</p> <p>The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.</p> <p>This bill would provide that no reimbursement is required by this act for a specified reason.</p>			
AB 2386 (Amended 5/1/18) Bill Text	Rubio	<p>Teacher Credentialing: Services Credential with a Specialization in Occupational Therapy or Physical Therapy Services</p> <p>(1) Existing law requires the Commission on Teacher Credentialing to, among other things, establish professional standards, assessments, and examinations for entry and advancement in the education profession and to establish standards for the issuance and renewal of credentials, certificates, and permits. Existing law sets forth the minimum requirements for a services credential with a specialization in health and excludes services as an occupational therapist or physical therapist from the health services the holder of a services credential with a specialization in health is authorized to perform.</p> <p>This bill would require the commission to develop a services credential with a specialization in occupational therapy or physical therapy services and would establish the minimum requirements for</p>	No Position.	5/25/18	Held Under Submission. Assembly Appropriations Committee.

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		<p>the credential, as provided.</p> <p>The bill would require the commission to determine the effective date of the credential and would authorize, on that date, any person with at least 5 years of experience providing occupational therapy or physical therapy services in a public school setting to apply for the credential if that person satisfies specified conditions.</p> <p>(2) Existing law specifies the minimum requirements for the preliminary services credential with a specialization in administrative services, which include, among other requirements, possession of one of various types of credentials.</p> <p>This bill would provide that possession of the services credential with a specialization in occupational therapy or physical therapy services satisfies that requirement.</p>			
<p>AB 2423 (Amended 4/9/18)</p> <p>Bill Analysis</p> <p>Bill Text</p> <p>Letter of Support</p>	Holden	<p>Physical Therapists: Direct Access to Services: Plan of Care Approval.</p> <p>The Physical Therapy Practice Act creates the Physical Therapy Board of California and makes it responsible for the licensure and regulation of physical therapists. The act makes it a crime to violate any of its provisions.</p> <p>The act authorizes a patient to access physical therapy treatment directly from a licensed physical therapist if the treatment is within the scope of practice of physical therapists and prescribed conditions are met, including a treatment limit prohibiting the physical therapist from continuing treatment beyond 45 calendar days or 12 visits, whichever occurs first, without</p>	Support	5/31/18	Senate. Pending Referral.

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		receiving specified doctor approval of the physical therapist's plan of care. The act exempts from that plan of care approval condition for continuing treatment the provision of certain wellness physical therapy services to a patient. This bill would also exempt from that condition the provision of physical therapy services as part of an individualized education plan pursuant to specified state statutes and the federal Individuals with Disabilities Education Act to an individual who does not have a medical diagnosis.			
AB 3013 (Amended 4/17/18) Bill Text	Chu Coauthor: Limón	Veterinary Medicine: Animal Physical Rehabilitation This bill would authorize a licensed physical therapist with an advanced certificate in animal physical rehabilitation to provide animal physical rehabilitation to an animal if certain conditions are met, including that the animal physical rehabilitation is performed on a veterinary premise registered with the Veterinary Medical Board, an animal rehabilitation facility registered with the Veterinary Medical Board, or a range setting. The bill would define an animal rehabilitation facility and would require an animal rehabilitation facility to register with the Veterinary Medical Board and pay specified registration fees. The bill would require the Veterinary Medical Board to create an application and determine the application process for the certificate. The bill would require the Veterinary Medical Board and the Physical Therapy Board of California, in cooperation, to determine	No Position	5/25/18	Held Under Submission. Assembly Appropriations Committee.

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		the qualifications necessary for a physical therapist to receive the advanced certificate issued by the Veterinary Medical Board and would authorize the Veterinary Medical Board to charge a fee for issuance and renewal of the advanced certificate. The bill would provide that a physical therapist with an advanced certificate in animal physical rehabilitation is solely liable for any rehabilitation provided under the certificate. The bill would also redefine physical therapy to include the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of an animal if practicing under the above-described advanced certificate.			
AB 3110 (Introduced 5/25/18) Bill Analysis Bill Text	Mullin Coauthors: Berman and Calderon	Athletic Trainers This bill would enact the Athletic Training Practice Act, which would establish the Athletic Trainer Board, until January 1, 2025, within the Department of Consumer Affairs to exercise licensing, regulatory, and disciplinary functions under the act. On or after January 1, 2021, <i>the</i> bill would prohibit a person from practicing as an athletic trainer or using certain titles or terms without being registered with the board, except as specified. The bill would define the practice of athletic training, and would specify requirements for registration as an athletic trainer, including graduating from a professional degree program in athletic training, and would require a registrant to render athletic training services only pursuant to orders from and under the	No Position	5/31/18	Senate. Pending Referral.

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		<p>supervision of a physician and surgeon or osteopathic physician and surgeon. The bill would provide that a registration to practice as an athletic trainer would be valid for 2 years and subject to renewal, would authorize the board to deny or revoke a registration for specified reasons, and would establish procedures for the referral of complaints. The bill would specify acts that constitute unprofessional conduct and would make it a misdemeanor for any person to violate the act. The bill would establish the Athletic Trainers' Fund for the deposit of application and renewal fees, as specified, and would make those fees available to the board for the purpose of implementing these provisions upon appropriation by the Legislature. The bill would authorize the Director of Consumer Affairs to seek and receive donations from the California Athletic Trainers Association or any other private person or entity or to obtain loans from existing state funds, as specified, for purposes of obtaining funds for the startup costs of implementing the act. By creating a new crime, and expanding the crime of perjury, this bill would impose a state-mandated local program.</p> <p>Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.</p>			

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		<p>This bill would make legislative findings to that effect.</p> <p>The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.</p> <p>This bill would provide that no reimbursement is required by this act for a specified reason.</p>			
SB 1298 (Amended 4/4/18) Bill Text	Skinner	<p>The Increasing Access to Employment Act</p> <p>This bill would, among other provisions, prohibit the Department of Justice (DOJ) from reporting specified records within a person's state summary criminal history information to specified requesters for employment, licensing, or certifying purposes and would require DOJ to provide the subject of the information with a copy of the summary information and at least five days to challenge its accuracy before releasing it to the requester</p>	No Position	5/25/18	Held Under Submission. Senate Appropriations Committee.
SB 1448 (Amended 5/25/18) Bill Analysis Bill Text	Hill	<p>Healing Arts Licensees: Probation Status: Disclosure</p> <p>This bill would This bill, on and after July 1, 2019, would require the California Board of Podiatric Medicine, the Naturopathic Medicine Committee, the State Board of Chiropractic Examiners, and the Acupuncture Board to require a licensee to provide a separate disclosure, as specified, to a patient or a patient's guardian or health care surrogate before the patient's first visit if the licensee is on probation pursuant to a probationary</p>	No Position	5/31/18	Assembly. Pending Referral.

2017/18 Legislative Summary

Bill	Author	Summary	Board's Position	Status	
		order made on and after July 1, 2019. The bill, on and after July 1, 2019, would require the Medical Board of California and the Osteopathic Medical Board of California to require a licensee to provide a separate disclosure, as specified, to a patient or a patient's guardian or health care surrogate before the patient's first visit if the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, under specified circumstances. The bill would also require the California Board of Podiatric Medicine, the Naturopathic Medicine Committee, the State Board of Chiropractic Examiners, the Acupuncture Board, the Medical Board of California, and the Osteopathic Medical Board of California to provide specified information relating to licensees on probation on the regulatory entity's online license information Internet Web site.			



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY - GOVERNOR EDMUND G. BROWN JR.

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Bill Analysis

Bill Number: AB 2078
Author: Daly
Version: Introduced 2/7/18
Sponsor: Orange County District Attorney
Subject: Sex Offenses: Professional Services
Status: Senate. Pending Referral

Adopted Position:

None.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

- Existing law states that any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.
- States that any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery.
- Punishes a violation of sexual battery by imprisonment in a county jail for not more than one year, and by a fine not exceeding \$2,000; or by imprisonment in the state prison for two, three, or four years; and by a fine not exceeding \$10,000.
- Defines battery (non-sexual) as any willful and unlawful use of force or violence upon the person of another.
- Punishes battery by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.
- Provides that rape is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, 1 under any of the following circumstances:
 - Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act;



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- b) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another;
 - c) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused;
 - d) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief;
 - e) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat; or
 - f) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official.
7. States that rape also occurs where the victim is unconscious of the nature of the act, and this is known to the accused.
8. Defines "unconscious of the nature of the act" as incapable of resisting because the victim meets one of the following conditions:
- a) Was unconscious or asleep;
 - b) Was not aware, knowing, perceiving, or cognizant that the act occurred;
 - c) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact;
 - d) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.
9. Defines "unconscious of the nature of the act" as incapable of resisting because the victim meets one of the following conditions: Punishes rape by imprisonment in state prison for three, six, or eight years.
10. States any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.
11. States that any person who commits an act of sodomy where the victim is unconscious of the nature of the act, and this is known to the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.
12. States that any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another



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person shall be punished by imprisonment in the state prison for three, six, or eight years.

13. States that any person who commits an act of oral copulation where the victim is unconscious of the nature of the act, and this is known to the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.
14. States any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.
15. States that any person who commits an act of sexual penetration where the victim is unconscious of the nature of the act, and this is known to the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

This Bill

1. Expands the crime of sexual battery to apply to a person who performs professional services that entail having access to another person's body, who touches an intimate part of that person's body while performing those services and the touching was against the person's will and for the purpose of sexual arousal, sexual gratification, or sexual abuse.
2. Punishes this form of sexual battery by either imprisonment in the county jail for not more than one year and a fine not exceeding \$2,000, or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding \$10,000.
3. Expands the crimes of rape, sodomy, oral copulation, and sexual penetration to include when any of those acts are performed against a victim's will by a professional whose services entail having access to the victim's body, if the conduct is performed by the professional in the course of the services.

Purpose/Background

Purpose:

The author states, " This bill would ensure that perpetrators can be punished proportionally for sexual battery and other sexual offenses that they commit during the course of a professional service. The punishment will apply when the victim is conscious of the nature of the act, consent is not given or obtained fraudulently, and the conduct is not related to the professional service."



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Existing law Arguably Fails to Establish Felony Liability for Unwanted Sexual Touching in the Context of Professional Services:

This bill addresses unwanted sexual touching in course of professional services that entail access to another person's body, such a full body massage. Under current law, a felony sex offense occurs when a masseuse engages in a sexual act by using force against a customer, when the masseuse "unlawfully restrains" the customer, or when a masseuse fraudulently deceives the customer that the sexual touching is somehow connected to the professional services. What existing law arguably fails to cover, is the situation in which a masseuse suddenly decides to sexually touch his or her customer without force, restraint, or fraud.

The gap in the existing law appears to be product of the technical way in which "force," "unlawful restraint," and "fraud" are defined by California law. "Force" in the context of California sex offenses requires the prosecution to demonstrate that the degree of force used was "sufficient to support a finding that the act of sexual intercourse was against the will of the victim." (People v. Griffin (2004) 33 Cal. 4th 1015, 1023-24 (quoting People v. Young (1987) 190 Cal. App. 3rd 248, 257-58).) "Unlawful restraint" according to the courts "requires something more than the exertion of physical effort required to commit the prohibited sexual act." (People v. Arnold (1992) 6 Cal. App 4th 18, 27.) Finally, "fraud" occurs where the deceit is so great that the victim is said to be "unconscious of the nature of the act." For example, in one case a gynecologist deceived his patients by stating that he was inserting medical instruments into their bodies, when in fact he was inserting his own sexual organ. (People v. Ogunmola (1987) 193 Cal.App 3rd 274, 279.) This was found to be rape by fraud because the victims were so completely deceived that they were "unconscious" of the nature of the sexual act, in that they believed they were being seen for legitimate genealogical services throughout the course of the appointment.

By contrast, if a masseuse is providing a full-body massage to a customer and suddenly decides to grope the intimate parts of the customer, that could present a situation in which the prosecution is unable to prove either force, unlawful restraint, or fraud as defined by existing law. Force would require that the jury find that the sexual touching was accomplished against the will of the victim, which may prove difficult where the victim did not call out or actively resist. The masseuse cannot be said to have "unlawfully restrained" the victim in order to accomplish the groping absent some evidence of handcuffing or otherwise tying down the victim. Furthermore, the masseuse did not attempt to fraudulently deceive the victim, he simply acted suddenly and without consent. Arguably, because there was neither force, not unlawful restraint, nor fraud, current law would only allow for a conviction for non-sexual battery, which is punishable only as misdemeanor. This bill seeks to punish such conduct as a felony.



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Examples of Situations in Which this Bill May Apply:

a) *People v. Stuedemann* (2007) 156 Cal.App.4th 1:

A story very similar to the hypothetical situation described above played out in *People v. Stuedemann* (2007) 156 Cal.App. 4th 1. In *Stuedemann*, the defendant, a massage therapist, was charged with sexual penetration of an unconscious person and oral copulation of an unconscious person. Specifically, the prosecutor alleged that the victim was "unconscious of the nature of the act" due to the perpetrator's fraud. (Pen. Code §§ 288a, subd. (f)(3) and 289, subd. (d)(3).)

Defendant *Stuedemann* met his victim, *Griselda*, while he was giving sample massages at a swap meet. *Griselda* made an appointment for a full massage at defendant's business. The scheduled one-hour massage had gone on for two hours before the conduct forming the basis for the charges occurred. The court of appeals described the pertinent facts of the massage as follows:

The massage began with *Stuedemann* instructing *Griselda* to lie face down on a table. He covered her with a sheet and began massaging her back. At one point, *Stuedemann* moved her panties to one side to massage her buttocks. When he was finished massaging her back, he instructed *Griselda* to lie on her back and, when she was face up, he put a mask over her eyes [ostensibly as part of aromatherapy]. While *Griselda* was on her back, *Stuedemann* initially kept the sheet in place to cover her while he massaged her. However, as the massage progressed, *Stuedemann* lowered the sheet and, without saying anything, massaged her breasts and nipples. She said nothing to him about it. He then lowered the sheet further and began massaging her abdomen. He pulled down her panties and twice inserted his finger into her vagina. He then orally copulated her, at which point *Griselda* sat up quickly and told him to stop. *Stuedemann* stopped, said "I'm sorry," and left the room. He did not tell her that he was going to digitally penetrate or orally copulate her.

(*Stuedemann.*, 156 Cal. App 4th at 4-5.)

Although a jury convicted *Stuedemann* of felony sexual battery on a fraudulent representation theory, the court of appeals rejected the fraud theory and stated: "There is no evidence *Griselda* consented or cooperated (was 'incapable of resisting') because of her ignorance of the true nature of the acts performed by *Stuedemann*. To the contrary, she did not permit *Stuedemann* to orally copulate or digitally penetrate her believing the copulation or penetration was something other than a sexual copulation or penetration; instead, she immediately recognized the acts for what they were and expressed her nonconsent." (Id., at p. 8.)

The court distinguished the *Ogunmola* case in which a doctor raped patients who initially believed he was performing a clinical examination, but actually inserted his penis into each victim's vagina:



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Unlike Ogunmola ... there was no evidence Griselda consented to anything resembling the [sexual] acts undertaken by Stuedemann. Although Griselda consented to a massage, the result of which made her vulnerable to Stuedemann's [sexual] acts... the evidence showed she was fully aware of the nature of Stuedemann's [sexual] acts ... and was capable of (and did) express her non-consent and resistance to the conduct. ... Stuedemann's 'conduct, reprehensible though it was, did not [constitute criminal oral copulation and sexual penetration] because Griselda was not unconscious due to Stuedemann's fraud in fact, the only theory asserted by the prosecution. If there is a statutory oversight in this area of the penal law, the Legislature may address it [citation]. (Id., at p. 14.)

As a result, Stuedemann was only convicted of misdemeanor battery, but under this bill he could have been convicted of a felony.

b) Massage Envy Lawsuit:

Massage Envy is a nationwide chain that provides full body massage services to its customers. The chain has a substantial presence in California, and there are more than a dozen locations in the greater Sacramento area alone. Recently, the chain became embroiled in a lawsuit in which nearly 200 customers made complaints of unwanted sexual touching. (Park, Woman Says she Was Sexually Assaulted at Massage Envy, CNN, November 28, 2017 [as of March 8, 2018].) Although it is unclear how many of the 180 plaintiffs joined in the lawsuit are California residents, it appears that at least one lawsuit has been brought against a massage envy location in the Los Angeles area. (See [as of March 8, 2018].) Some of these instances may have also been punishable under the provisions proposed by this bill.

c) Yolo County Case:

More recently, a man in Yolo County was charged with numerous counts of sexual battery stemming from multiple victims. (Keene, Former Davis Masseur Convicted of Sexual Battery, Davis Enterprise, March 7, 2018 [as of March 8, 2018].) According to the article, the defendant – a massage therapist – was convicted of a single felony count based on penetration of his final victim. Apparently, the jury acquitted on charges for sexual battery based on a fraudulent representation theory. Although the facts of the case are not laid out in any detail in the article, it appears that the Yolo County case would be an appropriate situation in which to use the expanded definition of sexual battery proposed by this bill.



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How should courts define “professional services” and “access to another person’s body?”

The provisions of this bill are defined in terms of the defendant performing professional services that entail having access to another person's body. The bill does not define a professional service. That raises the following question: Must the service be a legitimate, recognized professional service, or is a purported professional service covered by the bill?

For example, it appears that the defendant in Stuedemann was truly a massage therapist. He sexually touched and orally copulated the victim during what was otherwise a legitimate massage. In contrast, it is not difficult to imagine a situation in which a defendant may hold himself out to offer professional services when he in fact has no training or education in those services. For example, if the defendant in Stuedemann had no license and had offered to perform the massage at the victim's home rather than at the massage parlor, would this bill still apply? Is payment or the promise of payment required to meet the “professional services” element? The proposed bill also does not define what “access to another person’s body” is. While there are some situations such as a full body massage or physical examination that would certainly fall within its scope, this bill would also create a gray area. For example, would a golf instructor be subject to the new crime of sexual battery by a person employed for professional services with access to another person's body? How about a barber or a tailor? There are many professions that may or may not be subject to the provisions of this bill and there exists the possibility that the bill will be applied unequally from jurisdiction to jurisdiction.

Prison over-crowding:

In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (Coleman/Plata vs. Schwarzenegger (2010) No. Civ S90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that “without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill” inmates in California's prisons. (Brown v. Plata (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.) After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016. CDCR's February 2018 monthly report on the prison population notes that the in-state adult institution population is currently 113,975 inmates, which amounts to approximately 134% of design capacity. This represents a marginal .1% improvement from February of last year. Additionally, there are still 4,145



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prisoners being housed out of state. (.) Thus, while CDCR is currently in compliance with the three-judge panel's order on the prison population, the state needs to maintain a "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, Coleman v. Brown, Plata v. Brown (2-10-14).) This bill would expand felony liability and therefore is likely to result in more prison sentences. As a result it may be at odds with the requirement that the state continue to keep its prison population below the 137.5% threshold.

Related Legislation

AB 860 (Daly), of the 2015-2016 Legislative Session was virtually identical to this bill. It was held in the Senate Appropriations Committee suspense file.

Fiscal Impact:

1. Unknown, likely significant GF costs for the California Department of Corrections and Rehabilitation (CDCR) to incarcerate individuals who commit the crimes as expanded by this bill. As an example, if two additional offenders are admitted annually to CDCR with three year sentences (the mid-term sentence for felony sexual battery), costs in the first year will be \$60,000 (assuming the out-of-state contract rate of \$30,000 annually per offender), \$120,000 in the second year, and \$180,000 in the third year and ongoing.
2. Unknown, potential minor savings for local jails. Allowing the crimes specified in this bill to be charged as felonies rather than misdemeanors could reduce the number of offenders who would otherwise be sentenced to county jail.
3. Minor costs (Legal Services Revolving Fund) for the Department of Justice to process arrest records and fingerprints.

Support and Opposition

Support:

- Orange County District Attorney (Sponsor)
- California State Sheriff's Association

Opposition:

None

Action Required:

None.

ASSEMBLY BILL

No. 2078

Introduced by Assembly Member Daly

February 7, 2018

An act to amend Sections 243.4, 261, 286, 288a, and 289 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 2078, as introduced, Daly. Sex offenses: professional services.

Under existing law, a person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery punishable by imprisonment in a county jail for not more than one year or in the state prison for 2, 3, or 4 years, and a fine not to exceed \$10,000. Under existing law, the crimes of rape, sodomy, oral copulation, and sexual penetration, when the victim was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration or oral copulation served a professional purpose, are punishable by imprisonment in the state prison for 3, 6, or 8 years.

This bill would expand the crime of sexual battery to apply to a person who performs professional services that entail having access to another person's body and who touches an intimate part of that person's body while performing those services, and the touching was against the person's will and for the purpose of sexual arousal, sexual gratification, or sexual abuse. The bill would expand the definitions of each of the crimes of rape, sodomy, oral copulation, and sexual penetration to

include any of those crimes performed against a victim's will by a professional whose services entail having access to the victim's body, if the conduct is performed by the professional while performing those services. By expanding the scope of these crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 243.4 of the Penal Code is amended to
2 read:

3 243.4. (a) Any person who touches an intimate part of another
4 person while that person is unlawfully restrained by the accused
5 or an accomplice, and if the touching is against the will of the
6 person touched and is for the purpose of sexual arousal, sexual
7 gratification, or sexual abuse, is guilty of sexual battery. A violation
8 of this subdivision is punishable by imprisonment in a county jail
9 for not more than one year, and by a fine not exceeding two
10 thousand dollars (\$2,000); or by imprisonment in the state prison
11 for two, three, or four years, and by a fine not exceeding ten
12 thousand dollars (\$10,000).

13 (b) Any person who touches an intimate part of another person
14 who is institutionalized for medical treatment and who is seriously
15 disabled or medically incapacitated, if the touching is against the
16 will of the person touched, and if the touching is for the purpose
17 of sexual arousal, sexual gratification, or sexual abuse, is guilty
18 of sexual battery. A violation of this subdivision is punishable by
19 imprisonment in a county jail for not more than one year, and by
20 a fine not exceeding two thousand dollars (\$2,000); or by
21 imprisonment in the state prison for two, three, or four years, and
22 by a fine not exceeding ten thousand dollars (\$10,000).

23 ~~(c) Any~~

24 (c) (1) Any person who touches an intimate part of another
25 person for the purpose of sexual arousal, sexual gratification, or

sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery. ~~A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).~~

(2) Any person who performs professional services that entail having access to another person's body and who touches an intimate part of that person while performing those services, and the touching is against the will of the person touched and for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

(3) A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year and by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in the state prison for two, three, or four years and by a fine not exceeding ten thousand dollars (\$10,000).

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(e) (1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery shall be punishable by a fine not exceeding three thousand dollars (\$3,000), by

1 imprisonment in a county jail not exceeding six months, or by both
2 that fine and imprisonment. Notwithstanding any other provision
3 of law, any amount of a fine above two thousand dollars (\$2,000)
4 which is collected from a defendant for a violation of this
5 subdivision shall be transmitted to the State Treasury and, upon
6 appropriation by the Legislature, distributed to the Department of
7 Fair Employment and Housing for the purpose of enforcement of
8 the California Fair Employment and Housing Act (Part 2.8
9 (commencing with Section 12900) of Division 3 of Title 2 of the
10 Government Code), including, but not limited to, laws that
11 proscribe sexual harassment in places of employment. However,
12 in no event shall an amount over two thousand dollars (\$2,000)
13 be transmitted to the State Treasury until all fines, including any
14 restitution fines that may have been imposed upon the defendant,
15 have been paid in full.

16 (2) As used in this subdivision, “touches” means physical contact
17 with another person, whether accomplished directly, through the
18 clothing of the person committing the offense, or through the
19 clothing of the victim.

20 (f) As used in subdivisions (a), (b), (c), and (d), “touches” means
21 physical contact with the skin of another person whether
22 accomplished directly or through the clothing of the person
23 committing the offense.

24 (g) As used in this section, the following terms have the
25 following meanings:

26 (1) “Intimate part” means the sexual organ, anus, groin, or
27 buttocks of any person, and the breast of a female.

28 (2) “Sexual battery” does not include the crimes defined in
29 Section 261 or 289.

30 (3) “Seriously disabled” means a person with severe physical
31 or sensory disabilities.

32 (4) “Medically incapacitated” means a person who is
33 incapacitated as a result of prescribed sedatives, anesthesia, or
34 other medication.

35 (5) “Institutionalized” means a person who is located voluntarily
36 or involuntarily in a hospital, medical treatment facility, nursing
37 home, acute care facility, or mental hospital.

38 (6) “Minor” means a person under 18 years of age.

1 (h) This section ~~shall not be construed to~~ *does not* limit or
2 prevent prosecution under any other law which also proscribes a
3 course of conduct that also is proscribed by this section.

4 (i) In the case of a felony conviction for a violation of this
5 section, the fact that the defendant was an employer and the victim
6 was an employee of the defendant shall be a factor in aggravation
7 in sentencing.

8 (j) A person who commits a violation of subdivision (a), (b),
9 (c), or (d) against a minor when the person has a prior felony
10 conviction for a violation of this section shall be guilty of a felony,
11 punishable by imprisonment in the state prison for two, three, or
12 four years and a fine not exceeding ten thousand dollars (\$10,000).

13 SEC. 2. Section 261 of the Penal Code is amended to read:

14 261. (a) Rape is an act of sexual intercourse accomplished
15 with a person not the spouse of the perpetrator, under any of the
16 following circumstances:

17 (1) Where a person is incapable, because of a mental disorder
18 or developmental or physical disability, of giving legal consent,
19 and this is known or reasonably should be known to the person
20 committing the act. Notwithstanding the existence of a
21 conservatorship pursuant to the provisions of the
22 Lanterman-Petris-Short Act (Part 1 (commencing with Section
23 5000) of Division 5 of the Welfare and Institutions Code), the
24 prosecuting attorney shall prove, as an element of the crime, that
25 a mental disorder or developmental or physical disability rendered
26 the alleged victim incapable of giving consent.

27 (2) Where it is accomplished against a person's will by means
28 of force, violence, duress, menace, or fear of immediate and
29 unlawful bodily injury on the person or another.

30 (3) Where a person is prevented from resisting by any
31 intoxicating or anesthetic substance, or any controlled substance,
32 and this condition was known, or reasonably should have been
33 known by the accused.

34 (4) Where a person is at the time unconscious of the nature of
35 the act, and this is known to the accused. As used in this paragraph,
36 "unconscious of the nature of the act" means incapable of resisting
37 because the victim meets any one of the following conditions:

38 (A) Was unconscious or asleep.

39 (B) Was not aware, knowing, perceiving, or cognizant that the
40 act occurred.

1 (C) Was not aware, knowing, perceiving, or cognizant of the
2 essential characteristics of the act due to the perpetrator's fraud in
3 fact.

4 (D) Was not aware, knowing, perceiving, or cognizant of the
5 essential characteristics of the act due to the perpetrator's fraudulent
6 representation that the sexual penetration served a professional
7 purpose when it served no professional purpose.

8 (5) Where a person submits under the belief that the person
9 committing the act is someone known to the victim other than the
10 accused, and this belief is induced by any artifice, pretense, or
11 concealment practiced by the accused, with intent to induce the
12 belief.

13 (6) Where the act is accomplished against the victim's will by
14 threatening to retaliate in the future against the victim or any other
15 person, and there is a reasonable possibility that the perpetrator
16 will execute the threat. As used in this paragraph, "threatening to
17 retaliate" means a threat to kidnap or falsely imprison, or to inflict
18 extreme pain, serious bodily injury, or death.

19 (7) Where the act is accomplished against the victim's will by
20 threatening to use the authority of a public official to incarcerate,
21 arrest, or deport the victim or another, and the victim has a
22 reasonable belief that the perpetrator is a public official. As used
23 in this paragraph, "public official" means a person employed by
24 a governmental agency who has the authority, as part of that
25 position, to incarcerate, arrest, or deport another. The perpetrator
26 does not actually have to be a public official.

27 (8) *Where the act is accomplished against the victim's will by*
28 *a person while that person is performing professional services*
29 *that entail having access to the victim's body.*

30 (b) As used in this section, "duress" means a direct or implied
31 threat of force, violence, danger, or retribution sufficient to coerce
32 a reasonable person of ordinary susceptibilities to perform an act
33 which otherwise would not have been performed, or acquiesce in
34 an act to which one otherwise would not have submitted. The total
35 circumstances, including the age of the victim, and his or her
36 relationship to the defendant, are factors to consider in appraising
37 the existence of duress.

38 (c) As used in this section, "menace" means any threat,
39 declaration, or act which shows an intention to inflict an injury
40 upon another.

1 SEC. 3. Section 286 of the Penal Code is amended to read:

2 286. (a) Sodomy is sexual conduct consisting of contact
3 between the penis of one person and the anus of another person.
4 Any sexual penetration, however slight, is sufficient to complete
5 the crime of sodomy.

6 (b) (1) Except as provided in Section 288, any person who
7 participates in an act of sodomy with another person who is under
8 18 years of age shall be punished by imprisonment in the state
9 prison, or in a county jail for not more than one year.

10 (2) Except as provided in Section 288, any person over 21 years
11 of age who participates in an act of sodomy with another person
12 who is under 16 years of age shall be guilty of a felony.

13 (c) (1) Any person who participates in an act of sodomy with
14 another person who is under 14 years of age and more than 10
15 years younger than he or she shall be punished by imprisonment
16 in the state prison for three, six, or eight years.

17 (2) (A) Any person who commits an act of sodomy when the
18 act is accomplished against the victim's will by means of force,
19 violence, duress, menace, or fear of immediate and unlawful bodily
20 injury on the victim or another person shall be punished by
21 imprisonment in the state prison for three, six, or eight years.

22 (B) Any person who commits an act of sodomy with another
23 person who is under 14 years of age when the act is accomplished
24 against the victim's will by means of force, violence, duress,
25 menace, or fear of immediate and unlawful bodily injury on the
26 victim or another person shall be punished by imprisonment in the
27 state prison for 9, 11, or 13 years.

28 (C) Any person who commits an act of sodomy with another
29 person who is a minor 14 years of age or older when the act is
30 accomplished against the victim's will by means of force, violence,
31 duress, menace, or fear of immediate and unlawful bodily injury
32 on the victim or another person shall be punished by imprisonment
33 in the state prison for 7, 9, or 11 years.

34 (D) This paragraph does not preclude prosecution under Section
35 269, Section 288.7, or any other provision of law.

36 (3) Any person who commits an act of sodomy where the act
37 is accomplished against the victim's will by threatening to retaliate
38 in the future against the victim or any other person, and there is a
39 reasonable possibility that the perpetrator will execute the threat,

1 shall be punished by imprisonment in the state prison for three,
2 six, or eight years.

3 (d) (1) Any person who, while voluntarily acting in concert
4 with another person, either personally or aiding and abetting that
5 other person, commits an act of sodomy when the act is
6 accomplished against the victim's will by means of force or fear
7 of immediate and unlawful bodily injury on the victim or another
8 person or where the act is accomplished against the victim's will
9 by threatening to retaliate in the future against the victim or any
10 other person, and there is a reasonable possibility that the
11 perpetrator will execute the threat, shall be punished by
12 imprisonment in the state prison for five, seven, or nine years.

13 (2) Any person who, while voluntarily acting in concert with
14 another person, either personally or aiding and abetting that other
15 person, commits an act of sodomy upon a victim who is under 14
16 years of age, when the act is accomplished against the victim's
17 will by means of force or fear of immediate and unlawful bodily
18 injury on the victim or another person, shall be punished by
19 imprisonment in the state prison for 10, 12, or 14 years.

20 (3) Any person who, while voluntarily acting in concert with
21 another person, either personally or aiding and abetting that other
22 person, commits an act of sodomy upon a victim who is a minor
23 14 years of age or older, when the act is accomplished against the
24 victim's will by means of force or fear of immediate and unlawful
25 bodily injury on the victim or another person, shall be punished
26 by imprisonment in the state prison for 7, 9, or 11 years.

27 (4) This subdivision does not preclude prosecution under Section
28 269, Section 288.7, or any other provision of law.

29 (e) Any person who participates in an act of sodomy with any
30 person of any age while confined in any state prison, as defined
31 in Section 4504, or in any local detention facility, as defined in
32 Section 6031.4, shall be punished by imprisonment in the state
33 prison, or in a county jail for not more than one year.

34 ~~(f) Any~~

35 (f) (1) Any person who commits an act of sodomy, and the
36 victim is at the time unconscious of the nature of the act and this
37 is known to the person committing the act, shall be punished by
38 imprisonment in the state prison for three, six, or eight years. As
39 used in this subdivision, "unconscious of the nature of the act"

1 means incapable of resisting because the victim meets one of the
2 following conditions:

3 ~~(1)~~

4 (A) Was unconscious or asleep.

5 ~~(2)~~

6 (B) Was not aware, knowing, perceiving, or cognizant that the
7 act occurred.

8 ~~(3)~~

9 (C) Was not aware, knowing, perceiving, or cognizant of the
10 essential characteristics of the act due to the perpetrator's fraud in
11 fact.

12 ~~(4)~~

13 (D) Was not aware, knowing, perceiving, or cognizant of the
14 essential characteristics of the act due to the perpetrator's fraudulent
15 representation that the sexual penetration served a professional
16 purpose when it served no professional purpose.

17 (2) *A person who performs professional services that entail*
18 *having access to the victim's body and who commits an act of*
19 *sodomy upon the victim while performing those services, and the*
20 *act is against the victim's will, shall be punished by imprisonment*
21 *in the state prison for three, six, or eight years.*

22 (g) Except as provided in subdivision (h), a person who commits
23 an act of sodomy, and the victim is at the time incapable, because
24 of a mental disorder or developmental or physical disability, of
25 giving legal consent, and this is known or reasonably should be
26 known to the person committing the act, shall be punished by
27 imprisonment in the state prison for three, six, or eight years.
28 Notwithstanding the existence of a conservatorship pursuant to
29 the Lanterman-Petris-Short Act (Part 1 (commencing with Section
30 5000) of Division 5 of the Welfare and Institutions Code), the
31 prosecuting attorney shall prove, as an element of the crime, that
32 a mental disorder or developmental or physical disability rendered
33 the alleged victim incapable of giving consent.

34 (h) Any person who commits an act of sodomy, and the victim
35 is at the time incapable, because of a mental disorder or
36 developmental or physical disability, of giving legal consent, and
37 this is known or reasonably should be known to the person
38 committing the act, and both the defendant and the victim are at
39 the time confined in a state hospital for the care and treatment of
40 the mentally disordered or in any other public or private facility

1 for the care and treatment of the mentally disordered approved by
2 a county mental health director, shall be punished by imprisonment
3 in the state prison, or in a county jail for not more than one year.
4 Notwithstanding the existence of a conservatorship pursuant to
5 the Lanterman-Petris-Short Act (Part 1 (commencing with Section
6 5000) of Division 5 of the Welfare and Institutions Code), the
7 prosecuting attorney shall prove, as an element of the crime, that
8 a mental disorder or developmental or physical disability rendered
9 the alleged victim incapable of giving legal consent.

10 (i) Any person who commits an act of sodomy, where the victim
11 is prevented from resisting by an intoxicating or anesthetic
12 substance, or any controlled substance, and this condition was
13 known, or reasonably should have been known by the accused,
14 shall be punished by imprisonment in the state prison for three,
15 six, or eight years.

16 (j) Any person who commits an act of sodomy, where the victim
17 submits under the belief that the person committing the act is
18 someone known to the victim other than the accused, and this
19 belief is induced by any artifice, pretense, or concealment practiced
20 by the accused, with intent to induce the belief, shall be punished
21 by imprisonment in the state prison for three, six, or eight years.

22 (k) (1) Any person who commits an act of sodomy, where the
23 act is accomplished against the victim's will by threatening to use
24 the authority of a public official to incarcerate, arrest, or deport
25 the victim or another, and the victim has a reasonable belief that
26 the perpetrator is a public official, shall be punished by
27 imprisonment in the state prison for three, six, or eight years.

28 ~~As~~

29 (2) As used in this subdivision, "public official" means a person
30 employed by a governmental agency who has the authority, as part
31 of that position, to incarcerate, arrest, or deport another. The
32 perpetrator does not actually have to be a public official.

33 (l) As used in subdivisions (c) and (d), "threatening to retaliate"
34 means a threat to kidnap or falsely imprison, or inflict extreme
35 pain, serious bodily injury, or death.

36 (m) In addition to any punishment imposed under this section,
37 the judge may assess a fine not to exceed seventy dollars (\$70)
38 against any person who violates this section, with the proceeds of
39 this fine to be used in accordance with Section 1463.23. The court,
40 however, shall take into consideration the defendant's ability to

1 pay, and no defendant shall be denied probation because of his or
2 her inability to pay the fine permitted under this subdivision.

3 SEC. 4. Section 288a of the Penal Code is amended to read:

4 288a. (a) Oral copulation is the act of copulating the mouth
5 of one person with the sexual organ or anus of another person.

6 (b) (1) Except as provided in Section 288, any person who
7 participates in an act of oral copulation with another person who
8 is under 18 years of age shall be punished by imprisonment in the
9 state prison, or in a county jail for a period of not more than one
10 year.

11 (2) Except as provided in Section 288, any person over 21 years
12 of age who participates in an act of oral copulation with another
13 person who is under 16 years of age is guilty of a felony.

14 (c) (1) Any person who participates in an act of oral copulation
15 with another person who is under 14 years of age and more than
16 10 years younger than he or she shall be punished by imprisonment
17 in the state prison for three, six, or eight years.

18 (2) (A) Any person who commits an act of oral copulation when
19 the act is accomplished against the victim's will by means of force,
20 violence, duress, menace, or fear of immediate and unlawful bodily
21 injury on the victim or another person shall be punished by
22 imprisonment in the state prison for three, six, or eight years.

23 (B) Any person who commits an act of oral copulation upon a
24 person who is under 14 years of age, when the act is accomplished
25 against the victim's will by means of force, violence, duress,
26 menace, or fear of immediate and unlawful bodily injury on the
27 victim or another person, shall be punished by imprisonment in
28 the state prison for 8, 10, or 12 years.

29 (C) Any person who commits an act of oral copulation upon a
30 minor who is 14 years of age or older, when the act is accomplished
31 against the victim's will by means of force, violence, duress,
32 menace, or fear of immediate and unlawful bodily injury on the
33 victim or another person, shall be punished by imprisonment in
34 the state prison for 6, 8, or 10 years.

35 (D) This paragraph does not preclude prosecution under Section
36 269, Section 288.7, or any other provision of law.

37 (3) Any person who commits an act of oral copulation where
38 the act is accomplished against the victim's will by threatening to
39 retaliate in the future against the victim or any other person, and
40 there is a reasonable possibility that the perpetrator will execute

1 the threat, shall be punished by imprisonment in the state prison
2 for three, six, or eight years.

3 (d) (1) Any person who, while voluntarily acting in concert
4 with another person, either personally or by aiding and abetting
5 that other person, commits an act of oral copulation (A) when the
6 act is accomplished against the victim's will by means of force or
7 fear of immediate and unlawful bodily injury on the victim or
8 another person, or (B) where the act is accomplished against the
9 victim's will by threatening to retaliate in the future against the
10 victim or any other person, and there is a reasonable possibility
11 that the perpetrator will execute the threat, or (C) where the victim
12 is at the time incapable, because of a mental disorder or
13 developmental or physical disability, of giving legal consent, and
14 this is known or reasonably should be known to the person
15 committing the act, shall be punished by imprisonment in the state
16 prison for five, seven, or nine years. Notwithstanding the
17 appointment of a conservator with respect to the victim pursuant
18 to the provisions of the Lanterman-Petris-Short Act (Part 1
19 (commencing with Section 5000) of Division 5 of the Welfare and
20 Institutions Code), the prosecuting attorney shall prove, as an
21 element of the crime described under paragraph (3), that a mental
22 disorder or developmental or physical disability rendered the
23 alleged victim incapable of giving legal consent.

24 (2) Any person who, while voluntarily acting in concert with
25 another person, either personally or aiding and abetting that other
26 person, commits an act of oral copulation upon a victim who is
27 under 14 years of age, when the act is accomplished against the
28 victim's will by means of force or fear of immediate and unlawful
29 bodily injury on the victim or another person, shall be punished
30 by imprisonment in the state prison for 10, 12, or 14 years.

31 (3) Any person who, while voluntarily acting in concert with
32 another person, either personally or aiding and abetting that other
33 person, commits an act of oral copulation upon a victim who is a
34 minor 14 years of age or older, when the act is accomplished
35 against the victim's will by means of force or fear of immediate
36 and unlawful bodily injury on the victim or another person, shall
37 be punished by imprisonment in the state prison for 8, 10, or 12
38 years.

39 (4) This paragraph does not preclude prosecution under Section
40 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

~~(f) Any~~

(f) (1) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

~~(1)~~

(A) Was unconscious or asleep.

~~(2)~~

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

~~(3)~~

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

~~(4)~~

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.

(2) *A person who performs professional services that entail having access to the victim’s body and who commits an act of oral copulation upon the victim while performing those services, and the act is against the victim’s will, shall be punished by imprisonment in the state prison for three, six, or eight years.*

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the

1 Lanterman-Petris-Short Act (Part 1 (commencing with Section
2 5000) of Division 5 of the Welfare and Institutions Code), the
3 prosecuting attorney shall prove, as an element of the crime, that
4 a mental disorder or developmental or physical disability rendered
5 the alleged victim incapable of giving consent.

6 (h) Any person who commits an act of oral copulation, and the
7 victim is at the time incapable, because of a mental disorder or
8 developmental or physical disability, of giving legal consent, and
9 this is known or reasonably should be known to the person
10 committing the act, and both the defendant and the victim are at
11 the time confined in a state hospital for the care and treatment of
12 the mentally disordered or in any other public or private facility
13 for the care and treatment of the mentally disordered approved by
14 a county mental health director, shall be punished by imprisonment
15 in the state prison, or in a county jail for a period of not more than
16 one year. Notwithstanding the existence of a conservatorship
17 pursuant to the provisions of the Lanterman-Petris-Short Act (Part
18 1 (commencing with Section 5000) of Division 5 of the Welfare
19 and Institutions Code), the prosecuting attorney shall prove, as an
20 element of the crime, that a mental disorder or developmental or
21 physical disability rendered the alleged victim incapable of giving
22 legal consent.

23 (i) Any person who commits an act of oral copulation, where
24 the victim is prevented from resisting by any intoxicating or
25 anesthetic substance, or any controlled substance, and this condition
26 was known, or reasonably should have been known by the accused,
27 shall be punished by imprisonment in the state prison for a period
28 of three, six, or eight years.

29 (j) Any person who commits an act of oral copulation, where
30 the victim submits under the belief that the person committing the
31 act is someone known to the victim other than the accused, and
32 this belief is induced by any artifice, pretense, or concealment
33 practiced by the accused, with intent to induce the belief, shall be
34 punished by imprisonment in the state prison for a period of three,
35 six, or eight years.

36 (k) (1) Any person who commits an act of oral copulation,
37 where the act is accomplished against the victim's will by
38 threatening to use the authority of a public official to incarcerate,
39 arrest, or deport the victim or another, and the victim has a
40 reasonable belief that the perpetrator is a public official, shall be

1 punished by imprisonment in the state prison for a period of three,
2 six, or eight years.

3 ~~As~~

4 (2) As used in this subdivision, “public official” means a person
5 employed by a governmental agency who has the authority, as part
6 of that position, to incarcerate, arrest, or deport another. The
7 perpetrator does not actually have to be a public official.

8 (l) As used in subdivisions (c) and (d), “threatening to retaliate”
9 means a threat to kidnap or falsely imprison, or to inflict extreme
10 pain, serious bodily ~~injury~~ *injury*, or death.

11 (m) In addition to any punishment imposed under this section,
12 the judge may assess a fine not to exceed seventy dollars (\$70)
13 against any person who violates this section, with the proceeds of
14 this fine to be used in accordance with Section 1463.23. The court
15 shall, however, take into consideration the defendant’s ability to
16 pay, and no defendant shall be denied probation because of his or
17 her inability to pay the fine permitted under this subdivision.

18 SEC. 5. Section 289 of the Penal Code is amended to read:

19 289. (a) (1) (A) Any person who commits an act of sexual
20 penetration when the act is accomplished against the victim’s will
21 by means of force, violence, duress, menace, or fear of immediate
22 and unlawful bodily injury on the victim or another person shall
23 be punished by imprisonment in the state prison for three, six, or
24 eight years.

25 (B) Any person who commits an act of sexual penetration upon
26 a child who is under 14 years of age, when the act is accomplished
27 against the victim’s will by means of force, violence, duress,
28 menace, or fear of immediate and unlawful bodily injury on the
29 victim or another person, shall be punished by imprisonment in
30 the state prison for 8, 10, or 12 years.

31 (C) Any person who commits an act of sexual penetration upon
32 a minor who is 14 years of age or older, when the act is
33 accomplished against the victim’s will by means of force, violence,
34 duress, menace, or fear of immediate and unlawful bodily injury
35 on the victim or another person, shall be punished by imprisonment
36 in the state prison for 6, 8, or 10 years.

37 (D) This paragraph does not preclude prosecution under Section
38 269, Section 288.7, or any other provision of law.

39 (2) Any person who commits an act of sexual penetration when
40 the act is accomplished against the victim’s will by threatening to

1 retaliate in the future against the victim or any other person, and
2 there is a reasonable possibility that the perpetrator will execute
3 the threat, shall be punished by imprisonment in the state prison
4 for three, six, or eight years.

5 (b) Except as provided in subdivision (c), any person who
6 commits an act of sexual penetration, and the victim is at the time
7 incapable, because of a mental disorder or developmental or
8 physical disability, of giving legal consent, and this is known or
9 reasonably should be known to the person committing the act or
10 causing the act to be committed, shall be punished by imprisonment
11 in the state prison for three, six, or eight years. Notwithstanding
12 the appointment of a conservator with respect to the victim pursuant
13 to the provisions of the Lanterman-Petris-Short Act (Part 1
14 (commencing with Section 5000) of Division 5 of the Welfare and
15 Institutions Code), the prosecuting attorney shall prove, as an
16 element of the crime, that a mental disorder or developmental or
17 physical disability rendered the alleged victim incapable of giving
18 legal consent.

19 (c) Any person who commits an act of sexual penetration, and
20 the victim is at the time incapable, because of a mental disorder
21 or developmental or physical disability, of giving legal consent,
22 and this is known or reasonably should be known to the person
23 committing the act or causing the act to be committed and both
24 the defendant and the victim are at the time confined in a state
25 hospital for the care and treatment of the mentally disordered or
26 in any other public or private facility for the care and treatment of
27 the mentally disordered approved by a county mental health
28 director, shall be punished by imprisonment in the state prison, or
29 in a county jail for a period of not more than one year.
30 Notwithstanding the existence of a conservatorship pursuant to
31 the provisions of the Lanterman-Petris-Short Act (Part 1
32 (commencing with Section 5000) of Division 5 of the Welfare and
33 Institutions Code), the prosecuting attorney shall prove, as an
34 element of the crime, that a mental disorder or developmental or
35 physical disability rendered the alleged victim incapable of giving
36 legal consent.

37 ~~(d) Any~~

38 (d) (1) Any person who commits an act of sexual penetration,
39 and the victim is at the time unconscious of the nature of the act
40 and this is known to the person committing the act or causing the

1 act to be committed, shall be punished by imprisonment in the
2 state prison for three, six, or eight years. As used in this
3 subdivision, “unconscious of the nature of the act” means incapable
4 of resisting because the victim meets one of the following
5 conditions:

6 ~~(1)~~

7 (A) Was unconscious or asleep.

8 ~~(2)~~

9 (B) Was not aware, knowing, perceiving, or cognizant that the
10 act occurred.

11 ~~(3)~~

12 (C) Was not aware, knowing, perceiving, or cognizant of the
13 essential characteristics of the act due to the perpetrator’s fraud in
14 fact.

15 ~~(4)~~

16 (D) Was not aware, knowing, perceiving, or cognizant of the
17 essential characteristics of the act due to the perpetrator’s fraudulent
18 representation that the sexual penetration served a professional
19 purpose when it served no professional purpose.

20 *(2) A person who performs professional services that entail*
21 *having access to the victim’s body and who commits an act of*
22 *sexual penetration upon the victim while performing those services,*
23 *and the act is against the victim’s will, shall be punished by*
24 *imprisonment in the state prison for three, six, or eight years.*

25 (e) Any person who commits an act of sexual penetration when
26 the victim is prevented from resisting by any intoxicating or
27 anesthetic substance, or any controlled substance, and this condition
28 was known, or reasonably should have been known by the accused,
29 shall be punished by imprisonment in the state prison for a period
30 of three, six, or eight years.

31 (f) Any person who commits an act of sexual penetration when
32 the victim submits under the belief that the person committing the
33 act or causing the act to be committed is someone known to the
34 victim other than the accused, and this belief is induced by any
35 artifice, pretense, or concealment practiced by the accused, with
36 intent to induce the belief, shall be punished by imprisonment in
37 the state prison for a period of three, six, or eight years.

38 (g) Any person who commits an act of sexual penetration when
39 the act is accomplished against the victim’s will by threatening to
40 use the authority of a public official to incarcerate, arrest, or deport

1 the victim or another, and the victim has a reasonable belief that
2 the perpetrator is a public official, shall be punished by
3 imprisonment in the state prison for a period of three, six, or eight
4 years.

5 As used in this subdivision, “public official” means a person
6 employed by a governmental agency who has the authority, as part
7 of that position, to incarcerate, arrest, or deport another. The
8 perpetrator does not actually have to be a public official.

9 (h) Except as provided in Section 288, any person who
10 participates in an act of sexual penetration with another person
11 who is under 18 years of age shall be punished by imprisonment
12 in the state prison or in a county jail for a period of not more than
13 one year.

14 (i) Except as provided in Section 288, any person over 21 years
15 of age who participates in an act of sexual penetration with another
16 person who is under 16 years of age shall be guilty of a felony.

17 (j) Any person who participates in an act of sexual penetration
18 with another person who is under 14 years of age and who is more
19 than 10 years younger than he or she shall be punished by
20 imprisonment in the state prison for three, six, or eight years.

21 (k) As used in this section:

22 (1) “Sexual penetration” is the act of causing the penetration,
23 however slight, of the genital or anal opening of any person or
24 causing another person to so penetrate the defendant’s or another
25 person’s genital or anal opening for the purpose of sexual arousal,
26 gratification, or abuse by any foreign object, substance, instrument,
27 or device, or by any unknown object.

28 (2) “Foreign object, substance, instrument, or device” shall
29 include any part of the body, except a sexual organ.

30 (3) “Unknown object” shall include any foreign object,
31 substance, instrument, or device, or any part of the body, including
32 a penis, when it is not known whether penetration was by a penis
33 or by a foreign object, substance, instrument, or device, or by any
34 other part of the body.

35 (l) As used in subdivision (a), “threatening to retaliate” means
36 a threat to kidnap or falsely imprison, or inflict extreme pain,
37 serious bodily injury or death.

38 (m) As used in this section, “victim” includes any person who
39 the defendant causes to penetrate the genital or anal opening of
40 the defendant or another person or whose genital or anal opening

1 is caused to be penetrated by the defendant or another person and
2 who otherwise qualifies as a victim under the requirements of this
3 section.

4 SEC. 6. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

O



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Bill Analysis

Bill Number: AB 2138
Author: Chiu & Low
Version: Amended 5/25/18
Sponsor: Coalition of Criminal Justice Advocacy Groups
Subject: Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction
Status: Senate. Pending Referral

Adopted Position:
 Opposed.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

1. Provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license or take disciplinary action against a licensee on the grounds that the applicant or licensee has, among other things, been convicted of a crime, as specified.
2. Provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified.
3. Prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified.
4. Requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.
5. Authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.



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6. Authorizes specified agencies to take disciplinary action against a licensee or deny a license for professional misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs.
7. Authorizes a board after a specified hearing requested by an applicant for licensure to take various actions, including imposing probationary conditions on the license.

This Bill

1. Specifies that "conviction" for purposes of board actions means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt.
2. Narrows a board's discretion to deny or suspend or revoke a license to the following cases:
 - a) The individual has been convicted of a crime; limits denials based on a criminal conviction to convictions for which the applicant is presently incarcerated or that occurred within the preceding five years, except for convictions of a violent felony.
 - b) The individual has been subjected to formal discipline by a licensing board within the preceding five years based on professional misconduct that would have been cause for discipline before the board for which the present application is made.
3. Requires that any criminal conviction or formal discipline be directly and adversely related to the qualifications, functions, or duties of the business or profession for which the present application is made in order to be the cause for denial or revocation of a license.
4. Removes the authority for a board to deny or suspend or revoke a license based on "acts" for which there has been no due process in a criminal or disciplinary proceeding.
5. Specifies that a license shall not be denied or suspend or revoked on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed.
6. States that a board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed and prohibits a board from requiring an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history.
7. Provides that if a board decides to deny or suspend or revoke a license based solely or in part on the applicant's conviction history, the board shall notify the individual in writing of the along with the applicant's right to challenge or appeal the board's decision, as well as the process by which the individual may secure a copy of their own rap sheet.



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8. Requires boards to retain application forms and other documents for at least three years, along with statistical information relating to the applicant, and to report information annually.
9. Requires each board to develop criteria for determining whether a crime is directly and adversely related to a license, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.
10. Requires each board to post on its website a summary of the criteria used to consider whether a crime is considered to be directly and adversely related to the license being sought.
11. Limits probationary terms or restrictions placed on a license by a board to two years or less unless the board determines additional conditions are necessary to address a risk.
12. Requires a board to consider evidence of rehabilitation prior to denying or suspending or revoking a license based in whole or in part on a conviction, and requires a board to find that an applicant or licensee has made a showing of rehabilitation if the applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation, has worked in a related field continuously for at least one year prior to licensure, or has satisfied criteria for rehabilitation developed by the board.

Purpose/Background

Purpose:

This bill is sponsored by a coalition of criminal justice advocacy groups including the East Bay Community Law Center, Anti-Recidivism Coalition, Legal Services for Prisoners with Children, and Root & Rebound. According to the author:

“California has among the highest recidivism rates in the nation, with many low-level criminal offenders committing new crimes within a year of release. These factors play a significant role in the prison and jail overcrowding crisis that the Legislature has spent the past decade attempting to address. One of the root causes of high recidivism rates is the inability of prior offenders to secure gainful employment upon reentry. Nearly 30% of California jobs require licensure, certification, or clearance by an oversight board or agency for approximately 1,773 different occupations. All too often, qualified people are denied occupational licenses or have licenses revoked or suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed. Alleviating barriers to occupational licensing is just one way California can reduce recidivism and provide economic opportunity to all its residents.”



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Background:

Board Discretion to Deny Applications for Licensure.

Due to the unique nature of each individual profession licensed and regulated by entities under the DCA, the various professional practice acts contain their own standards and enforcement criteria for individuals applying for or in receipt of special occupational privileges from the state. There are some umbrella statutes that govern the discretion of these regulatory bodies generally. For example, Business and Professions Code (BPC) Section 480 governs the authority of regulatory boards to deny applicants for licensure.

Under BPC Section 480, a board may deny a license within the purview of the DCA on the grounds that the applicant has one of the following:

- 1) Been convicted of a crime; boards may disqualify based on criminal history if the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence.
- 2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- 3) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

Criticism has been made over statute's allowance for boards and bureaus to deny a license to an individual who has "done any act involving honesty, fraud, or deceit" for self-benefit or harm to others. This broad discretion goes beyond criminal convictions, as well as non-criminal activity that is nevertheless afforded an element of due process, such as regulatory discipline. This authority has opened the door for many licensure applications to be denied based purely on alleged misconduct that has not been determined to have occurred through standard due process.

The discretion for boards and bureaus to deny licensure to applicants with criminal histories has also been criticized, despite the guarantee of due process afforded to these applicants prior to a crime being reflected on their record. In its report *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, the National Employment Law Project (NELP) discusses the arguably draconian nature of barriers to occupational entry based on criminal history. NELP's report refers to "a lack of transparency and predictability in the licensure decision-making process and confusion caused by a labyrinth of different restrictions" in regulatory schemes across the country. California is specifically graded as "Needs Improvement," with recommendations that include provisions contained within this bill.

Recidivism Reduction Policies.

California has among the highest recidivism rates in the country. As part of the effort to promote reentry and reduce recidivism, the Legislature has passed a number of measures aimed at increasing access to employment for those with criminal histories. This bill would similarly improve economic opportunity for those with criminal convictions by increasing access to professional licensure. This bill does not broaden the state's



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"ban the box" laws to professional licensure, and it does not replicate those laws enacted for employment by a public or private entity. Applicants for licensure are not competitively evaluated and chosen based on professional strengths. Applicants are presumed eligible if they meet certain qualifications and if there is nothing to disqualify them. An applicant's criminal history is disclosed at the time of the application and this bill would not exclude or delay its consideration.

However, because current law enables boards to disqualify based on crimes that are "substantially related" to the profession, applicants are often unaware of what misconduct will render them ineligible for licensure. Further, many applications for licensure require self-disclosure of prior misconduct from applicants; in instances where applicants underestimate the inclusivity of what crimes or acts will disqualify them, they may fail to voluntarily disclose that information. This lack of disclosure is in and of itself grounds to deny the application for licensure. The practice of requiring self-disclosure by applicants and then denying an application based on an applicant's inadequate self-incrimination is frequently regarded as the "candor trap."

Revocation or Suspension of Licenses. Each regulatory board under the DCA has broad authority to take disciplinary action against its licensees based on the provisions of its specific practice act and the standard of conduct for its licensee population. In addition to these board-by-board causes for discipline, BPC Section 490 allows a board to suspend or revoke a license on the ground that a licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. While a number of disciplinary actions against licensees have been so-called "conviction cases" resulting directly from the result of parallel criminal proceedings, many stakeholders have been concerned that such cases are overly punitive and can frequently be cause for a licensee to be unable to practice his or her profession long after the criminal misconduct has occurred. This bill intends to make modest reforms to this process in addition to amendments to provisions governing the issuance of initial licensure applications.

Criminal Offenses Eligible for Consideration. This bill does not substantially change the authority of an individual board to determine what crimes may be considered when denying a licensure application or suspending or revoking a license. The bill does change the term "substantially related" to "directly and adversely related," clarifying that the relation should imply a greater proclivity for the individual to engage in misconduct while exercising their professional privileges. However, each board would still be authorized to develop its own specified standards for these purposes. The bill does mandate data collection and public reporting in regards to how criminal convictions are used to deny or revoke or suspend licenses. This information will guide policymakers in the event that more prescriptive reforms to what crimes are eligible for consideration are contemplated.



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The bill institutes a five-year "washout period" for convictions. Under these provisions, crimes older than five years may no longer be considered for purposes of denying a licensure application or revoking or suspending a current license. However, this washout period does not apply to violent felonies, which are already codified under Penal Code Section 667.5. The lengthy list of serious offenses listed under this section is cited as a way of ensuring that certain exceptions are made when generally downgrading the significance of an individual's conviction history.

Related Legislation

Current Related Legislation:

AB 3039 (Holden) would make similar reforms to the use of criminal history for licenses granted by the State Department of Social Services

Prior Related Legislation:

AB 1008 (McCarty, Chapter 789, Statutes of 2017) prohibited an employer from inquiring into or considering the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate information related to their rap sheet.

AB 2396 (Bonta, Chapter 737, Statutes of 2014) prohibited a board within the DCA from denying a license based solely on a conviction that has been dismissed.

AB 218 (Dickinson, Chapter 699, Statutes of 2013) prohibited from asking an applicant to disclose information regarding a criminal conviction until the agency has determined the applicant meets the minimum employment qualifications for the position.

Fiscal Impact:

1. According to the Assembly Committee on Appropriations, annual special fund costs for pre-licensure and enforcement-related costs ranging from minor and absorbable to significant, to various boards within the Department of Consumer Affairs (DCA).

Support and Opposition

Arguments in Support:

An extensive coalition of criminal justice reform advocacy organizations supports the bill, along with labor organizations.

The East Bay Community Law Center (EBCLC), a co-sponsor of the bill, writes that "many formerly incarcerated people struggle to find permanent and stable employment after contact with the criminal justice system. Data has shown that employment is the



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single most important factor to reducing recidivism. Across the nation, almost 30 percent of jobs require occupational licensing.” EBCLC states that “the increased ability to gain employment will reduce recidivism rates and will make our communities safer and more productive.”

Another co-sponsor of the bill, the Anti-Recidivism Coalition (ARC), writes that it is “incumbent on the state of California to develop stronger and fairer pathways into licensed professions for formerly incarcerated people and people with arrest and conviction records, as it will reduce recidivism, improve public safety, and increase economic security for millions of Californians with criminal records, as well as the children and families they support.” ARC states that “the increased ability to gain living wage employment will reduce recidivism rates and will make our communities safer and more prosperous.”

San Francisco Public Defender Jeff Adachi writes in support. P.D. Adachi writes that “nearly 30 percent of California jobs require licensure, certification, or clearance for approximately 1,773 different occupations. However, qualified people, including individuals who receive job-specific training while incarcerated, are either denied occupational licenses or even have licenses suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed.” P.D. Adachi states that “alleviating barriers to occupational licensing is just one way California can reduce recidivism, increase public safety, and provide economic opportunity to all its residents.”

The Ella Baker Center for Human Rights (EBCHR) is in support of the bill. EBCHR writes that “a 2015 report by the Ella Baker Center for Human Rights, Forward Together, and Research Action Design Who Pays, The True Cost of Incarceration on Families details how incarceration destabilizes entire families and communities. Many people who return from incarceration face extreme barriers to finding jobs and reintegrating into society. Research has shown that upwards of 60% of formerly incarcerated individuals cannot find employment one year after release.”

Support:

- Anti-Recidivism Coalition (Sponsor)
- East Bay Community Law Center (Sponsor)
- Legal Services for Prisoners with Children (Sponsor)
- Root & Rebound (Sponsor)
- American Civil Liberties Union (ACLU)
- American Federation of State, County and Municipal Employees (AFSCME)
- Alameda County Public Defender
- All of Us or None
- Alliance for Boys and Men of Color
- Anchor of Hope Ministries



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- Bay Area Legal Aid
- Bayview Hunters Point Foundation
- Because Black is Still Beautiful
- California Immigrant Policy Center
- Californians for Prop 57
- Californians for Safety and Justice
- California Workforce Organization
- Center for Employment Opportunities
- Center on Juvenile and Criminal Justice
- Center for Living and Learning
- Checkr
- Courage Campaign
- Downtown Women's Center
- Ella Baker Center for Human Rights
- Hillview Mental Health Center
- Homeboy Industries
- Hunters Point Family
- Lawyer's Committee for Civil Rights
- Leadership for Urban Renewal Network
- Legal Services of Northern California
- Leonard Carter
- Los Angeles Regional Reentry Partnership (LARRP)
- National Association of Social Workers - California Chapter
- National Employment Law Project
- New Door Ventures
- Oakland Private Industry Council
- Planting Justice
- Prisoner Reentry Network
- Project Rebound: Expanded

Arguments in Opposition:

Pacific Advocacy Group, representing the Plumbing-Heating-Cooling Contractors Association of California; the Western Electrical Contractors Association; and the San Diego, Southern and Central California Chapters of Associated Builders and Contractors opposes the bill. These groups are all "merit shop employer associations" (or trade associations that deliberately do not participate in labor unions) that represent licensees under the Contractors State Licensing Board (CSLB). The groups have taken an "oppose unless amended" position, arguing that "the number of applicants denied licensure at CSLB because of a criminal conviction is very low." The groups state that CSLB should be "exempt from the changes in AB 2138."



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This bill currently institutes a five-year washout period for consideration of crimes other than violent felonies. Many other laws regarding the use of criminal history in licensure or employment contexts currently feature a washout period of seven years. To make the provisions of this bill consistent with other areas of law, it may be advisable to extend the bill's washout period to seven years

Opposition:

- Plumbing-Heating-Cooling Contractors Association of California
- Western Electrical Contractors Association
- San Diego, Southern and Central California Chapters of Associated Builders and Contractors

Action Required:

None.

AMENDED IN ASSEMBLY MAY 25, 2018

AMENDED IN ASSEMBLY APRIL 2, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2138

Introduced by Assembly Members Chiu and Low

February 12, 2018

An act to amend Sections 7.5, 480, 481, 482, 488, 490, 492, 493, ~~4005~~, and 11345.2 of, *and* to add Section 481.5 to, ~~and to repeal Section 490.5 of~~, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, as amended, Chiu. Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license or take disciplinary action against a licensee on the grounds that the applicant or licensee has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. Existing law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to

determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been convicted of a crime only if the applicant or licensee is presently incarcerated or if the conviction, as defined, occurred within the preceding 5 years, except for violent felonies, and would require the crime to be directly and adversely related to the qualifications, functions, or duties of the business or profession. The bill would prohibit a board from denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction for a crime, if the conviction has been dismissed or expunged, if the person has made a showing of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction. The bill would provide that these provisions relating to denial, revocation, or suspension of a license would supersede contradictory provisions in specified existing law.

The bill would require the board to develop criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession. The bill would require a board to find that a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

~~Existing law authorizes a board to suspend a license if a licensee is not in compliance with a child support order or judgment.~~

~~This bill would repeal that authorization.~~

Existing law authorizes specified agencies to take disciplinary action against a licensee or deny a license for professional misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs.

This bill would instead prohibit a board from taking disciplinary action against a licensee or denying a license for professional misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs or deferred entry of judgment.

Existing law authorizes a board after a specified hearing requested by an applicant for licensure to take various actions, including imposing probationary conditions on the license.

This bill would additionally authorize a board to grant the license and immediately issue a public reproof. The bill would limit probationary terms or restrictions placed on a license by a board to 2 years or less and would authorize additional conditions to be imposed only if the board determines that there is clear and convincing evidence that additional conditions are necessary to address a risk shown by clear and convincing evidence. The bill would require a board to develop criteria to aid it in considering the imposition of probationary conditions and to determine what conditions may be imposed. The bill would authorize a licensee or registrant whose license or registration has been placed on probation to petition the board for a change to that probation one year from the effective date of the board's decision, would require the board to issue a decision on the petition within 90 days, and would deem the petition granted if the board does not file a decision denying the petition within 90 days.

This bill would also make necessary conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7.5 of the Business and Professions Code
- 2 is amended to read:
- 3 7.5. (a) A conviction within the meaning of this code means
- 4 a judgment following a plea or verdict of guilty or a plea of nolo
- 5 contendere or finding of guilt. Any action which a board is
- 6 permitted to take following the establishment of a conviction may
- 7 be taken when the time for appeal has elapsed, or the judgment of

1 conviction has been affirmed on appeal or when an order granting
2 probation is made suspending the imposition of sentence. However,
3 a board may not deny a license to an applicant who is otherwise
4 qualified pursuant to subdivision (b) or (c) of Section 480.

5 (b) Nothing in this section shall apply to the licensure of persons
6 pursuant to Chapter 4 (commencing with Section 6000) of Division
7 3.

8 (c) Except as provided in subdivision (b), this section controls
9 over and supersedes the definition of conviction contained within
10 individual practice acts under this code.

11 SEC. 2. Section 480 of the Business and Professions Code is
12 amended to read:

13 480. (a) (1) Notwithstanding any other provision of this code,
14 a board may deny a license regulated by this code on the grounds
15 that the applicant has been convicted of a crime or has been subject
16 to formal discipline only if either of the following conditions are
17 met:

18 (A) The applicant has been convicted of a crime for which the
19 applicant is presently incarcerated or for which the conviction
20 occurred within the preceding five years. However, the preceding
21 five year limitation shall not apply to a conviction for a violent
22 felony, as defined in Section 667.5 of the Penal Code.

23 The board may deny a license pursuant to this subparagraph only
24 if the crime is directly and adversely related to the qualifications,
25 functions, or duties of the business or profession for which
26 application is made.

27 (B) The applicant has been subjected to formal discipline by a
28 licensing board within the preceding five years based on
29 professional misconduct that would have been cause for discipline
30 before the board for which the present application is made and that
31 is directly and adversely related to the qualifications, functions,
32 or duties of the business or profession for which the present
33 application is made. However, prior disciplinary action by a
34 licensing board within the preceding five years shall not be the
35 basis for denial of a license if the basis for that disciplinary action
36 was a conviction that has been dismissed pursuant to Section
37 1203.4, 1203.4a, or 1203.41 of the Penal Code or a comparable
38 dismissal or expungement.

39 (2) Denial of a license includes denial of an unrestricted license
40 by issuance of a restricted or probationary license.

1 (b) Notwithstanding any other provision of this code, a person
2 shall not be denied a license on the basis that he or she has been
3 convicted of a crime, or on the basis of acts underlying a conviction
4 for a crime, if he or she has obtained a certificate of rehabilitation
5 under Chapter 3.5 (commencing with Section 4852.01) of Title 6
6 of Part 3 of the Penal Code, has been granted clemency or a pardon
7 by a state or federal executive, or has made a showing of
8 rehabilitation pursuant to Section 482.

9 (c) Notwithstanding any other provision of this code, a person
10 shall not be denied a license on the basis of any conviction, or on
11 the basis of the acts underlying the conviction, that has been
12 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the
13 Penal Code, or a comparable dismissal or expungement. An
14 applicant who has a conviction that has been dismissed pursuant
15 to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code
16 shall provide proof of the dismissal if it is not reflected on the
17 report furnished by the Department of Justice.

18 (d) Notwithstanding any other provision of this code, a board
19 shall not deny a license on the basis of an arrest that resulted in a
20 disposition other than a conviction, including an arrest that resulted
21 in an infraction, citation, or a juvenile adjudication.

22 (e) A board may deny a license regulated by this code on the
23 ground that the applicant knowingly made a false statement of fact
24 that is required to be revealed in the application for the license. A
25 board shall not deny a license based solely on an applicant's failure
26 to disclose a fact that would not have been cause for denial of the
27 license had it been disclosed.

28 (f) A board shall follow the following procedures in requesting
29 or acting on an applicant's criminal history information:

30 (1) A board shall not require an applicant for licensure to
31 disclose any information or documentation regarding the
32 applicant's criminal history.

33 (2) If a board decides to deny an application based solely or in
34 part on the applicant's conviction history, the board shall notify
35 the applicant in writing of all of the following:

36 (A) The denial or disqualification of licensure.

37 (B) Any existing procedure the board has for the applicant to
38 challenge the decision or to request reconsideration.

39 (C) That the applicant has the right to appeal the board's
40 decision.

1 (D) The processes for the applicant to request a copy of his or
2 her complete conviction history and question the accuracy or
3 completeness of the record pursuant to Sections 11122 to 11127
4 of the Penal Code.

5 (g) (1) For a minimum of three years, each board under this
6 code shall retain application forms and other documents submitted
7 by an applicant, any notice provided to an applicant, all other
8 communications received from and provided to an applicant, and
9 criminal history reports of an applicant.

10 (2) Each board under this code shall retain the number of
11 applications received for each license and the number of
12 applications requiring inquiries regarding criminal history. In
13 addition, each licensing authority shall retain all of the following
14 information:

15 (A) The number of applicants with a criminal record who
16 received notice of denial or disqualification of licensure.

17 (B) The number of applicants with a criminal record who
18 provided evidence of mitigation or rehabilitation.

19 (C) The number of applicants with a criminal record who
20 appealed any denial or disqualification of licensure.

21 (D) The final disposition and demographic information,
22 including, but not limited to, voluntarily provided information on
23 race or gender, of any applicant described in subparagraph (A),
24 (B), or (C).

25 (3) (A) Each board under this code shall annually make
26 available to the public through the board's Internet Web site and
27 through a report submitted to the appropriate policy committees
28 of the Legislature deidentified information collected pursuant to
29 this subdivision. Each board shall ensure confidentiality of the
30 individual applicants.

31 (B) A report pursuant to subparagraph (A) shall be submitted
32 in compliance with Section 9795 of the Government Code.

33 (h) "Conviction" as used in this section shall have the same
34 meaning as defined in Section 7.5.

35 (i) This section supersedes any contradictory provision in a
36 licensing act under this code or initiative act referred to in Division
37 2 (commencing with Section 500) that authorizes license denial
38 based on a criminal conviction, arrest, or the acts underlying an
39 arrest or conviction.

1 SEC. 3. Section 481 of the Business and Professions Code is
2 amended to read:

3 481. (a) Each board under this code shall develop criteria to
4 aid it, when considering the denial, suspension, or revocation of
5 a license, to determine whether a crime is directly and adversely
6 related to the qualifications, functions, or duties of the business or
7 profession it regulates.

8 (b) Criteria for determining whether a crime is directly and
9 adversely related to the qualifications, functions, or duties of the
10 business or profession a board regulates shall include all of the
11 following:

12 (1) The nature and gravity of the offense.

13 (2) The number of years elapsed since the date of the offense.

14 (3) The nature and duties of the profession in which the applicant
15 seeks licensure or in which the licensee is licensed.

16 (c) A board shall not deny a license based in whole or in part
17 on a conviction without considering evidence of rehabilitation.

18 (d) Each board shall post on its Internet Web site a summary of
19 the criteria used to consider whether a crime is considered to be
20 directly and adversely related to the qualifications, functions, or
21 duties of the business or profession it regulates consistent with this
22 section.

23 SEC. 4. Section 481.5 is added to the Business and Professions
24 Code, to read:

25 481.5. (a) Probationary terms or restrictions placed on a license
26 by a board shall be limited to two years or less. Any additional
27 conditions may be imposed only if the board determines that there
28 is clear and convincing evidence that additional conditions are
29 necessary to address a risk shown by clear and convincing
30 evidence.

31 (b) Each board under this code shall develop criteria to aid it
32 when considering the imposition of probationary conditions or
33 restrictions to determine what conditions may be imposed to
34 address a risk shown by clear and convincing evidence.

35 (c) (1) A licensee or registrant whose license or registration
36 has been placed on probation may petition the board for a change
37 to the probation, including modification or termination of
38 probation, one year from the effective date of the decision. The
39 board shall issue its decision on the petition within 90 days of
40 submission of the petition. The petition shall be deemed granted

1 by operation of law if the board does not file a decision denying
2 the petition within 90 days of submission of the petition.

3 (2) The one-year time period to petition for modification or
4 termination of penalty shall control over longer time periods under
5 a licensing act under this code or initiative act referred to in
6 Division 2 (commencing with Section 500).

7 SEC. 5. Section 482 of the Business and Professions Code is
8 amended to read:

9 482. (a) Each board under this code shall develop criteria to
10 evaluate the rehabilitation of a person when doing either of the
11 following:

12 (1) Considering the denial of a license by the board under
13 Section 480.

14 (2) Considering suspension or revocation of a license under
15 Section 490.

16 (b) Each board shall find that an applicant or licensee has made
17 a showing of rehabilitation if any of the following are met:

18 (1) The applicant or licensee has completed the criminal
19 sentence at issue without a violation of parole or probation.

20 (2) (A) The applicant or licensee documents that he or she has
21 worked in a related field continuously for at least one year prior
22 to licensure or successfully completed a course of training in a
23 related field, unless the board finds a public record of an official
24 finding that the applicant committed professional misconduct in
25 the course of that work.

26 (B) Work in a related field may include, but is not limited to,
27 work performed without compensation and work performed while
28 incarcerated.

29 (C) "Related field," for purposes of this paragraph, means a
30 field of employment whose duties are substantially similar to the
31 field regulated by the board.

32 (3) The applicant or licensee has satisfied criteria for
33 rehabilitation developed by the board.

34 SEC. 6. Section 488 of the Business and Professions Code is
35 amended to read:

36 488. Except as otherwise provided by law, following a hearing
37 requested by an applicant pursuant to subdivision (b) of Section
38 485, the board may take any of the following actions:

39 (a) Grant the license effective upon completion of all licensing
40 requirements by the applicant.

1 (b) Grant the license effective upon completion of all licensing
2 requirements by the applicant, grant the license and immediately
3 issue a public reproof pursuant to Section 495, immediately revoke
4 the license, stay the revocation, and impose probationary conditions
5 on the license, which may include suspension.

6 (c) Deny the license.

7 (d) Take other action in relation to denying or granting the
8 license as the board in its discretion may deem proper.

9 SEC. 7. Section 490 of the Business and Professions Code is
10 amended to read:

11 490. (a) (1) In addition to any other action that a board is
12 permitted to take against a licensee, a board may suspend or revoke
13 a license on the ground that the licensee has been convicted of a
14 crime for which the applicant is presently incarcerated or for which
15 the conviction occurred within the preceding five years. However,
16 the preceding five year limitation shall not apply to a conviction
17 for a violent felony, as defined in Section 667.5 of the Penal Code.

18 (2) The board may suspend or revoke a license pursuant to this
19 subdivision only if the crime is directly and adversely related to
20 the qualifications, functions, or duties of the business or profession
21 for which application is made.

22 (b) Notwithstanding any other provision of law, a board may
23 exercise any authority to discipline a licensee for conviction of a
24 crime that is independent of the authority granted under subdivision
25 (a) only if both of the following are met:

26 (1) The crime is directly and adversely related to the
27 qualifications, functions, or duties of the business or profession
28 for which the licensee's license was issued.

29 (2) The licensee was convicted of the crime within the preceding
30 five years or is presently incarcerated for the crime. However, the
31 preceding five year limitation shall not apply to a conviction for
32 a violent felony, as defined in Section 667.5 of the Penal Code.

33 (c) Notwithstanding any other provision of this code, a board
34 shall not suspend or revoke a license on the basis of a conviction,
35 or of the acts underlying a conviction, where that conviction has
36 been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or
37 1203.42 of the Penal Code or a comparable dismissal or
38 expungement.

39 (d) Notwithstanding any other provision of this code, a board
40 shall not suspend or revoke a license on the basis of an arrest that

1 resulted in a disposition other than a conviction, including an arrest
2 that resulted in an infraction, citation, or juvenile adjudication.

3 (e) The board shall use the following procedures in requesting
4 or acting on a licensee's criminal history information:

5 (1) A board shall not require a licensee to disclose any
6 information or documentation regarding the licensee's criminal
7 history.

8 (2) If a board chooses to file an accusation against a licensee
9 based solely or in part on the licensee's conviction history, the
10 board shall notify the licensee in writing of the processes for the
11 licensee to request a copy of the licensee's complete conviction
12 history and question the accuracy or completeness of his or her
13 criminal record pursuant to Sections 11122 to 11127, inclusive,
14 of the Penal Code.

15 (f) (1) For a minimum of three years, each board under this
16 code shall retain all documents submitted by a licensee, notices
17 provided to a licensee, all other communications received from or
18 provided to a licensee, and criminal history reports of a licensee.

19 (2) Each board under this code shall retain all of the following
20 information:

21 (A) The number of licensees with a criminal record who received
22 notice of potential revocation or suspension of their license or who
23 had their license suspended or revoked.

24 (B) The number of licensees with a criminal record who
25 provided evidence of mitigation or rehabilitation.

26 (C) The number of licensees with a criminal record who
27 appealed any suspension or revocation of a license.

28 (D) The final disposition and demographic information,
29 including, but not limited to, voluntarily provided information on
30 race or gender, of any applicant described in subparagraph (A),
31 (B), or (C).

32 (3) (A) Each board under this code shall annually make
33 available to the public through the board's Internet Web site and
34 through a report submitted to the appropriate policy committees
35 of the Legislature deidentified information collected pursuant to
36 this subdivision. Each board shall ensure the confidentiality of the
37 individual licensees.

38 (B) A report pursuant to subparagraph (A) shall be submitted
39 in compliance with Section 9795 of the Government Code.

(g) (1) This section supersedes any contradictory provision in a licensing act under this code or initiative act referred to in Division 2 (commencing with Section 500) that authorizes action based on a criminal conviction, arrest, or the acts underlying an arrest or conviction.

(2) This section shall not prohibit any agency from taking disciplinary action against a licensee for professional misconduct in the course and scope of the licensee's profession that is based on evidence that is independent of an arrest.

~~SEC. 8. Section 490.5 of the Business and Professions Code is repealed.~~

~~SEC. 9.~~

SEC. 8. Section 492 of the Business and Professions Code is amended to read:

492. (a) Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, successful completion by a licensee or applicant of any nonstatutory diversion program, deferred entry of judgment, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall prohibit any board from taking disciplinary action against a licensee or from denying a license for professional misconduct.

(b) This section shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee for professional misconduct in the course and scope of the profession, which is based on evidence that is independent of an arrest.

~~SEC. 10.~~

SEC. 9. Section 493 of the Business and Professions Code is amended to read:

493. (a) Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime directly and adversely related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be

1 conclusive evidence of the fact that the conviction occurred, but
2 only of that fact.

3 (b) (1) Criteria for determining whether a crime is directly and
4 adversely related to the qualifications, functions, or duties of the
5 business or profession the board regulates shall include all of the
6 following:

7 (A) The nature and gravity of the offense.

8 (B) The number of years elapsed since the date of the offense.

9 (C) The nature and duties of the profession.

10 (2) A board shall not categorically bar an applicant based solely
11 on the type of conviction without considering evidence of
12 rehabilitation.

13 (c) As used in this section, “license” includes “certificate,”
14 “permit,” “authority,” and “registration.”

15 ~~SEC. 11. Section 1005 of the Business and Professions Code~~
16 ~~is amended to read:~~

17 ~~1005. The provisions of Sections 12.5, 23.9, 29.5, 30, 31, 35,~~
18 ~~104, 114, 115, 119, 121, 121.5, 125, 125.6, 136, 137, 140, 141,~~
19 ~~143, 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, 491, 494,~~
20 ~~495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704, 710, 716,~~
21 ~~730.5, 731, and 851 are applicable to persons licensed by the State~~
22 ~~Board of Chiropractic Examiners under the Chiropractic Act.~~

23 ~~SEC. 12.~~

24 ~~SEC. 10.~~ Section 11345.2 of the Business and Professions Code
25 is amended to read:

26 11345.2. (a) An individual shall not act as a controlling person
27 for a registrant if any of the following apply:

28 (1) The individual has entered a plea of guilty or no contest to,
29 or been convicted of, a felony. If the individual’s felony conviction
30 has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41
31 of the Penal Code, the bureau may allow the individual to act as
32 a controlling person.

33 (2) The individual has had a license or certificate to act as an
34 appraiser or to engage in activities related to the transfer of real
35 property refused, denied, canceled, or revoked in this state or any
36 other state.

37 (b) Any individual who acts as a controlling person of an
38 appraisal management company and who enters a plea of guilty
39 or no contest to, or is convicted of, a felony, or who has a license
40 or certificate as an appraiser refused, denied, canceled, or revoked

- 1 in any other state shall report that fact or cause that fact to be
- 2 reported to the office, in writing, within 10 days of the date he or
- 3 she has knowledge of that fact.

O



Physical Therapy Board of California

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY - GOVERNOR EDMUND G. BROWN JR.

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May 3, 2018

The Honorable David S. Chiu
California State Assembly
State Capitol, Room 4112
Sacramento, CA 95814

The Honorable Evan Low
California State Assembly
State Capitol, Room 4126
Sacramento, CA 95814

Re: AB 2138 (Chiu and Low) Oppose Position

Dear Assembly Members Chiu and Low,

The Physical Therapy Board of California (Board) respectfully opposes AB 2138 as currently written. The Board is mandated by Business and Professions Code Section 2602.1 that the Board's highest priority is to protect the public. The Board recognizes the benefit this bill provides individuals with criminal history by removing barriers to certain professions and vocations. The healing arts professions, however are responsible for the health, safety and welfare of the public. A higher level of scrutiny is necessary for protection of the public. AB 2138 goes too far to protect criminally convicted individuals at the expense of the health and safety of California consumers.

The provisions in this bill would prohibit denial or revocation and suspension of a license for specified convictions. This bill would also prohibit regulatory boards from requiring an applicant to self-disclose criminal history information. In addition, AB 2138 would require boards to collect and publish demographic data regarding applicants who are denied licensure or who have licenses revoked or suspended among other provisions which would require the Board to make modifications to its Breeze database system. This would result in significant fiscal impact to the Board for the record retention and reporting requirements and the timeframes to process a petition for termination/modification of probation.

This bill would significantly narrow the authority of the Board to deny a license and take disciplinary action for criminal convictions and actions take by other licensing boards, even for crimes involving sexual misconduct, fraud, and alcohol or substance abuse. This bill does not allow the board to consider whether there is a pattern, or practice with respect to these types of convictions for the purposes of rehabilitation if the crime is older than 5 years or dismissed under plea agreement. AB 2138 would not allow the Board to deny a license based on the acts underlying a conviction. In addition, this bill would define denial to also include a probationary license.

The bill would also limit the length of probation that the Board can require for a probationary license to two years, which is less than the Board typically imposes for unprofessional conduct. AB 2138 would significantly narrow the Board's ability to deny licenses, issue probationary licenses, and take disciplinary action for convictions. For these reasons the Board feels this bill could seriously jeopardize its ability to meet its paramount mandate of consumer protection and respectfully opposes this bill.

Thank you on behalf of the Board for your thoughtful consideration of this request. The Board welcomes any opportunity to work with the author's office to address its concerns. Please feel free to contact the Board's Executive Officer, Jason Kaiser at (916) 561-2878.

Sincerely,

A handwritten signature in blue ink, reading "Alicia Rabena-Amen". The signature is fluid and cursive, with the first name "Alicia" being the most prominent.

Alicia Rabena-Amen
President, Physical Therapy Board of California

cc: Dennis Cuevas-Romero, Deputy Director, Division of Legislative Affairs, Department of
Consumer Affairs
Diana Vu, Legislative Analyst, Department of Consumer Affairs



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Bill Analysis

Bill Number:	AB 2221	Version:	Amended 4/5/18
Author:	Bloom	Sponsor:	American Occupational Therapy Association, Occupational Therapy Association of California
Subject:	Occupational Therapy	Status:	Senate. Pending Referral

Adopted Position:

None.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

1. The Occupational Therapy Practice Act, provides for the licensure and regulation of the practice of occupational therapy by the California Board of Occupational Therapy.
2. Defines the “practice of occupational therapy” and specifies that occupational therapy services encompass occupation therapy, assessment, treatment, education, and consultation with individuals referred for those services after diagnosis of a disease or disorder.
3. Prohibits a person from practicing occupational therapy without being licensed under the act and makes a violation of that prohibition a crime.
4. Defines the term “occupational therapist” and specifies that only the occupational therapist is responsible for the occupational therapy assessment of a client and the development of an occupational therapy plan of treatment.
5. Requires the occupational therapy board to ensure proper supervision of occupational therapy assistants and aides and allows an occupational therapist to supervise no more than 2 occupational therapy assistants at any one time.
6. Provides for aides to be supervised by occupational therapists or occupational therapy assistants and defines the term “aide” for purposes of the act to mean an individual who provides supportive services to an occupational therapist.
7. Authorizes an occupational therapist to provide advanced practices if the therapist, among other things, has demonstrated to the board that he or she has met educational training and competency requirements.



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8. Requires an occupational therapist providing hand therapy services or using physical agent modalities to demonstrate to the satisfaction of the board that he or she has completed post professional education and training in specified areas.
9. Requires an applicant for an occupational therapist license to, among other things, complete a specified educational program and pass a specified examination.
10. Requires the board to approve the examinations for licensure and also authorizes the board to adopt rules relating to professional conduct to carry out the purposes of the act.
11. Requires the curriculum for an educational program for occupational therapists to contain the content required or approved by specified organizations, and specifies a list of subjects that must be included in the program.
12. Authorizes the board to establish and require the satisfactory completion of continuing competency requirements as a condition of renewal of a license.
13. Prohibits a person from using specified professional abbreviations and terms intended to represent that the person is authorized to practice occupational therapy or assist in the practice of occupational therapy unless the person is licensed to practice as an occupational therapist or occupational therapy assistant.

This Bill

1. Replaces the term "practice" with the term "profession" where it is used as a noun and the term "provide" where it is used as a verb.
2. Replaces the term "patient" with "client."
3. Authorizes an "aide" to provide occupational therapy support services to OTAs in addition to OTs, but provides that the OT is responsible for the overall use and actions of the aide, increases the number of OTAs an OT may supervise from two to three, and replaces the requirement that an OT being the only person responsible for the assessment of a client and the development of an occupational therapy plan with the requirement that an OT directs the evaluation process and develops the intervention plan.
4. Defines "continuing competence" as a dynamic and multidimensional process in which the occupational therapist or occupational therapy assistant develops and maintains the knowledge, performance skills, interpersonal abilities, critical reasoning, and ethical reasoning skills necessary to perform current and future roles and responsibilities within the profession.
5. Redefines the "practice of occupational therapy" as "occupational therapy" and makes numerous changes, including deleting references to individuals with medical referrals and individuals receiving occupational therapy services under an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA) as the individuals who receive occupational therapy services; describing occupational therapy as the engagement in



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everyday activities to promote mental health and support functioning in people with, or at risk of experiencing, a range of mental health disorders, including, but not limited to, psychiatric, behavioral, and substance abuse disorders; and expanding the definition of "occupational therapy techniques" by deleting the "selective temporary" limitation on designing and fabricating orthotics.

6. Replaces the requirement that an OT demonstrate competence in advanced practices to the satisfaction of the CBOT with the requirement that an OT attest, under penalty of perjury, that the OT has met the educational training and competency requirements, authorizes the CBOT to periodically audit the advanced practices attestations for compliance, and deletes the term "post professional" from the advanced practice education requirements.
7. Deletes the list of subjects required as part of the curriculum for accredited OT educational programs and deletes the curriculum requirements for accredited OTA programs.
8. Deletes the option allowing an applicant who is a graduate from an OTA educational program who is unable to provide evidence of meeting educational requirements to instead demonstrate passage of specified examination national examinations.
9. Changes the CBOT's authority to establish continuing competence requirements into a requirement on the CBOT and provides that only a portion of continuing competence requirements, as determined by the CBOT to protect public health, safety, and welfare, may be fulfilled through competency assessment activities performed within the context of a broader professional development plan.
10. Deletes title protection for, and references to, the titles "Occupational Therapist Registered," "O.T.R.," "O.T.R./L.," "C.O.T.A.," and "C.O.T.A./L." and deletes requirements relating to the use of the title "O.T.D.," including the requirement that the licensee have earned a doctoral degree in occupational therapy; the requirement that a licensee must list the degree when using "Doctor" or "Dr." in a written communication; the requirement that the doctoral degree must be granted from an institution and program accredited by specified accrediting agencies; and the requirement that the CBOT define in regulation other authorized types of doctoral degrees.
11. Makes the requirement that the CBOT approve the examination for licensure permissive.
12. Revises the CBOT's authority to adopt regulations to include those "necessary to effectuate the purpose of" the practice act and deletes the limitation to those "relating to professional conduct to carry out the purpose of" the practice act.
13. Makes other technical, updating, and conforming changes.

Purpose/Background

Purpose:



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This bill is co-sponsored by the Occupational Therapy Association of California and the American Occupational Therapy Association. According to the author, "[o]ccupational therapists work with individuals from a wide range of backgrounds, experiencing physical and mental health conditions or disabilities, helping to improve and develop daily skills necessary on a routine basis. [This bill] ensures that [OTs] will be able to practice the full extent of their training to provide quality care for those in need."

Background:

According to the California Occupational Guides published by the Labor Market Information Division within the Employment Development Department (EDD), OTs and OTAs are healthcare providers who help patients with mental, emotional, or physical disabilities become self-sufficient. They may also work with other healthcare providers to develop therapy plans, which may include educational, vocational, and rehabilitative activities. The goal of occupational therapy is to enable patients to gain confidence, to adapt to or overcome their particular disability, and to use their time in rewarding ways.

Occupational Therapy Regulation.

The current iteration of the Occupational Therapy Practice Act passed in 2000. According to the author, changes in healthcare since the year 2000 have caused the practice act to become outdated. To address this issue, this bill "proposes to amend the Act to include the revision of outdated definitions, clarification of provisions related to advance practices, revision of continuing competence and coursework requirements, and language to clarify that occupational therapy supports functioning in people with or at risk of experiencing a range of mental health disorders."

CBOT.

The CBOT is a licensing board under the DCA. The purpose of the CBOT is to protect consumers through state regulation of the practice of occupational therapy. According to the DCA's 2017 Annual Report, the CBOT reported a total of 15,553 licensees, including 13,380 OTs and 2,977 OTAs.

Definition of Occupational Therapy.

This bill makes significant changes to the definition of occupational therapy. The changes are based on the sponsors' Standards of Practice for Occupational Therapy. The changes include, among others, referencing the relationship of occupational therapy to: rehabilitation, habilitation, cognitive, psychosocial, sensory-perception, and physical and mental health. It also adds references to the roles of occupational therapy in the promotion of functioning in those with mental health disorders, including, psychiatric, behavioral, and substance-use disorders.

According to the sponsors, these changes are intended to reflect that OTs and OTAs have a role in these services. Specifically, the sponsors note that this bill is intended "to



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clarify the role of occupational therapy in mental health and behavioral health services, which they are currently providing to patients in California."

Advanced Practice Requirements.

Currently, additional education and training is required before a licensee can perform advanced practices, including hand therapy, the use of physical agent modalities, and swallowing assessment, evaluation, and intervention. The CBOT is authorized to determine the method for demonstrating the completion of the advanced practice requirements.

This bill removes the CBOT's authority to determine how licensees demonstrate completion of the educational and training requirements for advanced practice. Instead, it will require the licensees to attest to completion of the requirements and authorize the CBOT to audit the attestations for compliance, similar to the requirements for continuing competence. The sponsors and the CBOT disagree on the necessity of the advanced practice requirements and the sufficiency of pre-licensure education.

POLICY ISSUE FOR CONSIDERATION:

Practice vs. Profession.

This bill replaces the term "practice" with "profession" where the term "practice" is used as a noun. This is inconsistent with the other practice acts and may narrow the scope of the state's regulation of occupational therapy. In general, the term "profession" means occupations or vocations that involve the use of specialized skills and knowledge requiring specific training, education, or experience. The term "practice" means the application or use of the specialized skills and knowledge, whether as part of a profession or otherwise.

For example, it is not the "profession of occupational therapy" itself that affects the health, safety, and welfare of the public. Rather, it is the risk of harms resulting from the unqualified practice of occupational therapy by the profession and others, including non-professionals and unlicensed practitioners.

Further, it is unclear that the "profession of occupational therapy" should to be the sole subject of state regulation and control, as state licensing schemes often involve regulation of much more than the profession itself, including OT and OTA students and applicants, education and test providers, health plans, health facilities, and other licensees authorized to practice occupational therapy. Therefore, the use of profession in place of practice may not achieve the goals of state regulation of occupational therapy.

IMPLEMENTATION ISSUES:

Definitions vs. Descriptions.

This bill revises the definition of "occupational therapy" by adding and amending the descriptions of various aspects of occupational therapy, including codifying the declaration that occupational therapy promotes mental health in people with, or who are



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at risk of, mental health disorders. In general, practice act definitions can help delineate specific services or actions that make up a practitioners scope of practice. In contrast, broad, open-ended descriptions may raise more questions. While the current practice act language is similarly descriptive, it is unclear how the changes may impact the scope of practice for OTs and OTAs.

Doctorate of Occupational Therapy (OTD) Degree.

At the CBOT's request, the last sunset review bill, AB 1706 (Committee on Business and Professions), Chapter 454, Statutes of 2017, authorized licensees who have earned an OTD to use the title "Dr." or "Doctor" under specified conditions, including requiring written communications to also clarify the type of doctoral degree by listing the degree after the licensee's name.

This bill deletes most of the new provisions, instead adding "O.T.D." to the list of protected titles. However, "O.T.D." is no longer spelled out. If this bill passes as written, it would be unclear from the practice act what "O.T.D." stands for. Further, this bill adds the title "O.T.D." to the list of titles that a licensed OT may use, but it does not specify which licensed OTs may use it.

Related Legislation

Current Related Legislation:

AB 2386 (Rubio), of the current Legislative Session, would require the Commission on Teacher Credentialing to, among other things, establish a specialization in occupational therapy or physical therapy services, as specified. STATUS: This bill is pending in the Assembly Committee on Education.

Prior Related Legislation:

AB 1706 (Low), Chapter 454, Statutes of 2017, among other things, extended the operation of the CBOT until 2022 and several other healing arts boards and made changes to the entities' practice acts intended to improve their efficiency and effectiveness, including authorizes licensees who have earned an OTD to use the title "Dr." or "Doctor" under specified conditions.

SB 1046 (Murray), Chapter 697, Statutes of 2000 repealed established the Occupational Therapy Practice Act and was substantially similar to SB 1287 (Murray) of 1999. SB 1287 (Murray) of 1999 would have established the Occupational Therapy Practice Act. NOTE: This bill was vetoed by Governor Davis because the anticipated revenue would have been insufficient to repay the loan in the allotted time.

AB 1100 (Egeland), Chapter 836, Statutes of 1977 established a title protection requirement, which prohibited the use of titles such as "occupational therapist" or "O.T." without meeting the requirements specified by regulations of the state Department of Health Services.



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY - GOVERNOR EDMUND G. BROWN JR.

Physical Therapy Board of California

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Fiscal Impact:

1. Ongoing administrative costs to the CBOT within the Department of Consumer Affairs, not likely to exceed \$100,000, for personnel to review attestations and verify compliance (all costs are Occupational Therapy Fund).
2. Uncertain, potentially significant ongoing enforcement costs if individuals are found in violation of new rules governing advanced practice.
3. Uncertain, potentially significant one-time regulatory and legal workload to respond to and interpret various definitional changes.

Support and Opposition

Support:

- American Occupational Therapy Association (Co-Sponsor)
- Occupational Therapy Association of California (Co-Sponsor)

Opposition:

None.

Action Required:

None.

AMENDED IN ASSEMBLY APRIL 5, 2018
AMENDED IN ASSEMBLY MARCH 23, 2018
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2221

Introduced by Assembly Member Bloom

February 12, 2018

An act to amend Sections 2570.1, 2570.2, 2570.3, 2570.6, 2570.7, 2570.10, 2570.14, 2570.18, 2570.185, 2570.20, 2570.28, 2570.29, and 2571 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2221, as amended, Bloom. Occupational therapy.

Existing law, the Occupational Therapy Practice Act, provides for the licensure and regulation of the practice of occupational therapy by the California Board of Occupational Therapy. Existing law defines the “practice of occupational therapy” and specifies that occupational therapy services encompass occupation therapy, assessment, treatment, education, and consultation with individuals referred for those services after diagnosis of a disease or disorder. Existing law prohibits a person from practicing occupational therapy without being licensed under the act and makes a violation of that prohibition a crime.

This bill would instead define “occupational therapy” for purposes of the act, and would make conforming changes. The bill would also eliminate the reference to a referral after diagnosis in the description of occupational therapy services. By expanding the scope of a crime, the bill would impose a state-mandated local program.

Existing law defines the term “occupational therapist” and specifies that only the occupational therapist is responsible for the occupational

therapy assessment of a client and the development of an occupational therapy plan of treatment.

This bill would eliminate that limitation and instead specify that the occupational therapist directs the evaluation process and develops the intervention plan.

Existing law requires the occupational therapy board to ensure proper supervision of occupational therapy assistants and aides and allows an occupational therapist to supervise no more than 2 occupational therapy assistants at any one time. Existing law provides for aides to be supervised by occupational therapists or occupational therapy assistants and defines the term “aide” for purposes of the act to mean an individual who provides supportive services to an occupational therapist.

This bill would increase the number of occupational therapy assistants an occupational therapist may supervise to 3. This bill would also revise the definition of “aide” to conform to the authority for an aide to also be supervised by an occupational therapy assistant. The bill would specify that the occupational therapist is responsible for the overall use and actions of the aide.

Existing law authorizes an occupational therapist to provide advanced practices if the therapist, among other things, has demonstrated to the board that he or she has met educational training and competency requirements.

This bill would require the therapist to attest to the board under penalty of perjury, rather than demonstrate to the satisfaction of the board, that he or she has met educational training and competency requirements. *The bill would authorize periodic compliance audits of attestations submitted to the board.* By expanding the crime of perjury, the bill would impose a state-mandated local program.

Existing law requires an occupational therapist providing hand therapy services or using physical agent modalities to demonstrate to the satisfaction of the board that he or she has completed post professional education and training in specified areas.

This bill would eliminate the post professional limitation.

Existing law requires an applicant for an occupational therapist license to, among other things, complete a specified educational program and pass a specified examination. Existing law requires the board to approve the examinations for licensure and also authorizes the board to adopt rules relating to professional conduct to carry out the purposes of the act. Existing law requires the curriculum for an educational program for occupational therapists to contain the content required or approved

by specified organizations, and specifies a list of subjects that must be included in the program.

This bill would delete that list of subjects. The bill would also ~~delete the requirement that~~ *authorize, rather than require*, the board to approve licensure examinations and would authorize the board to adopt rules necessary to effectuate the purpose of the act.

Existing law authorizes the board to establish and require the satisfactory completion of continuing competency requirements as a condition of renewal of a license.

The bill would instead require the board to do so, and would authorize only a portion of continuing competence requirements to be fulfilled through competency assessment activities performed in the context of a broader professional development plan. The bill would also provide a definition for the term “continuing competence.”

Existing law prohibits a person from using specified professional abbreviations and terms intended to represent that the person is authorized to practice occupational therapy or assist in the practice of occupational therapy unless the person is licensed to practice as an occupational therapist or occupational therapy assistant.

This bill would revise the list of abbreviations and terms that may not be used without a license. The bill would also delete provisions authorizing terms and abbreviations that may be used by a licensee who has earned a doctoral degree in occupational therapy or in a related area of practice or study.

The bill would replace references to “patient” with “client” throughout the act and would enact other related provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2570.1 of the Business and Professions
- 2 Code is amended to read:
- 3 2570.1. The Legislature finds and declares that the profession
- 4 of occupational therapy in California affects the public health,

1 safety, and welfare and there is a necessity for that profession to
2 be subject to regulation and control.

3 SEC. 2. Section 2570.2 of the Business and Professions Code
4 is amended to read:

5 2570.2. As used in this chapter, unless the context requires
6 otherwise:

7 (a) “Appropriate supervision of an aide” means that the
8 responsible occupational therapist or occupational therapy assistant
9 shall provide direct in-sight supervision when the aide is providing
10 delegated client-related tasks and shall be readily available at all
11 times to provide advice or instruction to the aide. The occupational
12 therapist or occupational therapy assistant is responsible for
13 documenting the client’s record concerning the delegated
14 client-related tasks performed by the aide.

15 (b) “Aide” means an individual who provides supportive services
16 to an occupational therapist or occupational therapy assistant and
17 who is trained by an occupational therapist or occupational therapy
18 assistant to perform, under appropriate supervision, delegated,
19 selected client and nonclient-related tasks for which the aide has
20 demonstrated competency. An occupational therapist or
21 occupational therapy assistant licensed pursuant to this chapter
22 may utilize the services of one aide engaged in client-related tasks
23 to assist the occupational therapist or occupational therapy assistant
24 in occupational therapy. The occupational therapist shall be
25 responsible for the overall use and actions of the aide.

26 (c) “Association” means the Occupational Therapy Association
27 of California or a similarly constituted organization representing
28 occupational therapists in this state.

29 (d) “Board” means the California Board of Occupational
30 Therapy.

31 (e) “Continuing competence” means a dynamic and
32 multidimensional process in which the occupational therapist or
33 occupational therapy assistant develops and maintains the
34 knowledge, performance skills, interpersonal abilities, critical
35 reasoning, and ethical reasoning skills necessary to perform current
36 and future roles and responsibilities within the profession.

37 (f) “Examination” means an entry level examination for
38 occupational therapists and occupational therapy assistants
39 administered by the National Board for Certification in

Occupational Therapy or by another nationally recognized credentialing body.

(g) “Good standing” means that the person has a current, valid license to practice occupational therapy or assist in the practice of occupational therapy and has not been disciplined by the recognized professional licensing or standard-setting body within five years prior to application or renewal of the person’s license.

(h) “Occupational therapist” means an individual who meets the minimum education requirements specified in Section 2570.6 and is licensed pursuant to the provisions of this chapter and whose license is in good standing as determined by the board to practice occupational therapy under this chapter. The occupational therapist directs the evaluation process and develops the intervention plan.

(i) “Occupational therapy assistant” means an individual who is licensed pursuant to the provisions of this chapter, who is in good standing as determined by the board, and based thereon, who is qualified to assist in the practice of occupational therapy under this chapter, and who works under the appropriate supervision of a licensed occupational therapist.

(j) “Occupational therapy services” means the services of an occupational therapist or the services of an occupational therapy assistant under the appropriate supervision of an occupational therapist.

(k) “Person” means an individual, partnership, unincorporated organization, or corporation.

(l) “Occupational therapy” means the therapeutic use of ~~occupations, including everyday life~~ *purposeful and meaningful goal-directed activities (occupations)* with individuals, groups, populations, or organizations, to support participation, performance, and function in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for habilitation, rehabilitation, and the promotion of health and wellness to those who have, or are at risk of developing, ~~an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction.~~ *health conditions that limit activity or cause participation restrictions*. Occupational therapy services encompass occupational therapy assessment, treatment, education, and consultation. Occupational therapy addresses the physical, cognitive, psychosocial, ~~sensory-perceptual,~~ *sensory-perception* and other aspects of performance in a variety

1 of contexts and environments to support engagement in occupations
2 that affect physical and mental health, well-being, and quality of
3 life. Occupational therapy assessment identifies performance
4 abilities and limitations that are necessary for self-maintenance,
5 learning, work, and other similar meaningful activities.
6 Occupational therapy treatment is focused on developing,
7 improving, or restoring functional daily living skills, compensating
8 for and preventing dysfunction, or minimizing disability. Through
9 engagement in everyday activities, occupational therapy promotes
10 mental health and supports functioning in people with, or at risk
11 of experiencing, a range of mental health disorders, including, but
12 not limited to, psychiatric, behavioral, and substance abuse
13 disorders. Occupational therapy techniques that are used for
14 treatment involve teaching activities of daily living (excluding
15 speech-language skills); designing or fabricating orthotic devices,
16 and applying or training in the use of assistive technology or
17 orthotic and prosthetic devices (excluding gait training).
18 Occupational therapy consultation provides expert advice to
19 enhance function and quality of life. Consultation or treatment
20 may involve modification of tasks or environments to allow an
21 individual to achieve maximum independence. Services are
22 provided individually, in groups, or populations.

23 (m) “Hand therapy” is the art and science of rehabilitation of
24 the hand, wrist, and forearm requiring comprehensive knowledge
25 of the upper extremity and specialized skills in assessment and
26 treatment to prevent dysfunction, restore function, or reverse the
27 advancement of pathology. This definition is not intended to
28 prevent an occupational therapist practicing hand therapy from
29 providing other occupational therapy services authorized under
30 this act in conjunction with hand therapy.

31 (n) “Physical agent modalities” means techniques that produce
32 a response in soft tissue through the use of light, water,
33 temperature, sound, or electricity. These techniques are used as
34 adjunctive methods in conjunction with, or in immediate
35 preparation for, occupational therapy services.

36 SEC. 3. Section 2570.3 of the Business and Professions Code
37 is amended to read:

38 2570.3. (a) No person shall provide occupational therapy or
39 hold himself or herself out as an occupational therapist or as being
40 able to provide occupational therapy, or to render occupational

1 therapy services in this state unless he or she is licensed as an
2 occupational therapist under the provisions of this chapter. No
3 person shall hold himself or herself out as an occupational therapy
4 assistant or work as an occupational therapy assistant under the
5 supervision of an occupational therapist unless he or she is licensed
6 as an occupational therapy assistant under the provisions of this
7 chapter.

8 (b) Only an individual may be licensed under this chapter.

9 (c) Nothing in this chapter shall be construed as authorizing an
10 occupational therapist to practice physical therapy, as defined in
11 Section 2620; speech-language pathology or audiology, as defined
12 in Section 2530.2; nursing, as defined in Section 2725; psychology,
13 as defined in Section 2903; or spinal manipulation or other forms
14 of healing, except as authorized by this section.

15 (d) An occupational therapist may provide advanced practices
16 if the therapist has the knowledge, skill, and ability to do so and
17 has attested, under penalty of perjury, to the board that he or she
18 has met educational training and competency requirements. *All*
19 *attestations submitted to the board may be subject to periodic*
20 *compliance audits, as determined by the board.* These advanced
21 practices include the following:

22 (1) Hand therapy.

23 (2) The use of physical agent modalities.

24 (3) Swallowing assessment, evaluation, or intervention.

25 (e) An occupational therapist providing hand therapy services
26 shall demonstrate to the satisfaction of the board that he or she has
27 completed education and training in all of the following areas:

28 (1) Anatomy of the upper extremity and how it is altered by
29 pathology.

30 (2) Histology as it relates to tissue healing and the effects of
31 immobilization and mobilization on connective tissue.

32 (3) Muscle, sensory, vascular, and connective tissue physiology.

33 (4) Kinesiology of the upper extremity, such as biomechanical
34 principles of pulleys, intrinsic and extrinsic muscle function,
35 internal forces of muscles, and the effects of external forces.

36 (5) The effects of temperature and electrical currents on nerve
37 and connective tissue.

38 (6) Surgical procedures of the upper extremity and their
39 postoperative course.

(f) An occupational therapist using physical agent modalities shall demonstrate to the satisfaction of the board that he or she has completed education and training in all of the following areas:

(1) Anatomy and physiology of muscle, sensory, vascular, and connective tissue in response to the application of physical agent modalities.

(2) Principles of chemistry and physics related to the selected modality.

(3) Physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of a modality.

(4) Guidelines for the preparation of the client, including education about the process and possible outcomes of treatment.

(5) Safety rules and precautions related to the selected modality.

(6) Methods for documenting immediate and long-term effects of treatment.

(7) Characteristics of the equipment, including safe operation, adjustment, indications of malfunction, and care.

(g) An occupational therapist in the process of achieving the education, training, and competency requirements established by the board for providing hand therapy or using physical agent modalities may practice these techniques under the supervision of an occupational therapist who has already met the requirements established by the board, a physical therapist, or a physician and surgeon.

(h) The board shall develop and adopt regulations regarding the educational training and competency requirements for advanced practices in collaboration with the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, and the Physical Therapy Board of California.

(i) Nothing in this chapter shall be construed as authorizing an occupational therapist to seek reimbursement for services other than for the practice of occupational therapy as defined in this chapter.

(j) "Supervision of an occupational therapy assistant" means that the responsible occupational therapist shall at all times be responsible for all occupational therapy services provided to the client. The occupational therapist who is responsible for appropriate supervision shall formulate and document in each client's record, with his or her signature, the goals and plan for that client, and shall make sure that the occupational therapy assistant assigned

1 to that client functions under appropriate supervision. As part of
2 the responsible occupational therapist's appropriate supervision,
3 he or she shall conduct at least weekly review and inspection of
4 all aspects of occupational therapy services by the occupational
5 therapy assistant.

6 (1) The supervising occupational therapist has the continuing
7 responsibility to follow the progress of each client, provide direct
8 care to the client, and to assure that the occupational therapy
9 assistant does not function autonomously.

10 (2) An occupational therapist shall not supervise more
11 occupational therapy assistants, at any one time, than can be
12 appropriately supervised in the opinion of the board. Three
13 occupational therapy assistants shall be the maximum number of
14 occupational therapy assistants supervised by an occupational
15 therapist at any one time, but the board may permit the supervision
16 of a greater number by an occupational therapist if, in the opinion
17 of the board, there would be adequate supervision and the public's
18 health and safety would be served. In no case shall the total number
19 of occupational therapy assistants exceed twice the number of
20 occupational therapists regularly employed by a facility at any one
21 time.

22 (k) The amendments to subdivisions (d), (e), (f), and (g) relating
23 to advanced practices, that are made by the act adding this
24 subdivision, shall become operative no later than January 1, 2004,
25 or on the date the board adopts regulations pursuant to subdivision
26 (h), whichever first occurs.

27 SEC. 4. Section 2570.6 of the Business and Professions Code
28 is amended to read:

29 2570.6. An applicant applying for a license as an occupational
30 therapist or as an occupational therapy assistant shall file with the
31 board a written application provided by the board, showing to the
32 satisfaction of the board that he or she meets all of the following
33 requirements:

34 (a) That the applicant is in good standing and has not committed
35 acts or crimes constituting grounds for denial of a license under
36 Section 480.

37 (b) (1) That the applicant has successfully completed the
38 academic requirements of an educational program for occupational
39 therapists or occupational therapy assistants that is approved by
40 the board and accredited by the American Occupational Therapy

1 Association's Accreditation Council for Occupational Therapy
2 Education (ACOTE), or accredited or approved by the American
3 Occupational Therapy Association's (AOTA) predecessor
4 organization, or approved by AOTA's Career Mobility Program.

5 (2) The curriculum of an educational program for occupational
6 therapists shall contain the content required by the ACOTE
7 accreditation standards, or as approved by AOTA's predecessor
8 organization, or as approved by AOTA's Career Mobility Program.

9 (c) (1) For an applicant who is a graduate of an occupational
10 therapy or occupational therapy assistant educational program who
11 is unable to provide evidence of having met the requirements of
12 paragraph (2) of subdivision (b), he or she may demonstrate
13 passage of the examination administered by the National Board
14 for Certification in Occupational Therapy, the American
15 Occupational Therapy Certification Board, or the American
16 Occupational Therapy Association, as evidence of having
17 successfully satisfied the requirements of paragraph (2) of
18 subdivision (b).

19 (2) For an applicant who completed AOTA's Career Mobility
20 Program, he or she shall demonstrate participation in the program
21 and passage of the examination administered by the National Board
22 for Certification in Occupational Therapy, the American
23 Occupational Therapy Certification Board, or the American
24 Occupational Therapy Association, as evidence of having
25 successfully satisfied the requirements of paragraphs (1) and (2)
26 of subdivision (b).

27 (d) That the applicant has successfully completed a period of
28 supervised fieldwork experience approved by the board and
29 arranged by a recognized educational institution where he or she
30 met the academic requirements of subdivision (b) or (c) or arranged
31 by a nationally recognized professional association. The fieldwork
32 requirements for applicants applying for licensure as an
33 occupational therapist or certification as an occupational therapy
34 assistant shall be consistent with the requirements of the ACOTE
35 accreditation standards, or AOTA's predecessor organization, or
36 AOTA's Career Mobility Program, that were in effect when the
37 applicant completed his or her educational program.

38 (e) That the applicant has passed an examination as provided
39 in Section 2570.7.

1 (f) That the applicant, at the time of application, is a person over
2 18 years of age, is not addicted to alcohol or any controlled
3 substance, and has not committed acts or crimes constituting
4 grounds for denial of licensure under Section 480.

5 SEC. 5. Section 2570.7 of the Business and Professions Code
6 is amended to read:

7 2570.7. (a) An applicant who has satisfied the requirements
8 of Section 2570.6 may apply for examination for licensure in a
9 manner prescribed by the board. Subject to the provisions of this
10 chapter, an applicant who fails an examination may apply for
11 reexamination.

12 (b) Each applicant for licensure shall successfully complete the
13 entry level examination for occupational therapists or occupational
14 therapy assistants, such as the examination administered by the
15 National Board for Certification in Occupational Therapy, the
16 American Occupational Therapy Certification Board, or the
17 American Occupational Therapy Association. The examination
18 shall be appropriately validated. Each applicant shall be examined
19 by written examination to test his or her knowledge of the basic
20 and clinical sciences relating to occupational therapy, occupational
21 therapy techniques and methods, and any other subjects that the
22 board may require to determine the applicant's fitness to practice
23 under this chapter.

24 (c) Applicants for licensure shall be examined at a time and
25 place and under that supervision as the board may require.

26 SEC. 6. Section 2570.10 of the Business and Professions Code
27 is amended to read:

28 2570.10. (a) Any license issued under this chapter shall be
29 subject to renewal as prescribed by the board and shall expire
30 unless renewed in that manner. The board may provide for the late
31 renewal of a license as provided for in Section 163.5.

32 (b) In addition to any other qualifications and requirements for
33 licensure renewal, the board shall by rule establish and require the
34 satisfactory completion of continuing competence requirements
35 as a condition of renewal of a license. Only a portion of continuing
36 competence requirements, as determined by the board to protect
37 public health, safety, and welfare, may be fulfilled through
38 competency assessment activities performed within the context of
39 a broader professional development plan.

1 SEC. 7. Section 2570.14 of the Business and Professions Code
2 is amended to read:

3 2570.14. An initial applicant who has not been actively engaged
4 in the practice of occupational therapy within the past five years
5 shall provide to the board, in addition to the requirements for
6 licensure under Section 2570.6, any of the following:

7 (a) Evidence of continued competency as referred to in
8 subdivision (b) of Section 2570.10 for the previous two-year
9 period.

10 (b) Evidence of having completed the entry-level examination
11 as described in subdivision (b) of Section 2570.7 within the
12 previous two-year period.

13 SEC. 8. Section 2570.18 of the Business and Professions Code
14 is amended to read:

15 2570.18. (a) A person shall not represent to the public by title,
16 education, or background, or by description of services, methods,
17 or procedures, or otherwise, that the person is authorized to practice
18 occupational therapy in this state, unless authorized to practice
19 occupational therapy under this chapter.

20 (b) Unless licensed to practice as an occupational therapist under
21 this chapter, a person may not use the professional abbreviations
22 “O.T.,” “~~O.D.T.~~,” “O.T.D.,” “Occupational Therapist,” or any
23 other words, letters, or symbols with the intent to represent that
24 the person practices or is authorized to practice occupational
25 therapy.

26 (c) Unless licensed to assist in the practice of occupational
27 therapy as an occupational therapy assistant under this chapter, a
28 person may not use the professional abbreviations “O.T.A.,”
29 “O.T.A/L.,” or “Occupational Therapy Assistant,” “Licensed
30 Occupational Therapy Assistant,” or any other words, letters, or
31 symbols, with the intent to represent that the person assists in, or
32 is authorized to assist in, the practice of occupational therapy as
33 an occupational therapy assistant.

34 (d) The unauthorized practice or representation as an
35 occupational therapist or as an occupational therapy assistant
36 constitutes an unfair business practice under Section 17200 and
37 false and misleading advertising under Section 17500.

38 SEC. 9. Section 2570.185 of the Business and Professions
39 Code is amended to read:

1 2570.185. (a) An occupational therapist shall document his
2 or her evaluation, goals, treatment plan, and summary of treatment
3 in the client record.

4 (b) An occupational therapy assistant shall document the services
5 provided in the client record.

6 (c) Occupational therapists and occupational therapy assistants
7 shall document and sign the client record legibly.

8 (d) Client records shall be maintained for a period of no less
9 than seven years following the discharge of the client, except that
10 the records of unemancipated minors shall be maintained at least
11 one year after the minor has reached the age of 18 years, and not
12 in any case less than seven years.

13 SEC. 10. Section 2570.20 of the Business and Professions
14 Code is amended to read:

15 2570.20. (a) The board shall administer, coordinate, and
16 enforce the provisions of this ~~chapter~~ and *chapter*, evaluate the
17 qualifications for ~~licensure~~ *licensure*, and may approve the
18 *examinations for licensure* under this chapter.

19 (b) The board shall adopt rules in accordance with the
20 Administrative Procedure Act necessary to effectuate the purpose
21 of this chapter for persons holding a license to provide occupational
22 therapy or to assist in providing occupational therapy in this state.

23 (c) Proceedings under this chapter shall be conducted in
24 accordance with Chapter 3.5 (commencing with Section 11340)
25 of Part 1 of Division 3 of Title 2 of the Government Code.

26 SEC. 11. Section 2570.28 of the Business and Professions
27 Code is amended to read:

28 2570.28. The board may deny or discipline a licensee for any
29 of the following:

30 (a) Unprofessional conduct, including, but not limited to, the
31 following:

32 (1) Incompetence or gross negligence in carrying out usual
33 occupational therapy functions.

34 (2) Repeated similar negligent acts in carrying out usual
35 occupational therapy functions.

36 (3) A conviction for practicing medicine without a license in
37 violation of Chapter 5 (commencing with Section 2000), in which
38 event a certified copy of the record of conviction shall be
39 conclusive evidence thereof.

1 (4) The use of advertising relating to occupational therapy that
2 violates Section 17500.

3 (5) Denial of licensure, revocation, suspension, restriction, or
4 any other disciplinary action against a licensee by another state or
5 territory of the United States, by any other government agency, or
6 by another California health care professional licensing board. A
7 certified copy of the decision, order, or judgment shall be
8 conclusive evidence thereof.

9 (b) Procuring a license by fraud, misrepresentation, or mistake.

10 (c) Violating or attempting to violate, directly or indirectly, or
11 assisting in or abetting the violation of, or conspiring to violate,
12 any provision or term of this chapter or any regulation adopted
13 pursuant to this chapter.

14 (d) Making or giving any false statement or information in
15 connection with the application for issuance or renewal of a license.

16 (e) Conviction of a crime or of any offense substantially related
17 to the qualifications, functions, or duties of a licensee, in which
18 event the record of the conviction shall be conclusive evidence
19 thereof.

20 (f) Impersonating an applicant or acting as proxy for an applicant
21 in any examination required under this chapter for the issuance of
22 a license.

23 (g) Impersonating a licensed practitioner, or permitting or
24 allowing another unlicensed person to use a license.

25 (h) Committing any fraudulent, dishonest, or corrupt act that is
26 substantially related to the qualifications, functions, or duties of a
27 licensee.

28 (i) Committing any act punishable as a sexually related crime,
29 if that act is substantially related to the qualifications, functions,
30 or duties of a licensee, in which event a certified copy of the record
31 of conviction shall be conclusive evidence thereof.

32 (j) Using excessive force upon or mistreating or abusing any
33 client. For the purposes of this subdivision, "excessive force"
34 means force clearly in excess of that which would normally be
35 applied in similar clinical circumstances.

36 (k) Falsifying or making grossly incorrect, grossly inconsistent,
37 or unintelligible entries in a client or hospital record or any other
38 record.

39 (l) Changing the prescription of a physician and surgeon or
40 falsifying verbal or written orders for treatment or a diagnostic

1 regime received, whether or not that action resulted in actual client
2 harm.

3 (m) Failing to maintain confidentiality of client medical
4 information, except as disclosure is otherwise permitted or required
5 by law.

6 (n) Delegating to an unlicensed employee or person a service
7 that requires the knowledge, skills, abilities, or judgment of a
8 licensee.

9 (o) Committing any act that would be grounds for denial of a
10 license under Section 480.

11 (p) Except for good cause, the knowing failure to protect clients
12 by failing to follow infection control guidelines of the board,
13 thereby risking transmission of infectious diseases from licensee
14 to client, from client to client, or from client to licensee.

15 (1) In administering this subdivision, the board shall consider
16 referencing the standards, regulations, and guidelines of the State
17 Department of Public Health developed pursuant to Section
18 1250.11 of the Health and Safety Code and the standards,
19 guidelines, and regulations pursuant to the California Occupational
20 Safety and Health Act of 1973 (Part 1 (commencing with Section
21 63001) of Division 5 of the Labor Code) for preventing the
22 transmission of HIV, hepatitis B, and other blood-borne pathogens
23 in health care settings. As necessary to encourage appropriate
24 consistency in the implementation of this subdivision, the board
25 shall consult with the Medical Board of California, the Board of
26 Podiatric Medicine, the Dental Board of California, the Board of
27 Registered Nursing, and the Board of Vocational Nursing and
28 Psychiatric Technicians.

29 (2) The board shall seek to ensure that licensees are informed
30 of their responsibility to minimize the risk of transmission of
31 infectious diseases from health care provider to client, from client
32 to client, and from client to health care provider, and are informed
33 of the most recent scientifically recognized safeguards for
34 minimizing the risks of transmission.

35 SEC. 12. Section 2570.29 of the Business and Professions
36 Code is amended to read:

37 2570.29. In addition to other acts constituting unprofessional
38 conduct within the meaning of this chapter, it is unprofessional
39 conduct for a person licensed under this chapter to do any of the
40 following:

1 (a) Obtain or possess in violation of law, or prescribe, or, except
2 as directed by a licensed physician and surgeon, dentist,
3 optometrist, or podiatrist, to administer to himself or herself, or
4 furnish or administer to another, any controlled substance as
5 defined in Division 10 (commencing with Section 11000) of the
6 Health and Safety Code or any dangerous drug or dangerous device
7 as defined in Section 4022.

8 (b) Use to an extent or in a manner dangerous or injurious to
9 himself or herself, to any other person, or to the public, or that
10 impairs his or her ability to conduct with safety to the public the
11 practice authorized by his or her license, of any of the following:

12 (1) A controlled substance as defined in Division 10
13 (commencing with Section 11000) of the Health and Safety Code.

14 (2) A dangerous drug or dangerous device as defined in Section
15 4022.

16 (3) Alcoholic beverages.

17 (c) Be convicted of a criminal offense involving the prescription,
18 consumption, or self-administration of any of the substances
19 described in subdivisions (a) and (b) of this section, or the
20 possession of, or falsification of a record pertaining to, the
21 substances described in subdivision (a) of this section, in which
22 event the record of the conviction is conclusive evidence thereof.

23 (d) Be committed or confined by a court of competent
24 jurisdiction for intemperate use of any of the substances described
25 in subdivisions (a) and (b) of this section, in which event the court
26 order of commitment or confinement is prima facie evidence of
27 the commitment or confinement.

28 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
29 unintelligible entries in any hospital or client record, or any other
30 record, pertaining to the substances described in subdivision (a)
31 of this section.

32 SEC. 13. Section 2571 of the Business and Professions Code
33 is amended to read:

34 2571. (a) An occupational therapist licensed pursuant to this
35 chapter and approved by the board in the use of physical agent
36 modalities may apply topical medications prescribed by the client's
37 physician and surgeon, certified nurse-midwife pursuant to Section
38 2746.51, nurse practitioner pursuant to Section 2836.1, or physician
39 assistant pursuant to Section 3502.1, if the licensee complies with
40 regulations adopted by the board pursuant to this section.

1 (b) The board shall adopt regulations implementing this section,
2 after meeting and conferring with the Medical Board of California,
3 the California State Board of Pharmacy, and the Physical Therapy
4 Board of California, specifying those topical medications applicable
5 to the practice of occupational therapy and protocols for their use.

6 (c) Nothing in this section shall be construed to authorize an
7 occupational therapist to prescribe medications.

8 SEC. 14. No reimbursement is required by this act pursuant
9 to Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

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AMENDED IN ASSEMBLY MAY 1, 2018

AMENDED IN ASSEMBLY APRIL 10, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2386

Introduced by Assembly Member Rubio

February 14, 2018

An act to add Section 44268.2 to the Education Code, relating to services credentialing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2386, as amended, Rubio. Services credentialing: services credential with a specialization in occupational therapy or physical therapy services.

Existing law requires the Commission on Teacher Credentialing to, among other things, establish professional standards, assessments, and examinations for entry and advancement in the education profession and to establish standards for the issuance and renewal of credentials, certificates, and permits. Existing law sets forth the minimum requirements for a services credential with a specialization in health and excludes services as an occupational therapist or physical therapist from the health services the holder of a services credential with a specialization in health is authorized to perform.

This bill would require the commission to convene a ~~workgroup to develop a proposed~~ *workgroup, as provided, to consider whether the development of a services credential with a specialization in occupational therapy or physical therapy services, as provided, and services is warranted and, if so warranted, to consider specified requirements for the credential.* The bill would require the workgroup to provide a report

on the proposed credential *its findings* to the Legislature, the Governor, and the Superintendent of Public Instruction on or before January 1, 2020.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44268.2 is added to the Education Code,
2 to read:

3 44268.2. (a) ~~(1)–The commission shall convene a workgroup,~~
4 ~~as provided in subdivision (c), to develop a proposed~~ *consider*
5 ~~whether the development of a~~ services credential with a
6 specialization in occupational therapy or physical therapy services.
7 ~~The workgroup shall provide a report on the proposed credential~~
8 ~~to the Legislature, the Governor, and the Superintendent on or~~
9 ~~before January 1, 2020; services is warranted.~~

10 ~~(2) The report described in paragraph (1) shall be submitted in~~
11 ~~compliance with Section 9795 of the Government Code.~~

12 ~~(b) In developing the proposed services credential with a~~
13 ~~specialization in occupational therapy or physical therapy services;~~
14 *If a determination is made that the credential is warranted,* the
15 workgroup shall consider all of the following:

16 (1) The minimum requirements for the credential.

17 (2) What experience may automatically qualify an occupational
18 therapist or physical therapist to earn the credential.

19 (3) Any additional specialized preparation necessary to qualify
20 for the credential.

21 (4) What options may be made available to occupational
22 therapists and physical therapists with respect to obtaining a
23 credential.

24 (c) The workgroup membership shall ~~include~~ *include, but not*
25 *be limited to*, all of the following:

26 (1) A representative from the Occupational Therapy Association
27 of California.

28 (2) A representative from the California Physical Therapy
29 Association.

30 (3) A representative from a labor union representing certificated
31 employees.

1 (4) A representative from a labor union representing classified
2 employees.

3 (5) A school administrator.

4 (6) At least two academic representatives from educational
5 institutions that have occupational therapy or physical therapy
6 degree programs.

7 (7) A representative from the department.

8 (8) A representative from a special education local plan area.

9 *(d) (1) The workgroup shall provide a report on its findings*
10 *pursuant to this section to the Legislature, the Governor, and the*
11 *Superintendent on or before January 1, 2020.*

12 *(2) The report described in paragraph (1) shall be submitted*
13 *in compliance with Section 9795 of the Government Code.*

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Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY - GOVERNOR EDMUND G. BROWN JR.

Physical Therapy Board of California

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Bill Analysis

Bill Number: AB 2423 **Version:** Amended 4/9/18
Author: Holden **Sponsor:** California Physical Therapy Association
Subject: Physical Therapists: **Status:** Senate. Pending Referral
Direct Access to
Services: Plan of
Care Approval

Adopted Position:
Support.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

1. Implements and supplements the federal IDEA law and establishes a state special education program for kindergarten and grades 1-12, administered by the California Department of Education and specified public agencies. (Education Code (EDC) §§ 56000-56865; California Code of Regulations (CCR), Title 5, §§ 3000-3100)
2. Defines an IEP as a written document for an individual with exceptional needs that is developed, reviewed, and revised in a meeting with an IEP team. (EDC § 56032)
3. Authorizes local special education programs to contract with licensed occupational therapists and physical therapists and requires the licensees to provide services based upon recommendation of the IEP team. (EDC § 56363; CCR, tit. 5, § 3051.6)
4. Establishes the Early Start Program under the California Early Intervention Services Act to provide early intervention services for toddlers and infants (0-3 years of age), including physical therapy, administered by the California Department of Developmental Services in collaboration with the California Department of Education. (EDC §§ 56425 - 56432; Government Code §§ 95000-95004; CCR, tit. 17, § 52000-52175)
5. Defines "individualized family service plan" (IFSP) as a written plan for providing early intervention services to infants or toddlers younger than three years of age and their families who have been determined eligible for early intervention services. (EDC § 56032; CCR, tit. 17, § 52000(b)(28))
6. Establishes the Physical Therapy Practice Act, which is enforced by the Physical Therapy Board of California (PTBC), to license and regulate the practice of physical therapists. (Business and Professions Code (BPC) § 2600 et seq.)



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7. Defines physical therapy as the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound massage, and active, passive, and restrictive exercise, and shall include physical therapy evaluation, treatment planning, instruction, and consultative services. (BPC § 2620)
8. Provides that the practice of physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions. (BPC § 2620)
9. Specifies that the use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy." (BPC § 2620)
10. Indicates that a physical therapy license does not authorize the diagnosis of disease. (BPC § 2620)
11. Provides that an applicant for a physical therapy license must be a graduate of a professional degree program of an accredited postsecondary institution approved by the PTB, and must complete academic coursework and a clinical internship in physical therapy. (BPC § 2650)
12. Permits a physical therapist to perform tissue penetration for the purpose of evaluating neuromuscular performance upon specified authorized of a physician and surgeon, but prohibits the physical therapist from developing or making diagnostic or prognostic interpretations from the data obtained. (BPC § 2620.5)
13. Authorizes a patient to access physical therapy treatment directly from a licensed physical therapist for up to 45 calendar days or 12 visits, whichever occurs first. After 45 days or 12 visits, the physical therapist must seek a doctor's signed approval of the physical therapist's plan of care. (BPC 2620.1 (a))
14. Requires that, if a physical therapist has reason to believe that the patient has signs or symptoms of a condition that requires treatment beyond the scope of practice of a physical therapist or the patient is not progressing toward documented treatment goals as demonstrated by objective, measurable, or functional improvement, the physical therapist must refer the patient to a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California or to a person licensed to practice dentistry, podiatric medicine, or chiropractic. (BPC § 2620.1(a)(1) 1
15. Exempts wellness physical therapy interventions from the 45-day or 12-visit direct access limitation. (BPC 2620.1 (b))



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This Bill

1. Exempts physical therapy services as part of an individualized education program (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA) from the direct access limitation that prohibits physical therapists from continuing treatment beyond 45 calendar days or 12 visits, whichever occurs first, without first receiving a physician's signed approval of the physical therapist's plan of care.

Purpose/Background

Purpose:

This bill is sponsored by the California Physical Therapy Association. According to the author, "[i]n 2013, AB 1000 (Wieckowski) gave Californians the right to directly seek treatment from physical therapists similar to what is allowed in many states. As a concession to concerns raised by medical interests, a 45-day/12-visit limit was included, which, once reached, requires a patient to see their physician before receiving further treatment. In schools, physical therapy services may be required as a condition of a student's Individualized Educational Program (IEP) as required by federal law. These plans are typically in effect for a year or more, and physical therapists will easily serve students throughout the year. This puts physical therapists at risk for violating AB 1000 while carrying out the demands of federal law and the students' IEPs. [This bill] provides a VERY narrow exception to the laws governing physical therapy services in California. It will allow students with an IEP to be served by physical therapists working in the schools without having to incur the extra cost and time delay of having to go see their physician."

Background:

According to the Physical Therapy Board of California (PTBC), physical therapists provide services to individuals to develop, maintain, and restore movement to maximize functional ability where movement and function are threatened by age, injury, disease, disorder, or other conditions or environmental factors. In California, a person may initiate physical therapy treatment directly from a licensed physical therapist without first obtaining a medical diagnosis, for up to 45 calendar days or 12 visits, whichever occurs first. If treatment is still needed beyond that time period, a physical therapist may not continue the treatment without receiving a licensed physician and surgeon's medical diagnosis and signed approval of the physical therapist's plan of care.

Currently, wellness physical therapy services are exempted from the referral requirement. Wellness physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement through lifestyle changes, including but not limited to, increased physical activity, with the goal of preventing injuries and/or diseases.



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Direct Access of Physical Therapy under IDEA.

Currently, children covered by the federal IDEA law are not specifically exempted from the direct access limitation under California law. This bill seeks to clarify that physical therapy services as part of an individualized education program under IDEA are not subject to the direct access limitation.

IDEA is a federal law that is implemented by states and public agencies to ensure early intervention, special education, and related services to eligible infants, toddlers, children, and youth with disabilities. The purpose behind IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, education, and independent living" (20 United States Code Section 1400 (d)).

Generally, there are two types of individualized programs under IDEA. IFSPs provide early intervention services for infants and toddlers (birth up to 36 months) with disabilities and their families under IDEA Part C. IEPs cover special education and related services for children and youth (ages three through 21) under IDEA Part B.

An IFSP or IEP may or may not involve a medical diagnosis. The services provided pursuant to an IFSP or IEP (such as physical therapy) are primarily habilitative, meaning they are meant to help students with exceptional needs more fully and effectively participate in educational programs. Medically necessary services provided pursuant to a medical diagnosis tend to be rehabilitative, meaning they are intended to address a specific health condition.

According to the sponsor, the 45-day or 12-visit limitation creates as a barrier to the students who do not have a medical diagnosis but can still benefit from physical therapy. While children that are covered by IDEA are entitled to receive appropriate services to meet their education needs, the current referral requirement under California law can delay a child's ability to receive proper medical treatment or equipment.

Related Legislation

Prior Related Legislation:

AB 1000 (Wieckowski), Chapter 620, Statutes of 2013 established the 45 day or 12 visit direct access limitation for physical therapy services.

SB 924 (Price) of 2011 would have, among other things, established a 30-day or 12-visit direct access limitation. NOTE: SB 924 died in the Senate Committee on Rules.



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AB 721 (Nava) of 2009 would have authorized patients to access physical therapy services directly without referral from a physician. NOTE: AB 721 failed passage in the Assembly Committee on Business, Professions, and Consumer Protection.

Fiscal Impact:

According to the Assembly Appropriations Committee, costs to the Physical Therapy Board within the Department of Consumer Affairs, including for a minor regulatory update, are expected to be minor and absorbable (Physical Therapy Fund).

Support and Opposition

Arguments in Support:

The California Physical Therapy Association (sponsor) writes in support, “[w]e have become aware that there are many cases in which children in schools are receiving services directed by an IEP, including physical therapy services, in which a “diagnosis” does not exist. The provisions of AB 1000 would effectively require services to stop until a visit with an M.D., D.O., or podiatrist was conducted. This conflicts with the mandate of the IEP and is often unnecessary, either because the child has already been seen by a physician or other provider who has not been willing to place a 'diagnosis' on the child at that point or because the services required are not due to a medical diagnosis but are necessary for the student to be successful in the educational environment. [This bill] resolves the unintended consequence in these instances by narrowly exempting from the 45-day/12-visit provision of AB 1000 those children who have a standing IEP in place that mandates physical therapy services but for whom an official diagnosis has not been made. It is important to note that such services provided are also still subject to [the requirement that physical therapists must refer patients if the physical therapist has reason to believe that the condition is beyond the physical therapists scope of practice]. [This bill] deftly addresses this issue and makes clear that the [BPC] does not otherwise impede education-related services that must be provided under both federal and state law.”

Support:

- California Physical Therapy Association (Sponsor)
- California Medical Association
- California Orthopedic Association

Arguments in Opposition

The California Medical Association (CMA) is opposed to this bill unless it is amended to (1) delete the reference to IFSPs and (2) clarify that the individual receiving services does not have a medical diagnosis. According to the CMA, this bill “seeks an exemption to the current direct access requirements for physical therapists that provide physical therapy services as part of an [IFSP or IEP]. An IFSP is a plan that guides and supports



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parents' efforts to boost their child's development up to age 3. An IEP is a plan for special education and related services for children ages 3 to 21.

Both types of plans require a team-based approach that may include parents, teachers, a school district representative, the student, and, if appropriate, physicians and other health care practitioners, such as physical therapists. However, while the main goal of an IEP is to develop a plan that optimizes the child's educational opportunities, the primary goal of an IFSP is to assess the physical, cognitive, communication, social and emotional development and the vision, hearing and overall health of children with disabilities under 4 years of age. Physical therapists lack the appropriate training to safely provide physical therapy services to toddlers without the child having a medical diagnosis from a physician and surgeon."

Opposition:

- California Medical Association

Action Required:

None.

AMENDED IN ASSEMBLY APRIL 9, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2423

Introduced by Assembly Member Holden

February 14, 2018

An act to amend Section 2620.1 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2423, as amended, Holden. Physical therapists: direct access to services: plan of care approval.

The Physical Therapy Practice Act creates the Physical Therapy Board of California and makes it responsible for the licensure and regulation of physical therapists. The act makes it a crime to violate any of its provisions.

The act authorizes a patient to access physical therapy treatment directly from a licensed physical therapist if the treatment is within the scope of practice of physical therapists and prescribed conditions are met, including a treatment limit prohibiting the physical therapist from continuing treatment beyond 45 calendar days or 12 visits, whichever occurs first, without receiving specified doctor approval of the physical therapist's plan of care. The act exempts from that plan of care approval condition for continuing treatment the provision of certain wellness physical therapy services to a patient.

This bill would also exempt from that condition the provision of physical therapy services as part of an ~~individualized family service plan or an individualized education plan pursuant to specified state statutes and the federal Individuals with Disabilities Education Act.~~ *Act to an individual who does not have a medical diagnosis.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2620.1 of the Business and Professions
2 Code is amended to read:
3 2620.1. (a) In addition to receiving those services authorized
4 by Section 2620, a person may initiate physical therapy treatment
5 directly from a licensed physical therapist if the treatment is within
6 the scope of practice of physical therapists, as defined in Section
7 2620, and all of the following conditions are met:
8 (1) If, at any time, the physical therapist has reason to believe
9 that the patient has signs or symptoms of a condition that requires
10 treatment beyond the scope of practice of a physical therapist or
11 the patient is not progressing toward documented treatment goals
12 as demonstrated by objective, measurable, or functional
13 improvement, the physical therapist shall refer the patient to a
14 person holding a physician and surgeon's certificate issued by the
15 Medical Board of California or by the Osteopathic Medical Board
16 of California or to a person licensed to practice dentistry, podiatric
17 medicine, or chiropractic.
18 (2) The physical therapist shall comply with Section 2633, and
19 shall disclose to the patient any financial interest he or she has in
20 treating the patient and, if working in a physical therapy
21 corporation, shall comply with Article 6 (commencing with Section
22 650) of Chapter 1.
23 (3) With the patient's written authorization, the physical
24 therapist shall notify the patient's physician and surgeon, if any,
25 that the physical therapist is treating the patient.
26 (4) The physical therapist shall not continue treating the patient
27 beyond 45 calendar days or 12 visits, whichever occurs first,
28 without receiving, from a person holding a physician and surgeon's
29 certificate from the Medical Board of California or the Osteopathic
30 Medical Board of California or from a person holding a certificate
31 to practice podiatric medicine from the California Board of
32 Podiatric Medicine and acting within his or her scope of practice,
33 a dated signature on the physical therapist's plan of care indicating
34 approval of the physical therapist's plan of care. Approval of the
35 physical therapist's plan of care shall include an in-person patient

1 examination and evaluation of the patient's condition and, if
2 indicated, testing by the physician and surgeon or podiatrist.

3 (b) The conditions in paragraph (4) of subdivision (a) do not
4 apply to a physical therapist under either of the following
5 circumstances:

6 (1) When he or she is only providing wellness physical therapy
7 services to a patient as described in subdivision (a) of Section
8 2620.

9 (2) ~~When Pursuant to Section 56363 of the Education Code or~~
10 ~~Section 7572 of the Government Code, when he or she is providing~~
11 ~~physical therapy services as part of an individualized family service~~
12 ~~plan or an individualized education plan pursuant to the federal~~
13 ~~Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400~~
14 ~~et seq.) and the individual receiving those services does not have~~
15 ~~a medical diagnosis.~~

16 (c) (1) This section does not expand or modify the scope of
17 practice for physical therapists set forth in Section 2620, including
18 the prohibition on a physical therapist diagnosing a disease.

19 (2) This section does not restrict or alter the scope of practice
20 of any other health care professional.

21 (d) Nothing in this section shall be construed to require a health
22 care service plan, insurer, workers' compensation insurance plan,
23 employer, or state program to provide coverage for direct access
24 to treatment by a physical therapist.

25 (e) When a person initiates physical therapy treatment services
26 directly, pursuant to this section, the physical therapist shall not
27 perform physical therapy treatment services without first providing
28 the following notice to the patient, orally and in writing, in at least
29 14-point type and signed by the patient:

30
31 "Direct Physical Therapy Treatment Services
32

33 You are receiving direct physical therapy treatment services
34 from an individual who is a physical therapist licensed by the
35 Physical Therapy Board of California.

36 Under California law, you may continue to receive direct
37 physical therapy treatment services for a period of up to 45 calendar
38 days or 12 visits, whichever occurs first, after which time a physical
39 therapist may continue providing you with physical therapy
40 treatment services only after receiving, from a person holding a

1 physician and surgeon's certificate issued by the Medical Board
2 of California or by the Osteopathic Medical Board of California,
3 or from a person holding a certificate to practice podiatric medicine
4 from the California Board of Podiatric Medicine and acting within
5 his or her scope of practice, a dated signature on the physical
6 therapist's plan of care indicating approval of the physical
7 therapist's plan of care and that an in-person patient examination
8 and evaluation was conducted by the physician and surgeon or
9 podiatrist.

10 _____
11 Patient's Signature/Date"
12

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Physical Therapy Board of California

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May 3, 2018

The Honorable Chris Holden
California State Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0041

Re: AB 2423 (Holden) Physical Therapists: Direct Access to Services: Plan of Care Approval

The Physical Therapy Board of California (Board), at its March 2018 meeting, adopted a Support Unless Amended position on AB 2423, specifically supporting that children under an Individualized Education Plan (IEP) in California schools can continue to receive uninterrupted physical therapy services as part of their IEP and consistent with federal law.

This bill would exempt patients receiving physical therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA) from a treatment limit prohibiting the physical therapist from continuing treatment beyond 45 calendar days or 12 visits.

The Board is mandated by Business and Professions Code Section 2602.1 that the Board's highest priority is to protect the public. The Board recognizes that children with disabilities are part of our most vulnerable population; therefore, the Board is in Support of AB 2423 Unless Amended.

Thank you on behalf of the Board for your thoughtful consideration of this request. If additional information is needed, please feel free to contact the Board's Legislative Analyst, Brooke Arneson at (916) 561-8260.

Sincerely,

Alicia Rabena-Amen
President, Physical Therapy Board of California

cc: Dennis Cuevas-Romero, Deputy Director, Division of Legislative Affairs, Department of Consumer Affairs
Diana Vu, Legislative Analyst, Department of Consumer Affairs

AMENDED IN ASSEMBLY APRIL 17, 2018

AMENDED IN ASSEMBLY APRIL 2, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 3013

**Introduced by Assembly Member Chu
(Coauthor: Assembly Member Limón)**

February 16, 2018

An act to amend Section 4905 of, and to add Section 4828.5 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 3013, as amended, Chu. Veterinary medicine: animal physical rehabilitation.

Existing law, the Physical Therapy Practice Act, provides for the licensure and regulation of physical therapists by the Physical Therapy Board of California, which is within the Department of Consumer Affairs, and defines physical therapy as the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise.

Existing law, the Veterinary Medicine Practice Act, provides for the licensure and regulation of veterinarians and the practice of veterinary medicine by the Veterinary Medical Board, which is within the Department of Consumer Affairs. That act makes it unlawful for any person to practice veterinary medicine in this state without a license and provides that the practice of veterinary medicine includes, among

other things, the treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal.

This bill would authorize a licensed physical therapist with a certificate in animal physical rehabilitation to provide animal physical rehabilitation to an animal if certain requirements are met, including that the animal physical rehabilitation is performed ~~on a veterinary premise registered with the Veterinary Medical Board, in an animal physical rehabilitation facility registered with the Veterinary Medical Board, or in a mobile or range setting~~; *in certain settings and under the supervision of a supervising veterinarian*. The bill would authorize ~~unlicensed assistants to perform an animal physical rehabilitation assistant to assist with delegated~~ animal physical rehabilitation tasks under the direct supervision of a licensed physical therapist with a certificate in animal physical rehabilitation. The bill would define an “animal physical rehabilitation facility” and would require an animal physical rehabilitation facility to register with the Veterinary Medical Board and pay specified registration fees; *if certain conditions are met*. The bill would require the Veterinary Medical Board to create an application form and determine the application process for the certificate. The bill would require the Veterinary Medical Board and the Physical Therapy Board of California, in cooperation, to determine the qualifications necessary for a physical therapist to receive a certificate issued by the Veterinary Medical Board, as provided, and would authorize the Veterinary Medical Board to charge a fee for issuance and renewal of a certificate. The bill would provide that a physical therapist with a certificate in animal physical rehabilitation *or an animal physical rehabilitation assistant* is solely liable for any *delegated* animal physical rehabilitation tasks provided under ~~the certificate~~; *a direct order*. The bill would authorize the Veterinary Medical Board to discipline a physical therapist with a certificate in animal physical rehabilitation. *The bill would also define various terms for these purposes*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4828.5 is added to the Business and
- 2 Professions Code, to read:

1 4828.5. (a) ~~Notwithstanding~~ For purposes of this section, the
2 following definitions shall apply:

3 (1) “Animal physical rehabilitation“ means the treatment of
4 injury or illness to address pain and improve function by means
5 of physical or corrective treatment, as defined under Section 2620.
6 Animal physical rehabilitation does not include relaxation,
7 recreational, or wellness modalities, including, but not limited to,
8 massage, athletic training, or exercise.

9 (2) “Animal physical rehabilitation assistant” means an
10 unlicensed person who is not a licensed veterinarian, registered
11 veterinarian, or supervised physical therapist and who assists a
12 supervised physical therapist with delegated animal physical
13 rehabilitation tasks pursuant to this section.

14 (3) “Animal physical rehabilitation facility” means a facility
15 where a supervised physical therapist performs delegated animal
16 physical rehabilitation tasks on an animal patient.

17 (4) “Delegated animal rehabilitation task” means animal
18 physical rehabilitation treatments, functions, or services delegated
19 to a supervised physical therapist or animal physical rehabilitation
20 assistant by a supervising veterinarian under direct orders.

21 (5) “Direct order“ means oral or written instruction from a
22 supervising veterinarian authorizing physical rehabilitation of an
23 animal patient, including, but not limited to, communication and
24 safety protocols or procedures specific to the animal patient,
25 consistent with standards of good veterinary medical practice, and
26 the particular delegated animal physical rehabilitation task.

27 (6) “Direct supervision” means all of the following:

28 (A) The supervising veterinarian is physically present at the
29 location where delegated animal rehabilitation tasks are to be
30 performed and is quickly and easily available.

31 (B) For purposes of supervision of animal physical rehabilitation
32 assistants, the supervised physical therapist is physically present
33 at the location where delegated animal rehabilitation tasks are to
34 be performed and is available as specified by the supervising
35 veterinarian.

36 (C) The animal has been examined by the supervising
37 veterinarian within the period of time consistent with standards
38 of good veterinary medical practice and the particular delegated
39 animal physical rehabilitation task.

40 (7) “Indirect supervision” means both of the following:

1 (A) *Determining the competency of a supervised physical*
2 *therapist to perform delegated animal physical rehabilitation tasks*
3 *and supervise an animal physical rehabilitation assistant.*

4 (B) *The animal has been examined by the supervising*
5 *veterinarian within the period of time consistent with standards*
6 *of good veterinary medical practice and the particular delegated*
7 *animal physical rehabilitation task.*

8 (8) *“Supervised physical therapist“ means a physical therapist*
9 *licensed under Chapter 5.7 (commencing with Section 2600) with*
10 *a certificate in animal physical rehabilitation issued by the board*
11 *who works under a supervising veterinarian pursuant to this*
12 *section.*

13 (9) *“Supervising veterinarian“ means a veterinarian licensed*
14 *pursuant to this chapter who is responsible for all of the following:*

15 (A) *Determining the competency of a supervised physical*
16 *therapist to perform delegated animal physical rehabilitation tasks*
17 *and supervise an animal physical rehabilitation assistant.*

18 (B) *Determining the competency of an animal physical*
19 *rehabilitation assistant to perform delegated animal physical*
20 *rehabilitation tasks under direct supervision of the supervised*
21 *physical therapist.*

22 (C) *Determining the appropriate degree of supervision of a*
23 *supervised physical therapist or an animal physical rehabilitation*
24 *assistant necessary for the performance of the particular delegated*
25 *animal physical rehabilitation task consistent with standards of*
26 *good veterinary medical practice and the particular delegated*
27 *animal physical rehabilitation task.*

28 (D) *Making all decisions relating to the diagnosis, treatment,*
29 *management, and future disposition of the animal patient.*

30 (E) *Examining the animal patient prior to authorizing a*
31 *supervised physical therapist or animal physical rehabilitation*
32 *assistant to perform a delegated animal physical rehabilitation*
33 *task. The examination of the animal patient shall be conducted*
34 *within the period of time consistent with standards of good*
35 *veterinary medical practice and the particular delegated animal*
36 *physical rehabilitation task.*

37 (10) *“Supervision“ or “degree of supervision“ means either*
38 *direct supervision or indirect supervision.*

39 (b) *Notwithstanding any other law, a supervised physical*
40 *therapist licensed under Chapter 5.7 (commencing with Section*

2600) with a certificate in animal physical rehabilitation issued by the board may provide animal physical rehabilitation to an animal if all of the following requirements are met:

(1) The *supervised* physical therapist is working under the indirect supervision of a licensed *supervising* veterinarian who has an established veterinarian-client-patient relationship with the animal, the veterinarian makes a referral to the physical therapist with a certificate in animal physical rehabilitation, and the veterinarian is available for immediate consultation by telephone or other electronic means if immediate veterinary medical care is necessary. *animal.*

~~(2) Unlicensed assistants may perform animal physical rehabilitation tasks under the direct supervision of a licensed physical therapist with a certificate in animal physical rehabilitation pursuant to this chapter.~~

(2) The degree of supervision is consistent with standards of good veterinary medical practice and the particular delegated animal physical rehabilitation task, as determined by the supervising veterinarian.

(3) The *delegated* animal physical rehabilitation task is performed on a veterinary premise registered with the board, in an animal physical rehabilitation facility registered with the board, or in a mobile or range setting.

(4) The *supervised* physical therapist ~~applies applied~~ to the board, on an application form approved by the board, *for a certificate in animal physical rehabilitation, received that certificate from the board, and pays paid* the fee for a certificate in animal physical rehabilitation that certificate described in Section 4905.

(c) An animal physical rehabilitation assistant may assist with delegated animal physical rehabilitation tasks if both of the following requirements are met:

(1) The animal physical rehabilitation assistant is working under the direct supervision of a supervised physical therapist in compliance with subdivision (b) of this section.

(2) The unlicensed assistant is working under the degree of supervision consistent with standards of good veterinary medical practice and the particular delegated animal physical rehabilitation task, as determined by the supervised physical therapist's supervising veterinarian.

(d) Unless specifically authorized by this section, a supervised physical therapist or animal physical rehabilitation assistant shall not perform any activity that represents the practice of veterinary medicine or requires the knowledge, skill, and training of a licensed veterinarian or registered veterinary technician, including the following:

- (1) Surgery.
- (2) Diagnosis and prognosis of animal diseases.
- (3) Prescription of drugs, medicines, or appliances.
- (4) Anesthesia.
- (5) Application of casts or splints, except temporary cast molding for purposes of fitting custom or prefabricated orthotics or prosthetics if authorized by a supervising veterinarian.
- (6) Dental extraction.
- (7) Suture.
- (8) Administration of controlled substances.
- (9) Any other veterinary medicine function, tasks, or activities not specifically authorized by a supervising veterinarian as a delegated animal rehabilitation task.

~~(b)~~

(e) (1) An animal physical rehabilitation facility shall register with the board, on a form approved by the board, and pay the registration fee described in Section 4905.

(2) A ~~licensed supervised physical therapist with a certificate in animal physical rehabilitation~~ may register an animal rehabilitation facility with the board.

(3) The board may inspect an animal rehabilitation facility for safety and compliance with this chapter.

~~(e)~~

(f) (1) The board and the Physical Therapy Board of California, in cooperation, shall determine what qualifications are necessary for a physical therapist licensed under Chapter 5.7 (commencing with Section 2600) to receive a certificate in animal physical rehabilitation issued by the board. When making this determination, the board and the Physical Therapy Board of California shall ensure that the qualifications provide for safe and efficacious treatment of an animal and are consistent with the Veterinary Medical Board's Animal Rehabilitation Task Force findings and approved motions.

(2) The board shall create the application form and determine the application process for the certificate.

~~(d)~~

(g) A certificate shall expire two years after the date of issuance and may be ~~renewed~~; *renewed in a manner approved by the board and consistent with Article 5 (commencing with Section 4900).*

~~(e)~~

~~(h) A supervised physical therapist with a certificate in animal physical rehabilitation or an animal physical rehabilitation assistant shall be solely liable for any delegated animal physical rehabilitation provided under the certificate tasks and the veterinarian that referred the animal for animal physical rehabilitation shall not be liable for any animal physical rehabilitation provided by the physical therapist.~~ *supervised physical therapist or animal physical rehabilitation assistant.*

~~(f)~~

(i) Consistent with this chapter, the board shall have the authority to discipline a ~~supervised physical therapist with a certificate in animal physical rehabilitation~~; *therapist, including, but not limited to, revocation of the supervised physical therapist's certificate in animal physical rehabilitation.*

~~(g) For purposes of this chapter, "animal physical rehabilitation facility" means a facility where a licensed physical therapist with a certificate in animal physical rehabilitation performs animal physical rehabilitation on an animal.~~

(j) *Failure to comply with the supervision requirements in this section shall be deemed unprofessional conduct.*

(k) *The board shall report final disciplinary actions against a supervised physical therapist pursuant to subdivision (i) to the Physical Therapy Board of California.*

SEC. 2. Section 4905 of the Business and Professions Code is amended to read:

4905. The following fees shall be collected by the board and shall be credited to the Veterinary Medical Board Contingent Fund:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars (\$350).

(b) The fee for the California state board examination shall be set by the board in an amount it determines is reasonably necessary

1 to provide sufficient funds to carry out the purpose of this chapter,
2 not to exceed three hundred fifty dollars (\$350).

3 (c) The fee for the Veterinary Medicine Practice Act
4 examination shall be set by the board in an amount it determines
5 reasonably necessary to provide sufficient funds to carry out the
6 purpose of this chapter, not to exceed one hundred dollars (\$100).

7 (d) The initial license fee shall be set by the board not to exceed
8 five hundred dollars (\$500) except that, if the license is issued less
9 than one year before the date on which it will expire, then the fee
10 shall be set by the board not to exceed two hundred fifty dollars
11 (\$250). The board may, by appropriate regulation, provide for the
12 waiver or refund of the initial license fee where the license is issued
13 less than 45 days before the date on which it will expire.

14 (e) The renewal fee shall be set by the board for each biennial
15 renewal period in an amount it determines is reasonably necessary
16 to provide sufficient funds to carry out the purpose of this chapter,
17 not to exceed five hundred dollars (\$500).

18 (f) The temporary license fee shall be set by the board in an
19 amount it determines is reasonably necessary to provide sufficient
20 funds to carry out the purpose of this chapter, not to exceed two
21 hundred fifty dollars (\$250).

22 (g) The fee for filing an application for a university license shall
23 be one hundred twenty-five dollars (\$125), which may be revised
24 by the board in regulation but shall not exceed three hundred fifty
25 dollars (\$350).

26 (h) The initial license fee for a university license shall be two
27 hundred ninety dollars (\$290), which may be revised by the board
28 in regulation but shall not exceed five hundred dollars (\$500).

29 (i) The biennial renewal fee for a university license shall be two
30 hundred ninety dollars (\$290), which may be revised by the board
31 in regulation but shall not exceed five hundred dollars (\$500).

32 (j) The delinquency fee shall be set by the board, not to exceed
33 fifty dollars (\$50).

34 (k) The fee for issuance of a duplicate license is twenty-five
35 dollars (\$25).

36 (l) Any charge made for duplication or other services shall be
37 set at the cost of rendering the service, except as specified in
38 subdivision (k).

39 (m) The fee for failure to report a change in the mailing address
40 is twenty-five dollars (\$25).

1 (n) The initial and annual renewal fees for registration of
2 veterinary premises shall be set by the board in an amount not to
3 exceed four hundred dollars (\$400) annually.

4 (o) If the money transferred from the Veterinary Medical Board
5 Contingent Fund to the General Fund pursuant to the Budget Act
6 of 1991 is redeposited into the Veterinary Medical Board
7 Contingent Fund, the fees assessed by the board shall be reduced
8 correspondingly. However, the reduction shall not be so great as
9 to cause the Veterinary Medical Board Contingent Fund to have
10 a reserve of less than three months of annual authorized board
11 expenditures. The fees set by the board shall not result in a
12 Veterinary Medical Board Contingent Fund reserve of more than
13 10 months of annual authorized board expenditures.

14 (p) The fee for the issuance and renewal of a certificate in animal
15 physical rehabilitation pursuant to Section 4828.5 shall be set by
16 the board in an amount not to exceed the reasonable regulatory
17 costs to the board.

18 (q) The initial and annual renewal fees for registration of an
19 animal physical rehabilitation facility pursuant to Section 4828.5
20 shall be set by the board in an amount not to exceed the reasonable
21 regulatory costs to the board.

O



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Bill Analysis

Bill Number: AB 3110 **Version:** Amended 5/25/18
Author: Mullin **Sponsor:** Author
 Coauthors: Berman,
 Calderon, Chau,
 Kalra, McCarty, and
 Stone
Subject: Athletic Trainers **Status:** Senate. Pending
 Referral

Adopted Position:
 None.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

1. Provides for the regulation and licensure of the practice of medicine under the Medical Practice Act and establishes the Medical Board of California to implement and enforce the Act. (Business and Professions Code (BPC) §§ 2000-2028.5)
2. Prohibits any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided under the Medical Practice Act or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law. (BPC § 2052)
3. Establishes requirements and procedures for legislative oversight of state board formation and licensed professional practice. (Government Code (GOV) §§ 9148-9148.8)
4. Requires, prior to consideration by the Legislature of legislation creating a new state board or legislation creating a new category of licensed professional, that the author or sponsor of the legislation develop a plan for the establishment and operation of the proposed state board or new category of licensed professional. (GOV § 9148.4)
5. The plan must include, but not be limited to, all of the following:
 - a) A description of the problem that the creation of the specific state board or new category of licensed professional would address, including the



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specific evidence of need for the state to address the problem. (GOV § 9148.4 (a))

b) The reasons why this proposed state board or new category of licensed professional was selected to address this problem, including the full range of alternatives considered and the reason why each of these alternatives was not selected. (GOV § 9148.4(b))

c) Alternatives that shall be considered include, but are not limited to, the following:

i) No action taken to establish a state board or create a new category of licensed professional. (GOV § 9148.4(b)(1))

ii) The use of a current state board or agency or the existence of a current category of licensed professional to address the problem, including any necessary changes to the mandate or composition of the existing state board or agency or current category of licensed professional. (GOV § 9148.4(b)(2))

iii) The various levels of regulation or administration available to address the problem. (GOV § 9148.4(b)(3))

iv) Addressing the problem by federal or local agencies. (GOV § 9148.4(b)(4))

d) The specific public benefit or harm that would result from the establishment of the proposed state board or new category of licensed professional, the specific manner in which the proposed state board or new category of licensed professional would achieve this benefit, and the specific standards of performance which shall be used in reviewing the subsequent operation of the board or category of licensed professional. (GOV § 9148.4(c))

e) The specific source or sources of revenue and funding to be utilized by the proposed state board or new category of licensed professional in achieving its mandate. (GOV § 9148.4(d))

f) The necessary data and other information required in this section shall be provided to the Legislature with the initial legislation and forwarded to the policy committees in which the bill will be heard. (GOV § 9148.4(e))

6. Authorizes the appropriate policy committee of the Legislature to evaluate the plan prepared in connection with a legislative proposal to create a new state board and provides that, if the appropriate policy committee does not evaluate a plan, then the Joint Sunset Review Committee shall evaluate the plan and provide recommendations to the Legislature. (GOV § 9148.8)
7. Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency. (BPC § 100)
8. Provides for the licensure and regulation of various professions and vocations by boards, bureaus, and other entities within the DCA. (BPC §§ 22, 100-144.5)



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9. Specifies that the DCA is under the control of a civil executive officer who is known as the Director of Consumer Affairs and specifies the duties and authority of the Director. (BPC §§ 150-166)
10. Authorizes the DCA to levy a charge for estimated administrative expenses, not to exceed the available balance in any appropriation for any one fiscal year, in advance on a pro rata share basis against any of the boards, bureaus, commissions, divisions, and agencies, at the discretion of the director and with the approval of the Department of Finance. (BPC § 201)
11. Establishes the Bagley-Keene Open Meetings Act, which covers all state boards and commissions and requires them to publicly notice their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized to meet in closed session. (GOV §§ 11120-11132)
12. Provides for the licensure and regulation of the practice of occupational therapy, as defined, by the CBOT within the DCA until January 1, 2021, and provides that the repeal of these provisions subjects the CBOT to review by the appropriate policy committees of the Legislature. (BPC § 3716)

This Bill

1. Establishes the Athletic Training Practice Act which is a comprehensive scheme for the regulation and registration of the profession of athletic training.
2. Establishes, until January 1, 2025, the Athletic Training Board within the Department of Consumer Affairs, as specified, and empowers the Board to adopt, repeal, and amend regulations as may be necessary to administer and enforce this chapter.
3. Specifies the requirements for registration and the use of titles, requiring the Board to issue an athletic training registration to an applicant who meets all of the prescribed requirements at the time of application.
4. Specifies that all registrations are valid for two years and specifies registration renewal requirements.
5. Authorizes the Board to deny, suspend, or revoke a registration for specified reasons, including relevant final disciplinary actions by other agencies and criminal convictions.
6. Prohibits the unregistered practice of athletic training, including advertising or representing the ability to practice or provide athletic training services unless registered under the Athletic Training Practice Act.
7. Establishes, on January 1, 2021, title protection for athletic trainers, prohibiting the use of the title "athletic trainer," "licensed athletic trainer," "certified athletic trainer," "athletic trainer certified," "a.t.," "a.t.l.," "c.a.t.," "a.t.c.," or any other variation of these terms, or any other similar terms indicating that the person is an athletic trainer, unless registered under the Athletic Training Practice Act.
8. Establishes a temporary "grandfathering" exemption period, exempting from the title protection provisions a person who is covered under a collective bargaining



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agreement that would be impacted by the title protection provisions until the parties to the agreement are able to renegotiate the agreement.

9. Defines, for the purposes of the Athletic Training Practice Act, the following:
 - a) "Athletic trainer" means a person who practices athletic training and who meets the requirements of this chapter.
 - b) "Board" means the Athletic Training Board.
 - c) "Registrant" means a person who practices athletic training and is registered pursuant to this chapter.
 - d) "Director" means the Director of Consumer Affairs.
10. Defines "unprofessional conduct," and contains an extensive list of offenses, including:
 - a) Incompetence, negligence, or gross negligence in carrying out usual athletic trainer functions.
 - b) Repeated similar negligent acts in carrying out usual athletic trainer functions.
 - c) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event a certified copy of the record of conviction shall be conclusive evidence thereof.
 - d) The use of advertising relating to athletic training which violate false advertising requirements under the Business and Professions Code (BPC) Section 17500.
 - e) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a licensee by another state or territory of the United States, by any other government agency, or by another California healing arts licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence thereof.
 - f) Committing any act punishable as a sexually related crime, if that act is substantially related to the qualifications, functions, or duties of a licensee, in which event a certified copy of the record of conviction shall be conclusive evidence thereof.
 - g) Using excessive force upon or mistreating or abusing any patient. For purposes of this subdivision, "excessive force" means force clearly in excess of that which would normally be applied in similar clinical circumstances.
 - h) As a registrant, using to an extent or in a manner dangerous or injurious to himself or herself, to any other person, or to the public, or that impairs his or her ability to conduct with safety to the public the practice authorized by his or her registration, of any of the following:
 - i) A controlled substance as defined in the Health and Safety Code, Division 10 (commencing with Section 11000).
 - ii) A dangerous drug or dangerous device as defined in Section 4022.
 - iii) Alcoholic beverages.



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i) As a registrant, falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient record, or any other record.

11. Defines the "practice of athletic training" to include all of the following:

- a) Risk management and injury or illness prevention through preparticipation screening and evaluation, educational programs, physical conditioning and reconditioning programs, application of commercial products, use of protective equipment, promotion of healthy behaviors, and reduction of environmental risks.
- b) The clinical evaluation and assessment of an injury sustained or exacerbated while participating in athletic activity or a condition exacerbated while participating in athletic activity, for which the athletic trainer has had formal training during his or her professional education program or advanced postprofessional study and falls within the scope of practice of athletic training, by obtaining a history of the injury or condition, inspection and palpation of the injured part and associated structures, and performance of specific testing techniques related to stability and function to determine the extent of an injury.
- c) The immediate care of an injury sustained or exacerbated while participating in athletic activity or a condition exacerbated while participating in athletic activity, for which the athletic trainer has had formal training during his or her professional education program or advanced postprofessional study and falls within the scope of practice of athletic training, by the application of first-aid and emergency procedures, techniques, and equipment for nonlife-threatening or life-threatening injuries or conditions.
- d) The rehabilitation and reconditioning from an injury sustained or exacerbated while participating in athletic activity and reconditioning from a condition, for which the athletic trainer has had formal training during his or her professional education program or advanced postprofessional study and falls within the scope of practice of athletic training, including, but not limited to, the application of physical agents and modalities, therapeutic exercise, manual therapy and massage, standard reassessment techniques and procedures, commercial products and durable medical equipment, and educational programs, in accordance with guidelines established with a healing arts licensee.
- e) "Athletic activity" means an activity involving an athlete that requires physical strength, range-of-motion, flexibility, body awareness and control, speed, stamina, or agility, as specified.
- f) "Athlete" means a person who participates in an athletic activity.

12. Excludes from practice of athletic training the following:

- a) Grade 5 spinal manipulations.
- b) The diagnosis of disease.



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- c) The practice of medicine.
13. Provides that a registrant who meets the requirements of this chapter and is certified as an athletic trainer shall only render athletic training services pursuant to a verbal or written order by, and under the supervision of, a physician and surgeon licensed by the Medical Board of California or an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California.
14. States, for purposes of this section, "supervision" means services are only provided pursuant to an athletic training treatment plan or protocol, as specified.
15. Exempts from the requirements of the Athletic Training Practice Act the following:
- a) An athletic trainer licensed, certified, or registered in another state or country who is in California temporarily, while traveling with a team or organization, to engage in the practice of athletic training for, among other things, an athletic or sporting event and only when this athletic trainer limits his or her scope of practice to the members of the team or organization or during an emergency.
 - b) An athletic trainer licensed, certified, or registered in another state or country who is invited by a sponsoring organization, such as the United States Olympic Committee, to temporarily provide athletic training services under his or her state's scope of practice for athletic training.
 - c) A student enrolled in an athletic training education program, while participating in educational activities during the course of his or her educational rotations under the supervision and guidance of an athletic trainer registered under this chapter, a physician and surgeon licensed by the Medical Board of California, an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California, or other any licensed health care provider, when the student's title clearly indicates student status.
 - d) A member or employee of the United States Armed Forces, licensed, certified, or registered in another state as an athletic trainer, as part of his or her temporary federal deployment or employment in California for a limited time.
 - e) Any other healing arts licensee.
16. Establishes the Athletic Trainers' Fund in the State Treasury and specifies the following:
- a) All fees collected pursuant to this chapter shall be paid into the fund.
 - b) Moneys in the fund shall be available to the Board, upon appropriation by the Legislature, for expenditure by the Board to defray its expenses for administering this chapter.
17. Establishes fees, as provided.
18. Authorizes the Director to seek donations or, if no private funds are available, seek a loan from existing state funds to cover the initial costs of the chapter.
19. Makes various Legislative findings and declarations.



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Purpose/Background

Purpose:

This bill is sponsored by the author. However, the author and the author's office note that they are working closely with the California Athletic Trainers Association. According to the author, "Athletic trainers are health care professionals who specialize in the prevention, recognition, treatment, and rehabilitation of injuries and conditions. California is the only state that does not regulate the profession of athletic training. Approximately 20% of individuals calling themselves athletic trainers in high schools have not completed a university level accredited athletic training education program or passed the national standard BOC athletic training certification examination. This puts student athletes at risk, since the mistakes of unlicensed athletic trainers can lead to serious, even life threatening issues. Further, in a growing number of states, including Utah, Texas, Hawaii, and Massachusetts, it is illegal for unregulated athletic trainers to practice in those states for any period of time. Consequently, when California athletic trainers travel to these states with their teams, they risk violating those state laws, since athletic trainers are not regulated in California putting themselves and their employers at risk. [This bill] defines a scope of practice, education and training qualifications, and practice standards for athletic trainers. Regulating the profession of athletic training will increase safety by guaranteeing that athletic trainers are qualified to identify and treat injuries and conditions, and that they have a defined scope of practice and work under the direction of physicians. It will also reduce liability by ensuring that employers are legally able to travel with their athletic trainers to states in which it is illegal for unregulated athletic trainers to practice."

Background:

In California, many professions require a license to legally practice. Many of the professional licenses are administered by licensing boards, bureaus, and other entities within the DCA. The DCA licensing entities are established to protect the people of California through adequate regulation of businesses and professions that engage in activities that risk harm to the health, safety, and welfare of the public (BPC § 101.6).

The licensing entities establish the minimum level of competency required to engage in the occupations they regulate. As a result, an applicant seeking a license to practice from a licensing authority must demonstrate the ability to provide safe and effective services to the public. However, to avoid creating unnecessary barriers to entering a profession, the requirements should not require more than the minimum amount of training, education, and experience necessary to practice safely.

Sunrise of New Licensing Programs.

The Legislature uses a Sunrise process for the purpose of assessing requests for new or increased occupational regulation, pursuant to GOV § 9148 and policy Committee Rules. The process includes a questionnaire and a set of evaluative scales to be



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completed by the group supporting regulation. The questionnaire is an objective tool for collecting and analyzing information needed to arrive at accurate, informed, and publicly supportable decisions regarding the merits of regulatory proposals. According to the author's Sunrise Questionnaire, "Athletic trainers are seeking licensure. The California Athletic Trainers Association (CATA) is the membership organization pursuing regulation for the athletic training profession in California."

The Legislature often receives requests for new or expanded occupational regulation. The regulatory proposals are generally intended to assure the competence of specified practitioners in different occupations. The requests have resulted in a proliferation of licensure and certification programs, which are often met with mixed reviews. Proponents argue that licensing benefits the public by assuring competence and an avenue for consumer redress. Critics disturbed by increased governmental intervention in the marketplace have cited shortages of practitioners and increased costs of service as indicators that regulation benefits a profession more than it benefits the public.

State legislators and administrative officials are expected to weigh arguments regarding the necessity of such regulation, determine the appropriate level of regulation (e.g., registration, certification or licensure), and select a set of standards (education, experience, examinations) that will assure competency. Requests for regulatory decisions often result in sharp differences of opinion as supporters and critics of the proposed regulation present their arguments. As a result, accurate information is necessary.

The Sunrise process was designed to ensure that necessary information is collected and that the arguments presented are objectively weighed. In developing the sunrise process, the Legislature and the DCA looked at methods for assessing needs for examinations, educational standards, and experience requirements that would assure provider competence. The project resulted in the current Sunrise process, an evaluative process designed to provide a uniform basis for the presentation and review of proposed occupational regulation. The Sunrise process includes a questionnaire and evaluative scales that allow systematic collection and analysis of the data required for decisions about new regulation.

This process accomplishes the following: (1) places the burden of showing the necessity for new regulations on the requesting groups; (2) allows the systematic collection of opinions both pro and con; and (3) documents the criteria used to decide upon new regulatory proposals. This helps to ensure that regulatory mechanisms are imposed only when proven to be the most effective way of protecting the public health, safety and welfare.

If review of the proponents' case indicates that regulation is appropriate, a determination must be made regarding the appropriate level of regulation. As noted



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above, the public is best served by minimal government intervention. The definitions and guidelines below are intended to facilitate selection of the least restrictive level of regulation that will adequately protect the public interest.

- Level I: Strengthen existing laws and controls. The choice may include providing stricter civil actions or criminal prosecutions. It is most appropriate where the public can effectively implement control.
- Level II: Impose inspections and enforcement requirements. This choice may allow inspection and enforcement by a state agency. These should be considered where a service is provided that involves a hazard to the public health, safety, or welfare. Enforcement may include recourse to court injunctions, and should apply to the business or organization providing the service, rather than the individual employees.
- Level III: Impose registration requirements. Under registration, the state maintains an official roster of the practitioners of an occupation, recording also the location and other particulars of the practice, including a description of the services provided. This level of regulation is appropriate where any threat to the public is small.
- Level IV: Provide opportunity for certification. Certification is voluntary; it grants recognition to persons who have met certain prerequisites. Certification protects a title: noncertified persons may perform the same tasks but may not use “certified” in their titles. Usually an occupational association is the certifying agency, but the state can be one as well. Either can provide consumers a list of certified practitioners who have agreed to provide services of a specified quality for a stated fee. This level of regulation is appropriate when potential for harm exists and when consumers have substantial need to rely on the services of practitioners.
- Level V: Impose licensure requirements. Under licensure, the state allows persons who meet predetermined standards to work at an occupation that would be unlawful for an unlicensed person to practice. Licensure protects the scope of practice and the title. It also provides for a disciplinary process administered by a state control agency. This level of regulation is appropriate only in those cases where a clear potential for harm exists and no lesser level of regulation can be shown to adequately protect the public.

Licensing Reform.

In July of 2015, the Obama Administration issued a report, *Occupational Licensing: A Framework for Policymakers*. The report was prepared by the U.S. Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. The report noted that there has been a sharp increase in the number of workers holding a license. It also noted that, while licensing offers important protections to consumers and can benefit workers, there are also substantial costs and licensing requirements may not



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always align with the skills necessary for the profession being licensed.

Specifically, the report found:

There is evidence that licensing requirements raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across State lines. Too often, policymakers do not carefully weigh these costs and benefits when making decisions about whether or how to regulate a profession through licensing. In some cases, alternative forms of occupational regulation, such as State certification, may offer a better balance between consumer protections and flexibility for workers.

In response to the report, the Little Hoover Commission began a study on occupational licensing in October 2015. The Little Hoover Commission, formally known as the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, is an independent state oversight agency.

In October 2016, the Little Hoover Commission published its report, *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers* (Report #234). The report noted:

One out of every five Californians must receive permission from the government to work. For millions of Californians, that means contending with the hurdles of becoming licensed. Sixty years ago the number needing licenses nationally was one in 20. What has changed? What once was a tool for consumer protection, particularly in the healing arts professions, is now a vehicle to promote a multitude of other goals. These include professionalism of occupations, standardization of services, a guarantee of quality and a means of limiting competition among practitioners, among others. Many of these goals, though usually well intentioned, have had a larger impact of preventing Californians from working, particularly harder-to-employ groups such as former offenders and those trained or educated outside of California, including veterans, military spouses and foreign-trained workers.

The Commission found that the effects of occupational licensing may extend beyond the people entering a licensed occupation. The Commission specifically expressed concern over those with lower incomes, "[w]hen government limits the supply of providers, the cost of services goes up. Those with limited means have a harder time accessing those services. Consequently, occupational licensing hurts those at the bottom of the economic ladder twice: first by imposing significant costs on them should they try to enter a licensed occupation and second by pricing the services provided by licensed professionals out of reach."



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As a result, the Commission recommended caution when looking at new licensing schemes (in addition to reviewing the current ones). Among other things, it recommended participating in a White House effort to review licensing programs across the country. It is providing, through the Department of Labor, \$7.5 million in funding for a consortium of states to assess whether current levels of occupational regulation are appropriate.

The Commission also recommended that the state consider the impact of licensing on groups disproportionately harmed by the regulations, including:

- 1) Former offenders. Witnesses testified there is no evidence demonstrating that having a criminal record is related to providing low quality services. Unnecessary restrictions on criminal convictions simply punish again people who have already served their time.
- 2) Military spouses. When military spouses cannot transfer their licenses across state lines due to state restrictions, they spend precious time and resources re-completing requirements they already have, or taking, in all likelihood, a lower-paying, lower-skilled job. Married service members overwhelmingly report their spouse's ability to maintain a career affects their decision to remain in the military.
- 3) Veterans. Veterans often face difficulty transferring their military education and experience into civilian licensing requirements. Sometimes they must repeat these requirements for a job they have been performing for years. Taxpayers then pay twice for them to learn the same set of skills: once while in the military and again through the G.I. Bill.
- 4) Foreign-trained workers. Like veterans, foreign-trained workers often have difficulty translating their education and experience into state licensing requirements and often take lower-skilled jobs instead. With worker shortages looming in mid- and high-skilled professions, the state should embrace these workers instead of erecting barriers to keep them out of jobs

The Commission further noted that examining and assessing occupational regulations does not mean stripping consumer protection. Instead, it is an exercise in striking the appropriate balance between protecting consumers and limiting access to occupations and services.

Athletic Trainers.

According to the California Occupational Guides published by the Labor Market Information Division within the Employment Development Department (EDD), Athletic Trainers "[e]valuate, advise, and treat athletes to assist recovery from injury, avoid injury, or maintain peak physical fitness." Athletic training educational programs prepare "individuals to work in consultation with, and under



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the supervision of physicians to prevent and treat sports injuries and associated conditions."

Education programs include "instruction in the identification, evaluation, and treatment of athletic injuries and illnesses; first aid and emergency care; therapeutic exercise; anatomy and physiology; exercise physiology; kinesiology and biomechanics; nutrition; sports psychology; personal and community health; knowledge of various sports and their biomechanical and physiological demands; and applicable professional standards and regulations."

According to the author's 2017 Sunrise Questionnaire, "Athletic trainers are unique in that they are the only profession to provide a continuum of care to their patients. This seamless provision of care encompasses everything from the active prevention of injuries to the evaluation, treatment and management of all stages of the injury recovery process. This is illustrated in the most recent Athletic Training Practice Analysis, 7th Edition (L) which identifies the following areas as being those tasks and duties performed by practitioners:

- Injury and Illness Prevention and Wellness Promotion
- Examination, Assessment, and Diagnosis
- Immediate and Emergency Care
- Therapeutic Intervention
- Health Care Administration and Professional Responsibility"

As noted above, the questionnaire states that the applicant group representing the athletic trainers in this effort is the California Athletic Trainers Association (CATA). The CATA is a professional association that represents athletic trainers in California and includes both certified and noncertified members. Certification is obtained from the Board of Certification for the Athletic Trainer (BOC). According to the CATA, education for athletic training has been standardized and is accredited by a national accreditation agency, the Commission on Accreditation of Athletic Training Education (CAATE).

Occupational Therapy and the CBOT.

This bill establishes the athletic trainer licensing program under the CBOT. The CBOT is a licensing board under the DCA. The purpose of the CBOT is to protect consumers through regulation of the practice of occupational therapy in California. Specifically, the CBOT administers the licensing and enforcement programs for occupational therapists (OTs), occupational therapy assistants (OTAs), and occupational therapy aides. The CBOT also establishes and clarifies state-specific process and practice standards through administrative rulemaking.

Under the OT Practice Act, it is a misdemeanor to practice occupational therapy or hold oneself out as being able to practice occupational therapy, via titles or other methods, unless licensed or otherwise authorized by law. The OT Practice



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Act provides, among others, the following definitions relating to the breadth and scope of occupational therapy as regulated in California:

- “Practice of occupational therapy” means the therapeutic use of occupations.
- “Occupations” are “purposeful and meaningful goal-directed activities... which engage the individual’s body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and maintain health.”
- “Occupational therapy services” include “occupational therapy assessment, treatment, education of, and consultation with, individuals who have been referred for occupational therapy services subsequent to diagnosis of disease or disorder (or who are receiving occupational therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA)).”
- “Occupational therapy assessment” is the identification of “performance abilities and limitations that are necessary for self-maintenance, learning, work, and other similar meaningful activities.”
- “Occupational therapy treatment” is defined as being “focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability.” Treatment “may involve modification of tasks or environments to allow an individual to achieve maximum independence.”
- “Occupational therapy techniques that are used for treatment” are defined as involving “teaching activities of daily living (excluding speech-language skills); designing or fabricating selective temporary orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices (excluding gait training).”
- “Occupational therapy consultation” provides expert advice to enhance function and quality of life. Consultation, like treatment, may also “involve modification of tasks or environments to allow an individual to achieve maximum independence.”

The CBOT oversees over 12,000 OTs and 2,500 OTAs. During each of the last three fiscal years, the CBOT issued a combined average of 1,018 licenses and renewed a combined average of 6,849 licenses.

The CBOT’s mandates include:

- Administer, coordinate, and enforce the provisions of the Practice Act.
- Evaluate the qualifications of applicants.
- Approve the examinations for licensure.
- Adopt rules relating to professional conduct to carry out the purpose of the Practice Act, including, but not limited to, rules relating to professional licensure and to the establishment of ethical standards of practice for



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persons holding a license to practice occupational therapy or to assist in the practice of occupational therapy in this state.

The current CBOT mission statement, as stated in its 2016–2019 Strategic Plan, is "[t]o protect California consumers of occupational therapy services through effective regulation, licensing and enforcement." The CBOT also interacts frequently with stakeholders, such as professional associations and consumers. The two professional associations cited in the CBOT's 2016 Sunset Review Report are the local Occupational Therapy Association of California, Inc. (OTAC) and the national American Occupational Therapy Association, Inc. (AOTA). The CBOT also utilizes the examination provided by the National Board for Certification in Occupational Therapy (NBCOT), a voluntary certification organization.

Fiscal Impact:

1. \$1.6 million in 2019-20, \$1.3 million in 2020-21, and \$1.2 million ongoing to the Athletic Trainer's Fund, which would need a GF or special fund loan for start-up costs if private funds were not available.
2. One-time costs to the Department of Justice exceeding \$100,000 for background checks (Fingerprint Fees Account).

Legislation:

Current Legislation:

B 2138 (Chiu and Low) of the current Legislative Session makes numerous changes to the criteria for denial and discipline of a license. STATUS: This bill is pending in this Committee.

2409 (Kiley) of the current Legislative Session establishes a right to engage in a profession or vocation without being subject to an occupational regulation that imposes a substantial burden on that right, and creates a private right of action for individuals to sue a regulatory board in court, wherein the board must prove through a preponderance of evidence that any challenged occupational regulation is limited to what is demonstrably necessary and narrowly tailored to fulfill a legitimate public health, safety, or welfare objective. STATUS: This bill is pending in this Committee.

2483 (Voepel) of the current Legislative Session requires a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board within the DCA for an act or omission occurring within the scope of the member's official capacity as a member of that regulatory board, as specified. STATUS: This bill is pending in the Assembly Committee on Appropriations.



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Prior Related Legislation:

AB 1510 (Debabneh) of 2017 was substantially similar to this bill. NOTE: This bill died pursuant to Art. IV, Sec. 10(c) of the Constitution.

AB 161 (Chau) of 2015 would have established certification and training requirements for athletic trainers and prohibit individuals from calling themselves athletic trainers unless they meet those requirements. NOTE: This bill was vetoed by Governor Brown, noting that the requirements under the bill would “impose unnecessary burdens on athletic trainers without sufficient evidence that they are really needed.”

AB 1890 (Chau) of 2014 was substantially similar to AB 161 (Chau) of 2015, establishing title protection for ATs. NOTE: This bill was vetoed by Governor Brown, noting that the requirements under the bill would “impose unnecessary burdens on athletic trainers without sufficient evidence that they are really needed.”

AB 864 (Skinner) of 2013 would have established the licensure and regulation of athletic trainers through the creation of an Athletic Trainer Licensing Committee under the Physical Therapy Board of California. NOTE: This bill died in the Assembly Committee on Appropriations.

SB 1273 (Lowenthal) of 2012 was substantially similar to AB 864. NOTE: This bill died in the Senate Committee on Business, Professions, and Economic Development.

AB 374 (Hayashi) of 2011 as introduced would have established the Athletic Trainer Licensing Committee within the Medical Board of California to license and regulate athletic trainers commencing January 1, 2013, with a sunset date of January 1, 2018, and was later amended to provide title protection for athletic trainers. NOTE: This bill was substantially amended into AB 374 (Hill), Chapter 364, Statutes of 2011, relating to funeral directors and embalmers)

AB 1647 (Hayashi) of 2010 would have established certification and training requirements for athletic trainers and prohibited individuals from calling themselves athletic trainers unless they meet those requirements. NOTE: This bill was vetoed by Governor Schwarzenegger.

SB 284 (Lowenthal) of 2007 would have enacted the Athletic Trainers Registration Act prohibiting a person from representing himself or herself as a “certified athletic trainer,” unless he or she is registered by an athletic training organization. NOTE: This bill was vetoed by Governor Schwarzenegger.

SB 1397 (Lowenthal) of 2006 would have enacted the Athletic Trainers Certification Act, prohibiting a person from representing him or herself as an athletic trainer unless he or she is certified as an athletic trainer by an athletic training organization, as defined. NOTE: This bill was vetoed by Governor Schwarzenegger.



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AB 614 (Lowenthal) of 2003 would have required the DCA to submit a recommendation to the Legislature as to whether the state should license and regulate athletic trainers by January 1, 2006, if the DCA is provided with an occupational analysis of persons providing athletic trainer services by July 1, 2005. NOTE: This bill was held in Senate Committee on Business and Professions Committee to allow the Joint Committee on Boards, Commissions and Consumer Protections to examine whether athletic trainers should be licensed as part of the Sunrise process.

AB 2789 (Lowenthal) of 2002 would have required the Department of Consumer Affairs to review the need for licensing of athletic trainers and undertake an occupational analysis. NOTE: This bill was held under submission in the Assembly Committee on Appropriations.

SB 2036 (McCorquodale), Chapter 908, Statutes of 1994, expanded existing law into the current Sunrise process, covering the creation of new categories of licensed professionals and the revision of the scope of practice of an existing category of licensed professional.

Support and Opposition

Arguments in Support:

The California Athletic Trainers' Association, along with a coalition of supporting organizations, writes in support, "Athletic Training is a healthcare profession recognized by 49 states, the District of Columbia, the federal government, the American Medical Association and many employers, organizations, and associations. Athletic trainers must complete a challenging accredited athletic training education program and pass a national certification examination. Athletic trainers provide a continuum of care to physically active individuals that starts with injury and illness prevention, includes injury recognition and emergency management, and progresses through treatment, rehabilitation and return to activity. There are over 3,100 certified athletic trainers in California working in a variety of settings with a variety of patients. While many athletic trainers traditionally work in schools, colleges/universities and professional sports, approximately a third work in other settings including industry, police/fire, performing arts, military and healthcare facilities....

The public is at risk of harm from uneducated and uncertified individuals holding themselves out as athletic trainers. According to recent California Interscholastic Federation (CIF) data, over 150 such individuals are currently practicing on unknowing young athletes and giving advice to parents who incorrectly assume that the "athletic trainer" their school has hired is qualified. Tens of thousands of student athletes come in contact with these individuals on a daily basis. Unfortunately, albeit predictably, there



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are documented cases of harm resulting to athletes under the care of these unqualified individuals.

In addition, the state has increased the responsibility schools and organizations have for managing concussions. Athletic trainers are barred by statute from specific components of concussion management, including supervision of 'return to activity protocols,' even though athletic trainers are typically the most available and qualified individuals to do so – the reason for this egregious and dangerous situation is only because athletic trainers are not licensed in California.

In some institutions in California, athletic trainers are barred from looking at, or entering into, patient medical records of that institution because of their non-licensed status, which obviously compromises the care that they and other members of the healthcare team provide....

Only licensure can provide the scope of practice necessary to remove the legal grey area that athletic trainers work under and decreases liability to athletic trainers and their employers. Only licensure provides the regulatory framework required of California athletic trainers travelling to other states to practice in accordance with their state law. Only licensure gives other licensed healthcare providers the clear legal protection necessary to interact with athletic trainers and allowing safe, quality care. Only licensure creates statutory guidelines that prevent unqualified individuals from providing medical care to young athletes. Only licensure creates a board to investigate and discipline/remove individuals who have committed harm to the public. "

The California Medical Association writes in support that this bill "would professionalize the practice of athletic training and provide the scope of practice necessary to remove the legal grey area that athletic trainers work under and decreases liability to athletic trainers and their employers. The Committee would be responsible for issuing and renewing athletic training licenses and imposing disciplinary action. In addition, the bill protects consumers by providing for athletic trainers to practice under the supervision of a physician and surgeon using a written order, protocols, or athletic treatment plans." Support:

- California Medical Association
- Numerous individuals
- California Association for Health, Physical Education, Recreation and Dance
- University of Southern California
- American Medical Society for Sports Medicine
- National Collegiate Athletic Association
- Association of Independent California Colleges and Universities
- University of Redlands
- Board of Certification, Inc. (BOC)
- Breg, Inc.



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- California Athletic Trainers Association (CATA)
- California Community College Athletic Trainers Association
- Commission on Accreditation of Athletic Training Education (CAATE)
- National Athletic Trainers Association
- Onsite Innovations
- American Orthopaedic Society for Sports Medicine
- California Interscholastic Federation Southern California Section
- Far West Athletic Trainers' Association
- John North High School
- Southern California Intercollegiate Athletic Conference
- University of California, San Francisco PlaySafe Program
- Pivot Physical Therapy

Arguments in Opposition

The American Occupational Therapy Association and the Occupational Therapy Association of California write in opposition, "[w]e do not believe the Board of Occupational Therapy is the appropriate regulatory body to oversee athletic trainers, who receive very different training from OTs and perform services, though significant, that greatly differ from occupational therapy. Further, the number of licensed occupational therapy practitioners in California continues to increase. The Board's focused oversight on occupational therapy and the people it serves remains critically important. Additionally, the language in [this bill] calls for written or verbal treatment protocols for an athletic trainer that is directed by a physician. Although there are significant concerns with the broad language outlining physician supervision, if such supervision is required, it logically follows that the California Medical Board might be best suited to oversee athletic trainers."

The California Academy of PAs is opposed to this bill unless amended, writing that "[t]he proposed scope in the bill would permit athletic trainers to assess and treat a medical condition exacerbated while participating in a physical activity as well as provide immediate care for an injury or condition sustained or exacerbated while participating in a physical activity. However, the bill does not define what injuries or conditions can be treated, such as limiting the practice to the muscular skeletal system which is frequently inflicted with athletic injuries. Nor does the bill require the athletic trainer to refer a patient to another healthcare practitioner for the purpose of having a medical condition diagnosed or limit the practice settings to student-athletes, athletes or athletic settings. The only requirement is that the Athletic Trainer provides treatment under the direction of a physician, which may be based solely on protocols. Without limiting this scope of practice, this bill creates ambiguity about practice parameters and settings which would allow Athletic Trainers to assess and treat any medical condition or injury arising from an athletic injury in endless settings."



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The California Physical Therapy Association and California Nurses Association are opposed to this bill unless amended, writing that, "There is no demonstrated need for the creation of a new bachelor's degree-level health care provider that provides services like that of a physical therapist, physician's assistant, nurse, or nurse practitioner. The scope of practice outlined in [this bill] is expansive and not consistent with the education and training of athletic trainers....

Unfortunately, the bill does not define 'athletic activity' as being different from 'physical activity' or delineate the setting in which the athletic trainer works. Currently, athletic trainers primarily work with athletes in an athletic setting (i.e. sports team, university, etc.). Importantly, it is not clear how the scope of practice of the athletic trainer as outlined in the current bill would differ from the physical therapist or occupational therapist, professionals who are licensed to treat active individuals in any setting. Coupled with a later section defining the relationship with a physician and allowance for treatment by an athletic trainer, the scope of practice of athletic trainers under [this bill] would allow treatment of persons with a range of medical conditions. Proponents also claim that athletic trainers work in a variety of settings, which is true, but they fail to mention that they work in these settings not as athletic trainers, but in other capacities, such as Medical Assistants, Physical Therapy Aides and other roles....

Licensure is unnecessary. Title protection would be a more appropriate measure. The Legislature's Joint Committee on Boards, Commissions and Consumer Protection reviewed the issue of licensure for athletic trainers in 2005, and unanimously recommended against licensing. The argument that anyone could hold themselves out as an athletic trainer is easily addressed by 'title protection,' which would prohibit an individual from calling himself or herself a 'certified athletic trainer' without being properly certified by an appropriate body identified in legislation. In fact, title protection legislation reached the Governor's desk in 2006 (SB 1397/Lowenthal), 2014 (AB 1890/Chau), and 2015 (AB 161/Chau). Unfortunately, SB 1397 was vetoed by Gov. Schwarzenegger, and AB 1890 and AB 161 were both vetoed by Gov. Brown."

The United Nurses Associations of California/Union of Health Care Professionals (UNAC/UHCP) is opposed to this bill unless amended, writing that "[this] bill would define a scope of practice that would allow treatment of an injury sustained while engaged in 'athletic activity.' The bill then defines 'athletic activity' so broadly that it could include virtually everything: 'athletic activity' means participation in activity requiring physical strength, range-of motion, flexibility, body awareness and control, speed, stamina, or agility. This could encompass an injury sustained while walking, driving a vehicle, or lifting boxes at work. Moreover, the athletic trainer is not required to work under the supervision of a physician or surgeon, as is required for virtually every other health professional. Instead, they must merely act 'under the direction' of a physician or surgeon, which simply means the athletic trainer could have a telephone



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conversation with a physician or surgeon and then begin treatment with no further interaction or supervision of the treatment. We do not believe this will lead to positive patient outcomes. In addition, the currently articulated scope of practice essentially encompasses the scopes of physical therapists and occupational therapists, but with fewer restrictions. In other words, there are already licensed professionals who are qualified to practice in this area and thus the creation of a new licensure scheme is not warranted."

Opposition:

- California Nurses Association
- California Physical Therapy Association
- Occupational Therapy Association of California
- United Nurses Associations of California/Union of Healthcare Professionals
- California Academy of PAs
- Numerous individual occupational therapists
- Numerous individual physical therapists

Action Required:

None.

AMENDED IN ASSEMBLY MAY 25, 2018

AMENDED IN ASSEMBLY MAY 9, 2018

AMENDED IN ASSEMBLY MAY 1, 2018

AMENDED IN ASSEMBLY APRIL 11, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 3110

Introduced by Assembly Member Mullin
(Coauthors: Assembly Members Berman, Calderon, Chau, Kalra,
and McCarty)
(Coauthor: Senator Stone)

February 16, 2018

An act to amend Sections 101 and 144 of, to add Chapter 5.8 (commencing with Section 2697) to Division 2 of, and to repeal Section 2697.2 of, the Business and Professions Code, relating to athletic trainers.

LEGISLATIVE COUNSEL'S DIGEST

AB 3110, as amended, Mullin. Athletic trainers.

Existing law provides for the licensure and regulation of various professions and vocations.

This bill would enact the Athletic Training Practice Act, which would establish the Athletic Trainer Board, until January 1, ~~2023~~, 2025, within the Department of Consumer Affairs to exercise licensing, regulatory, and disciplinary functions under the act. ~~The~~ *On or after January 1, 2021, the* bill would prohibit a person from practicing as an athletic trainer or using certain titles or terms without being registered with the board, except as specified. The bill would define the practice of athletic

training, and would specify requirements for registration as an athletic trainer, including graduating from a professional degree program in athletic training, and would require a registrant to render athletic training services only pursuant to orders from and under the supervision of a physician and surgeon or osteopathic physician and surgeon. The bill would provide that a registration to practice as an athletic trainer would be valid for 2 years and subject to renewal, would authorize the board to deny or revoke a registration for specified reasons, and would establish procedures for the referral of complaints. The bill would specify acts that constitute unprofessional conduct and would make it a misdemeanor for any person to violate the act.

The bill would establish the Athletic Trainers' Fund for the deposit of application and renewal fees, as specified, and would make those fees available to the board for the purpose of implementing these provisions upon appropriation by the Legislature. The bill would authorize the Director of Consumer Affairs to seek and receive donations from the California Athletic Trainers Association or any other private person or entity *or to obtain loans from existing state funds, as specified*, for purposes of obtaining funds for the startup costs of implementing the act. By creating a new crime, and expanding the crime of perjury, this bill would impose a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) California is the only state that does not currently regulate
- 3 the practice of athletic training. This lack of regulation creates the

1 risk that individuals who have lost or are unable to obtain licensure
2 in another state may come to California to practice, thereby putting
3 the public in danger and degrading the standards of the profession
4 as a whole.

5 (b) There is a pressing and immediate need to regulate the
6 profession of athletic training in order to protect the public health,
7 safety, and welfare. This need is particularly important because
8 athletic trainers often work with minors.

9 (c) There is also a pressing and immediate need to regulate the
10 profession of athletic training because the absence of regulation
11 puts California businesses, colleges, universities, and other
12 organizations at risk of liability solely because of the unlicensed
13 status of athletic trainers in the state.

14 SEC. 2. Section 101 of the Business and Professions Code, as
15 added by Section 4 of Chapter 828 of the Statutes of 2017, is
16 amended to read:

17 101. The department is comprised of the following:

- 18 (a) The Dental Board of California.
- 19 (b) The Medical Board of California.
- 20 (c) The State Board of Optometry.
- 21 (d) The California State Board of Pharmacy.
- 22 (e) The Veterinary Medical Board.
- 23 (f) The California Board of Accountancy.
- 24 (g) The California Architects Board.
- 25 (h) The State Board of Barbering and Cosmetology.
- 26 (i) The Board for Professional Engineers, Land Surveyors, and
27 Geologists.
- 28 (j) The Contractors' State License Board.
- 29 (k) The Bureau for Private Postsecondary Education.
- 30 (l) The Bureau of Electronic and Appliance Repair, Home
31 Furnishings, and Thermal Insulation.
- 32 (m) The Board of Registered Nursing.
- 33 (n) The Board of Behavioral Sciences.
- 34 (o) The State Athletic Commission.
- 35 (p) The Cemetery and Funeral Bureau.
- 36 (q) The State Board of Guide Dogs for the Blind.
- 37 (r) The Bureau of Security and Investigative Services.
- 38 (s) The Court Reporters Board of California.
- 39 (t) The Board of Vocational Nursing and Psychiatric
40 Technicians.

- 1 (u) The Landscape Architects Technical Committee.
- 2 (v) The Division of Investigation.
- 3 (w) The Bureau of Automotive Repair.
- 4 (x) The Respiratory Care Board of California.
- 5 (y) The Acupuncture Board.
- 6 (z) The Board of Psychology.
- 7 (aa) The California Board of Podiatric Medicine.
- 8 (ab) The Physical Therapy Board of California.
- 9 (ac) The Arbitration Review Program.
- 10 (ad) The Physician Assistant Board.
- 11 (ae) The Speech-Language Pathology and Audiology and
- 12 Hearing Aid Dispensers Board.
- 13 (af) The California Board of Occupational Therapy.
- 14 (ag) The Osteopathic Medical Board of California.
- 15 (ah) The Naturopathic Medicine Committee.
- 16 (ai) The Dental Hygiene Committee of California.
- 17 (aj) The Professional Fiduciaries Bureau.
- 18 (ak) The State Board of Chiropractic Examiners.
- 19 (al) The Bureau of Real Estate Appraisers.
- 20 (am) The Structural Pest Control Board.
- 21 (an) The Bureau of Cannabis Control.
- 22 (ao) The Athletic Training Board.
- 23 (ap) Any other boards, offices, or officers subject to its
- 24 jurisdiction by law.
- 25 SEC. 3. Section 144 of the Business and Professions Code is
- 26 amended to read:
- 27 144. (a) Notwithstanding any other law, an agency designated
- 28 in subdivision (b) shall require an applicant to furnish to the agency
- 29 a full set of fingerprints for purposes of conducting criminal history
- 30 record checks. Any agency designated in subdivision (b) may
- 31 obtain and receive, at its discretion, criminal history information
- 32 from the Department of Justice and the United States Federal
- 33 Bureau of Investigation.
- 34 (b) Subdivision (a) applies to the following:
- 35 (1) California Board of Accountancy.
- 36 (2) State Athletic Commission.
- 37 (3) Board of Behavioral Sciences.
- 38 (4) Court Reporters Board of California.
- 39 (5) State Board of Guide Dogs for the Blind.
- 40 (6) California State Board of Pharmacy.

- 1 (7) Board of Registered Nursing.
- 2 (8) Veterinary Medical Board.
- 3 (9) Board of Vocational Nursing and Psychiatric Technicians.
- 4 (10) Respiratory Care Board of California.
- 5 (11) Physical Therapy Board of California.
- 6 (12) Physician Assistant Committee of the Medical Board of
- 7 California.
- 8 (13) Speech-Language Pathology and Audiology and Hearing
- 9 Aid Dispensers Board.
- 10 (14) Medical Board of California.
- 11 (15) State Board of Optometry.
- 12 (16) Acupuncture Board.
- 13 (17) Cemetery and Funeral Bureau.
- 14 (18) Bureau of Security and Investigative Services.
- 15 (19) Division of Investigation.
- 16 (20) Board of Psychology.
- 17 (21) California Board of Occupational Therapy.
- 18 (22) Structural Pest Control Board.
- 19 (23) Contractors' State License Board.
- 20 (24) Naturopathic Medicine Committee.
- 21 (25) Professional Fiduciaries Bureau.
- 22 (26) Board for Professional Engineers, Land Surveyors, and
- 23 Geologists.
- 24 (27) Bureau of Cannabis Control.
- 25 (28) California Board of Podiatric Medicine.
- 26 (29) Osteopathic Medical Board of California.
- 27 (30) Athletic Training Board.

28 (c) For purposes of paragraph (26) of subdivision (b), the term
29 "applicant" shall be limited to an initial applicant who has never
30 been registered or licensed by the board or to an applicant for a
31 new licensure or registration category.

32 SEC. 4. Chapter 5.8 (commencing with Section 2697) is added
33 to Division 2 of the Business and Professions Code, to read:

34
35 CHAPTER 5.8. ATHLETIC TRAINERS

36
37 Article 1. General Provisions

38
39 2697. This chapter shall be known, and may be cited, as the
40 Athletic Training Practice Act.

1 2697.1. For the purposes of this chapter, the following
2 definitions apply:

3 (a) “Athlete” means a person who participates in an athletic
4 activity.

5 (b) “Athletic activity” means an activity involving an athlete
6 that requires physical strength, ~~range-of-motion~~, *range of motion*,
7 flexibility, body awareness and control, speed, stamina, or agility
8 that is related to the following:

9 (1) An activity or event conducted by any of the following:

10 (A) An intercollegiate athletic association or interscholastic
11 athletic association.

12 (B) A professional athletic organization.

13 (C) An amateur athletic organization.

14 (2) A professional or recreational activity that meets all of the
15 following:

16 (A) Has officially designated coaches or trainers.

17 (B) Conducts regularly scheduled practices or workouts that
18 are supervised by coaches or trainers.

19 (C) Has established schedules for performances, competitive
20 events, or exhibitions.

21 (3) An activity or event defined by the board as “athletic” for
22 purposes of registration under this chapter and as necessary to
23 protect the public.

24 (c) “Athletic trainer” means a person who practices athletic
25 training and who meets the requirements of subdivision (b) of
26 Section 2697.5.

27 (d) “Athletic training” includes all of the following:

28 (1) Risk management and injury or illness prevention through
29 preparticipation screening and evaluation, educational programs,
30 physical conditioning and reconditioning programs, application
31 of commercial products, use of protective equipment, promotion
32 of healthy behaviors, and reduction of environmental risks.

33 (2) The clinical evaluation and assessment of an injury sustained
34 or exacerbated while participating in athletic activity or a condition
35 exacerbated while participating in athletic activity, for which the
36 athletic trainer has had formal training during his or her
37 professional education program or advanced postprofessional study
38 and falls within the practice standards of athletic training, by
39 obtaining a history of the injury or condition, inspection and
40 palpation of the injured part and associated structures, and

1 performance of specific testing techniques related to stability and
2 function to determine the extent of an injury.

3 (3) The immediate care of an injury sustained or exacerbated
4 while participating in athletic activity or a condition exacerbated
5 while participating in athletic activity, for which the athletic trainer
6 has had formal training during his or her professional education
7 program or advanced postprofessional study and falls within the
8 practice standards of athletic training, by the application of ~~first aid~~
9 *first aid*, and emergency procedures, techniques, and equipment
10 for nonlife-threatening or life-threatening injuries or conditions.

11 (4) The rehabilitation and reconditioning from an injury
12 sustained or exacerbated while participating in athletic activity
13 and reconditioning from a condition, for which the athletic trainer
14 has had formal training during his or her professional education
15 program or advanced postprofessional study and falls within the
16 practice standards of athletic training, including, but not limited
17 to, the application of physical agents and modalities, therapeutic
18 exercise, manual therapy and massage, standard reassessment
19 techniques and procedures, commercial products and durable
20 medical equipment, and educational programs, in accordance with
21 guidelines established with a healing arts licensee as described in
22 subdivision (c) of Section 2697.5.

23 (5) The practice of athletic training does not include grade 5
24 spinal manipulations, the diagnosis of disease, or the practice of
25 medicine.

26 (e) “Board” means the Athletic Training Board.

27 (f) “Director” means the Director of Consumer Affairs.

28 (g) “Registrant” means a person who practices athletic training
29 and is registered pursuant to this chapter.

30 Article 2. Administration

31
32 2697.2. (a) There is established the Athletic Training Board
33 within the Department of Consumer Affairs.

34 (b) The board is comprised of seven members as follows:

35 (1) Two athletic trainers certified pursuant to Section 2697.5.

36 (2) Four public members who are not licensed pursuant to this
37 division.
38

1 (3) One physician and surgeon licensed by the Medical Board
2 of California or one osteopathic physician and surgeon licensed
3 by the Osteopathic Medical Board of California.

4 (c) Subject to confirmation by the Senate, the Governor shall
5 appoint the athletic trainers, two of the public members, and the
6 physician and surgeon or osteopathic physician and surgeon. The
7 Senate Committee on Rules and the Speaker of the Assembly shall
8 each appoint a public member.

9 (d) All appointments shall be for a term of four years and shall
10 expire on June 30 of the year in which the term expires. Appointees
11 may be reappointed once. Vacancies shall be filled for any
12 unexpired term.

13 (e) Each member of the board shall receive per diem and
14 expenses as provided in Section 103.

15 (f) Subject to Sections 107 and 154, the board may employ an
16 executive officer and other employees as necessary to administer
17 this chapter.

18 (g) This section shall remain in effect only until January 1, ~~2023~~,
19 2025, and as of that date is repealed.

20 2697.3. Notwithstanding any other law, the repeal of Section
21 2697.2 renders the board or its successor entity subject to review
22 by the appropriate policy committees of the Legislature.

23 2697.4. (a) (1) The board shall adopt, repeal, and amend
24 regulations as may be necessary to administer and enforce this
25 chapter.

26 (2) Before adopting regulations, the board may consult the
27 professional standards issued by the National Athletic Trainers'
28 Association, the Board of Certification, Inc., the Commission on
29 Accreditation of Athletic Training Education, or any other
30 nationally recognized professional athletic training organization.

31 (b) The board shall verify, to the extent practicable, the
32 information provided, certified, or attested to in an application
33 before a registration is issued.

34 (c) (1) The board shall maintain a publicly accessible registry
35 of all registrants that contains the information specified under
36 subdivision (f) of Section 2697.6.

37 (2) In maintaining the publicly accessible registry, the board
38 shall comply with the Department of Consumer Affairs' guidelines
39 for access to public records.

1 (d) The board shall give protection of the public the highest
2 priority in administering this chapter. Whenever the protection of
3 the public is inconsistent with other interests sought to be
4 promoted, the protection of the public shall be paramount.

5
6 Article 3. Registration and Protected Titles
7

8 2697.5. (a) A person shall not practice athletic training or hold
9 himself or herself out as an athletic trainer or as being able to
10 practice athletic training, or to render athletic training services in
11 this state unless registered with the board pursuant to this chapter.

12 (b) A person shall not use the title “athletic trainer,” “licensed
13 athletic trainer,” “certified athletic trainer,” “registered athletic
14 trainer,” “athletic trainer certified,” “a.t.,” “l.a.t.,” “c.a.t.,” “r.a.t.,”
15 “a.t.c.,” or any other variation of these terms, or any other similar
16 terms indicating that the person is an athletic trainer, unless all of
17 the following apply:

18 (1) The person is registered pursuant to this chapter.

19 (2) The board has received official verification of the registrant’s
20 certification issued by the Board of Certification, Inc., its
21 predecessors or successors, or another nationally accredited athletic
22 trainer certification agency approved and recognized by the board.

23 (3) The registrant maintains the certification issued by the Board
24 of Certification, Inc., its predecessors or successors, or another
25 nationally accredited athletic trainer certification agency approved
26 and recognized by the board.

27 (c) (1) A registrant who meets the requirements of subdivision
28 (b) shall only render athletic training services pursuant to a verbal
29 or written order by, and under the supervision of, a physician and
30 surgeon licensed by the Medical Board of California or an
31 osteopathic physician and surgeon licensed by the Osteopathic
32 Medical Board of California.

33 (2) For purposes of this section, “supervision” means services
34 are only provided pursuant to an athletic training treatment plan
35 or protocol that meets all the following:

36 (A) The plan or protocol specifies the athletic training services,
37 settings, and referral requirements specific to the athletic trainer’s
38 individual training and competence.

1 (B) The plan or protocol is established with and approved by
2 the supervising physician and surgeon or osteopathic physician
3 and surgeon.

4 (C) The plan or protocol accounts for the supervising physician
5 and surgeon's availability to the athletic trainer as determined by
6 the supervising ~~physician~~. *physician and surgeon*.

7 (d) A registrant shall refer an athlete to an appropriate licensed
8 health care provider when the management of the injury or
9 condition does not fall within the competence of the registrant.

10 (e) A registrant shall not provide, offer to provide, or represent
11 that he or she is qualified to provide any treatment that he or she
12 is not qualified to perform by his or her professional education,
13 advanced postprofessional study, license, or individual training
14 and competence.

15 (f) ~~A registrant~~ *person* who does not meet the requirements of
16 subdivision (b) may use the titles "manager," "coach," "assistant,"
17 "associate," "volunteer," or any other title that does not imply the
18 ~~registrant~~ *person* is an athletic trainer who meets the requirements
19 of subdivision (b).

20 (g) *A person who is currently using one of the titles listed under*
21 *subdivision (b) and is covered under a collective bargaining*
22 *agreement is not subject to the requirements of subdivision (b)*
23 *until the parties to that bargaining agreement renew that*
24 *agreement. At that time, a person shall not use the titles listed in*
25 *subdivision (b) if the individual does not meet the requirements of*
26 *this section. Those individuals may choose a different title to*
27 *describe their positions under the new collective bargaining*
28 *agreement.*

29 (h) *This section shall become operative on January 1, 2021.*

30 2697.6. Except as otherwise provided in this chapter, the board
31 shall issue an athletic training registration to an applicant who
32 meets all of the following requirements at the time of application:

33 (a) The applicant is over 18 years of age.

34 (b) The applicant certifies that the applicant is not addicted to
35 alcohol or any controlled substance and has not committed acts or
36 crimes constituting grounds for denial of a license under Section
37 480.

38 (c) The applicant submits an application developed by the board
39 that includes, but is not limited to, the following:

40 (1) The name or names of the applicant.

(2) The applicant's contact information, including the applicant's phone number, email address, and mailing address. An applicant may provide an alternate address of record for purposes of the public registry. An alternate address of record is anywhere a registrant may receive service of process, including a current work address or a valid post office box. Nothing in this paragraph prohibits the board from requiring a home address in addition to an alternate address of record for purposes of board communications.

(3) The applicant's current employer and the employer's contact information. If the applicant is not employed, the applicant shall list any organization or setting where the applicant practices athletic training on a contractual, ongoing, or regular basis, as specified by the board.

(4) The applicant's completed postsecondary education, degree-granting institutions, and graduation dates, if applicable.

(5) Whether the applicant is certified by the Board of Certification, Inc., its predecessors or successors, or another nationally accredited athletic trainer certification agency approved and recognized by the board.

(6) Any of the applicant's other licenses, credentials, or information relevant to the applicant's qualifications in athletic training.

(d) The applicant completes a criminal background history check.

(e) The applicant pays the application fee established by the board.

(f) The applicant authorizes the publication of all of the following information for purposes of the publicly accessible registry:

(1) The applicant's name or names.

(2) The applicant's address of record. If the applicant provides an alternate address of record pursuant to paragraph (2) of subdivision (c), the applicant may instead authorize the publication of the applicant's alternate address of record.

(3) The applicant's current employer. If the applicant is not employed, the authorization shall apply to the organizations or setting provided pursuant to paragraph (3) of subdivision (c).

(4) Whether the applicant is certified by the Board of Certification, Inc., its predecessors or successors, or another

1 nationally accredited athletic trainer certification agency approved
2 by the board.

3 (5) The applicant's completed postsecondary education,
4 degree-granting institutions, and graduation dates, if applicable.

5 2697.7. A registration issued by the board pursuant to Section
6 2697.5 is valid for two years and thereafter is subject to the renewal
7 requirements described in Section 2697.8.

8 2697.8. The board shall renew a ~~license~~ *registration* if an
9 applicant meets both of the following requirements:

10 (a) Pays the renewal fee established by the board.

11 (b) Submits the following:

12 (1) Verification of place of employment.

13 (2) Verification of certificate and other credentials.

14 (3) Verification of address of record.

15 (4) Attestation that the registrant has not been disciplined or
16 convicted of a crime that would be grounds for revocation.

17 2697.9. (a) The board may deny or revoke a registration for
18 any of the following:

19 (1) The applicant or registrant fails to provide the information
20 required pursuant to *Section 2697.8*.

21 (2) The applicant or registrant has had an athletic training or
22 other healing arts license, certification, or registration revoked or
23 suspended by an accredited organization, state agency, or territory.

24 (3) The applicant or registrant has been convicted of a crime
25 that is substantially related to the functions or duties of an athletic
26 trainer.

27 (b) If the board suspends a registration based on suspension or
28 other disciplinary action by another board or certifying entity, the
29 suspension shall not exceed the length of the suspension as
30 determined by the other board or certifying entity.

31 2697.10. (a) The board shall refer complaints as follows:

32 (1) Unlicensed practice to the appropriate licensing board and
33 law enforcement agencies.

34 (2) Incompetent practice and unprofessional conduct to the
35 following, as applicable:

36 (A) The registrant's employer of record.

37 (B) The Board of Certification, Inc.

38 (C) The appropriate licensing board.

1 (b) The board shall include with a complaint referred pursuant
2 to this section a statement disclosing the unverified nature of the
3 complaint.

4 (c) The board shall not make available to the public complaints
5 that have not resulted in a final disciplinary action or criminal
6 conviction.

7 (d) (1) The board shall track and report data relating to
8 complaints, registrants, instances of consumer harm,
9 recommendations for improving athlete and consumer safety, and
10 any other information the board finds necessary, to the appropriate
11 policy committees of the Legislature by July 1, ~~2021~~ 2023. The
12 information shall be aggregated in a manner that does not disclose
13 unverified or criminal or disciplinary actions that did not result in
14 a criminal conviction or formal discipline, or other personal or
15 identifying information.

16 (2) The requirement for submitting a report imposed under
17 paragraph (1) is inoperative on July 1, ~~2025~~ 2027, pursuant to
18 Section 10231.5 of the Government Code.

19 (3) A report to be submitted pursuant to paragraph (1) shall be
20 submitted in compliance with Section 9795 of the Government
21 Code.

22 2697.11. For purposes of this chapter, unprofessional conduct
23 includes, but is not limited to, the following:

24 (a) Incompetence, negligence, or gross negligence in carrying
25 out usual athletic trainer functions.

26 (b) Repeated similar negligent acts in carrying out usual athletic
27 trainer functions.

28 (c) A conviction of practicing medicine without a license in
29 violation of Chapter 5 (commencing with Section 2000), in which
30 event a certified copy of the record of conviction shall be
31 conclusive evidence thereof.

32 (d) The use of advertising relating to athletic training which
33 violates Section 17500.

34 (e) Denial of licensure, revocation, suspension, restriction, or
35 any other disciplinary action against a ~~licensee, certificant, or~~
36 ~~registrant~~ *person licensed, certified, or registered* by another state
37 or territory of the United States, by any other government agency,
38 or by another California healing arts licensing board. A certified
39 copy of the decision, order, or judgment shall be conclusive
40 evidence thereof.

1 (f) Procuring a license by fraud, misrepresentation, or mistake.

2 (g) Violating or attempting to violate, directly or indirectly, or
3 assisting in or abetting the violation of, or conspiring to violate,
4 any provision or term of this chapter or any regulation adopted
5 pursuant to this chapter.

6 (h) Making or giving any false statement or information in
7 connection with the application for issuance or renewal of a
8 registration.

9 (i) Conviction of a crime or of any offense substantially related
10 to the qualifications, functions, or duties of a registrant, in which
11 event the record of the conviction shall be conclusive evidence
12 thereof.

13 (j) Impersonating an applicant or acting as proxy for an applicant
14 in any examination required under this chapter for the issuance of
15 a license, certificate, or registration.

16 (k) ~~Impersonating a licensee, certificant, or registrant, person~~
17 ~~who is licensed, certified, or registered~~ or permitting or allowing
18 another unlicensed person to use a license, certificate, or
19 registration.

20 (l) Committing any fraudulent, dishonest, or corrupt act that is
21 substantially related to the qualifications, functions, or duties of a
22 registrant.

23 (m) Committing any act punishable as a sexually related crime,
24 if that act is substantially related to the qualifications, functions,
25 or duties of a registrant, in which event a certified copy of the
26 record of conviction shall be conclusive evidence thereof.

27 (n) Using excessive force upon or mistreating or abusing any
28 athlete. For purposes of this subdivision, “excessive force” means
29 force clearly in excess of that which would normally be applied
30 in similar clinical circumstances.

31 (o) Falsifying or making grossly incorrect, grossly inconsistent,
32 or unintelligible entries in an athlete or hospital record or any other
33 record.

34 (p) Changing the prescription of a physician and surgeon or
35 falsifying verbal or written orders for treatment or a diagnostic
36 regime received, whether or not that action resulted in actual athlete
37 harm.

38 (q) Failing to maintain confidentiality of athlete medical
39 information, except as disclosure is otherwise permitted or required
40 by law.

1 (r) Delegating to an unlicensed employee or person a service
2 that requires the knowledge, skills, abilities, or judgment of a
3 certified athletic trainer who meets the requirements of subdivision
4 (b) of Section 2697.5.

5 (s) Committing any act that would be grounds for denial of a
6 license or registration under Section 480.

7 (t) Except for good cause, the knowing failure to protect athletes
8 by failing to follow infection control guidelines of the board,
9 thereby risking transmission of infectious diseases from registrant
10 to athlete, from athlete to athlete, or from athlete to registrant.

11 (u) As a registrant, obtaining or possessing in violation of law,
12 or prescribing, or, except as directed by a licensed physician and
13 surgeon, dentist, optometrist, or podiatrist, administering to himself
14 or herself, or furnishing or administering to another, any controlled
15 substance as defined in Division 10 (commencing with Section
16 11000) of the Health and Safety Code or any dangerous drug or
17 dangerous device as defined in Section 4022.

18 (v) As a registrant, using to an extent or in a manner dangerous
19 or injurious to himself or herself, to any other person, or to the
20 public, or that impairs his or her ability to conduct with safety to
21 the public the practice authorized by his or her license, of any of
22 the following:

23 (1) A controlled substance as defined in Division 10
24 (commencing with Section 11000) of the Health and Safety Code.

25 (2) A dangerous drug or dangerous device as defined in Section
26 4022.

27 (3) Alcoholic beverages.

28 (w) As a registrant, being convicted of a criminal offense
29 involving the prescription, consumption, or self-administration of
30 any of the substances described in paragraphs (1) and (2) of
31 subdivision (v), or the possession of, or falsification of a record
32 pertaining to, the substances described in paragraph (1) of
33 subdivision (v), in which event the record of the conviction is
34 conclusive evidence thereof.

35 (x) As a registrant, being committed or confined by a court of
36 competent jurisdiction for intemperate use of any of the substances
37 described in paragraphs (1) and (2) of subdivision (v), in which
38 event the court order of commitment or confinement is prima facie
39 evidence of the commitment or confinement.

1 (y) As a registrant, falsifying, or making grossly incorrect,
2 grossly inconsistent, or unintelligible entries in any athlete record,
3 or any other record.

4
5 Article 4. Penalties and Exemptions
6

7 2697.14. Any person who violates this chapter shall be guilty
8 of a misdemeanor punishable by imprisonment in the county jail
9 not exceeding six months, or by a fine not exceeding one thousand
10 dollars (\$1,000), or by both.

11 2697.15. Whenever any person has engaged in any act or
12 practice which constitutes an offense against this chapter, the
13 superior court of any county, on application of the board, may
14 issue an injunction or other appropriate order restraining such
15 conduct. Proceedings under this section shall be governed by
16 Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of
17 the Code of Civil Procedure. The board may commence action in
18 the superior court under the provisions of this section.

19 2697.16. The requirements of this chapter do not apply to the
20 following:

21 (a) An athletic trainer licensed, certified, or registered in another
22 state or country who is in California temporarily, while traveling
23 with a team or organization, to engage in the practice of athletic
24 training for, among other things, an athletic or sporting event and
25 only when this athletic trainer limits his or her scope of practice
26 to the members of the team or organization or during an emergency.

27 (b) An athletic trainer licensed, certified, or registered in another
28 state or country who is invited by a sponsoring organization, such
29 as the United States Olympic Committee, to temporarily provide
30 athletic training services under his or her state's scope of practice
31 for athletic training.

32 (c) A student enrolled in an athletic training education program,
33 while participating in educational activities during the course of
34 his or her educational rotations under the supervision and guidance
35 of an athletic trainer who meets the requirements of subdivision
36 (b) of Section 2697.5, a physician and surgeon licensed by the
37 Medical Board of California, an osteopathic physician and surgeon
38 licensed by the Osteopathic Medical Board of California, or ~~other~~
39 any *other* licensed health care provider, when the student's title
40 clearly indicates student status.

1 (d) A member or employee of the United States Armed Forces,
2 licensed, certified, or registered in another state as an athletic
3 trainer, as part of his or her temporary federal deployment or
4 employment in California for a limited time.

5 2697.17. This chapter does not limit, impair, or otherwise apply
6 to the practice of any person licensed and regulated under any
7 other chapter of this division.

8 2697.18. This chapter does not require new or additional
9 third-party reimbursement for services rendered by an individual
10 registered under this chapter.

11
12 Article 5. Revenue
13

14 2697.19. (a) The Athletic Trainers' Fund is hereby established
15 in the State Treasury. All fees collected pursuant to this chapter
16 shall be paid into the fund. Moneys in the fund shall be available
17 to the board, upon appropriation by the Legislature, for expenditure
18 by the committee to defray its expenses for administering this
19 chapter.

20 (b) The board shall charge the following fees:

21 (1) An application fee of not more than the reasonable cost of
22 processing the application.

23 (2) An initial registration fee, which shall be prorated and based
24 on the biennial renewal fee.

25 (3) A renewal fee to be established by the board, not to exceed
26 the costs of providing the regulatory administration of this chapter.

27 (4) A delinquency fee for late payment of the registration
28 renewal fee in the following amounts:

29 (A) If the registration is renewed not more than two years from
30 the date of its expiration, the delinquency fee shall be 50 percent
31 of the renewal fee in effect at the time of renewal.

32 (B) If the registration is renewed more than two years after date
33 of expiration of the registration, the delinquency fee shall be 100
34 percent of the renewal fee in effect at the time of renewal.

35 (5) A duplicate registration fee, to replace one that is lost or
36 destroyed, or in the event of a name change, not to exceed the
37 reasonable cost of issuing the duplicate registration.

38 (6) An endorsement fee not to exceed the reasonable cost of
39 issuing the endorsement.

1 (7) A fee to collect fingerprints for criminal history record
2 checks charged by the Department of Justice and the Federal
3 Bureau of Investigation.

4 2697.20. Notwithstanding any other law, including Section
5 11005 of the Government Code, but subject to the Political Reform
6 Act of 1974 (Title 9 (commencing with Section 81000) of the
7 Government Code), the Director of Consumer Affairs may seek
8 and receive funds from the California Athletic Trainers Association
9 or any other private individual or entity for the initial costs of
10 implementing this chapter. *If private funds are unavailable to cover*
11 *the startup costs of implementing this act, a general fund or special*
12 *fund loan may be used and shall be repaid with fee revenue.*

13 SEC. 5. The Legislature finds and declares that Section 4 of
14 this act, which adds Sections 2697.4 and 2697.10 to the Business
15 and Professions Code, imposes a limitation on the public's right
16 of access to the meetings of public bodies or the writings of public
17 officials and agencies within the meaning of Section 3 of Article
18 I of the California Constitution. Pursuant to that constitutional
19 provision, the Legislature makes the following findings to
20 demonstrate the interest protected by this limitation and the need
21 for protecting that interest:

22 In order to allow the Athletic Training Board to fully accomplish
23 its goals, it is imperative to protect the interests of those persons
24 whose information is submitted to the board to ensure that any
25 personal information that this act requires to be submitted is
26 protected as confidential information.

27 SEC. 6. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

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AMENDED IN SENATE APRIL 4, 2018

SENATE BILL

No. 1298

Introduced by Senator Skinner

February 16, 2018

An act to amend Sections 11105, 11121, 11126, and 13300 of, to add Section 11128 to, and to repeal and add Section 11122 of, *Section 11105* of the Penal Code, relating to criminal records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1298, as amended, Skinner. The Increasing Access to Employment Act.

~~(1) Existing~~

Existing law requires the Department of Justice to maintain state summary criminal history information, as defined, and requires the Attorney General to furnish state summary criminal history information to specified entities and individuals if needed in the course of their duties: individuals, including an authorized entity for employment, licensing, or certification relative to community care facilities, residential care facilities, and other specified health facilities. Existing law requires the department to provide the requester with every conviction of an offense rendered against the applicant, except for a conviction for which relief was granted to a victim of human trafficking, as specified.

~~This bill would limit the information the department provides to specified requesters to more recent misdemeanors and felonies, generally within 5 years, and other information, as specified, including offenses for which registration as a sex offender is required. The bill would, for specified requesters, prohibit the disclosure of a conviction that has been dismissed, an arrest that was subsequently deemed a detention, or~~

~~an arrest that resulted in the successful completion of a diversion program, exoneration, or an arrest that has been sealed. The bill would specify what information is to be provided to a consumer reporting agency, as defined. prohibit the department from releasing, for these purposes, the record of convictions that were dismissed pursuant to specified provisions.~~

Existing law requires the department to provide an agency, organization, or individual, including, but not limited to, a cable corporation, in-home supportive services recipient, or property security organization, requesting the information for specified employment purposes with every conviction for which registration as a sex offender is required and, except as specified, every conviction that occurred within 10 years of the date of the request or for which the person was incarcerated within 10 years of the request for information.

This bill would require that only convictions from the prior 7 years or for which the person was incarcerated or on probation or parole within 7 years of the request be provided.

Existing law requires, when state summary criminal history information is furnished as a result of specified requests, and the information is to be used for employment, licensing, or certification purposes, that the requester furnish the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision.

This bill would instead require the department to furnish a copy of the Criminal Offender Record Information (CORI) to the subject when a state or federal summary criminal history information is requested and the information is to be used for employment, licensing, or certification purposes of the request and would require the department to allow the subject a reasonable opportunity of not less than five days to challenge the accuracy or completeness of any matter contained in the CORI prior to furnishing a report to a third party. The bill would require the department to make specified corrections prior to furnishing the information to the requester.

~~Existing law requires a person who wants a copy of the his or her state summary criminal history information to obtain an application form furnished by the department and provide his or her fingerprints, in addition to other information specified by the department.~~

~~This bill would remove the requirement that a person submit fingerprints to obtain his or her state summary criminal history~~

information and would require only that information the department deems necessary.

(2) Existing law authorizes a person who desires to question the accuracy or completeness of any material matter contained in the record to submit a written request to the department and, if the accuracy of the source document is questioned, requires the department to forward it to the person or agency that furnished the questioned information. Existing law gives person or agency 30 days from the receipt of the written request for clarification, to review its information and forward to the department the results of the review. Under existing law, if the person or agency that created the source document concurs in the allegations of inaccuracy or incompleteness in the record, and finds that the error is material, it is required to correct its record and inform the department. Existing law provides the department 30 within which to inform the applicant of its correction of the record.

This bill would authorize an applicant to question the accuracy or completeness of any matter and, if the source document is questioned, would require the department, within 5 days, to verify the accuracy of the source document with the person or agency that furnished the questioned information. The bill would require the department to correct its record, destroy and purge the incorrect information if the department is unable to verify the accuracy or completeness of the source document and would require to destroy and purge the incorrect information. The bill would require the department to inform the applicant of the correction and destruction of the record within 10 days. The bill would also require a person or agency to which the incorrect record has been disseminated to, upon notification, correct the record accordingly and destroy and purge the incorrect information within 30 days. By increasing the requirements on local agencies that supply the source documents, this bill would impose a state-mandated local program.

(3) This bill would establish the Increasing Access to Employment Fund and would make funds available, upon appropriation, to the California Workforce Investment Board to administer a grant program aimed at improving rehabilitation, reentry, and employment and licensing outcomes for people with criminal convictions, as specified.

(4) Existing law requires the disclosure of local summary criminal history information by a local criminal justice agency to certain authorized entities and authorizes the disclosure of that information to other entities in specified circumstances.

~~The bill would require a local agency to disclose local summary criminal history information to the subject of the request or to an individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation. By increasing the duties of local criminal justice agencies, this bill would impose a state-mandated local program. The bill would also reduce the entities to which local summary criminal history is required to be disclosed and to which that information is authorized to be disclosed, as specified.~~

~~Existing law prohibits a local criminal justice agency from releasing information under specified circumstances, including information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated.~~

~~This bill would prohibit a local criminal justice agency from releasing information relating to convictions that were dismissed, arrests subsequently deemed a detention, arrests that resulted in the successful completion of a diversion program, exoneration, or arrests that were sealed. The bill would also limit the information that a local criminal justice agency can disclose to convictions for which registration as a sex offender is required, information concerning misdemeanor convictions that occurred before 2 years of the date of the request for information, and felony convictions that occurred before 5 years of the date of the request for information.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) This act shall be known, and may be cited,
- 2 as the Increasing Access to Employment Act.
- 3 (b) It is the intent of the Legislature that criminal conviction
- 4 records not operate as an automatic bar to employment, licensure,
- 5 and certification. It is the intent of the Legislature not to change

or impact in any way the role or authority of a licensing board or state agency to assess the fitness of applicants seeking licensure, certification, and employment pursuant to provisions of the Business and Professions Code, Health and Safety Code, Insurance Code, and Welfare and Institutions Code, as applicable. This act supercedes any statute, regulation, rule, or decision directing a licensing board, state agency, employer, or any other applicable person or entity, to obtain criminal history records in a manner that conflicts with the intent of this act.

~~(c) It is the intent of the Legislature to create the Increasing Access to Employment Fund for rehabilitation and reentry services to improve prospects for licensing, certification, and professional employment for people with criminal conviction records. Recidivism is reduced when people with criminal convictions are given the opportunity to secure employment and engage in a trade, occupation, or profession. It is in the interest of public safety to assist in the rehabilitation of criminal offenders by removing impediments and restrictions on an offenders' ability to obtain employment or engage in a trade, occupation, or profession when those impediments and restrictions are based solely upon the existence of a criminal record. Increasing opportunities for people with criminal records improves the economic well-being of families and communities and is a path to full employment in California.~~

SEC. 2. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, ~~such as~~ including name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints ~~to or~~ to, investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys or city prosecutors of a city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to ~~Section 4852.08.~~ 4852.01.

(9) A public defender or attorney of record when representing a person in a criminal case, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official ~~of the state~~ authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related

1 information to the Department of Justice to be transmitted to the
2 Federal Bureau of Investigation.

3 (11) ~~A city or city, county, city and county, district, or an officer~~
4 ~~or official thereof thereof~~, if access is needed in order to assist that
5 agency, officer, or official in fulfilling employment, certification,
6 or licensing duties, and if the access is specifically authorized by
7 the city council, board of supervisors, or governing board of the
8 city, county, or district if the state summary criminal history
9 information is required to implement a statute, ordinance, or
10 regulation that expressly refers to specific criminal conduct
11 applicable to the subject person of the state summary criminal
12 history information, and contains requirements or exclusions, or
13 both, expressly based upon that specified criminal conduct. The
14 ~~city or city, county, city and county, district, or the officer or~~
15 ~~official thereof~~ authorized by this paragraph may also transmit
16 fingerprint images and related information to the Department of
17 Justice to be transmitted to the Federal Bureau of Investigation.

18 (12) The subject of the state summary criminal history
19 information under procedures established under Article 5
20 (commencing with Section 11120).

21 (13) A person or entity when access is expressly authorized by
22 statute if the criminal history information is required to implement
23 a statute or regulation that expressly refers to specific criminal
24 conduct applicable to the subject person of the state summary
25 criminal history information, and contains requirements or
26 exclusions, or both, expressly based upon that specified criminal
27 conduct.

28 (14) Health officers of a city, county, city and county, or district
29 when in the performance of their official duties enforcing Section
30 120175 of the Health and Safety Code.

31 (15) A managing or supervising correctional officer of a county
32 jail or other county correctional facility.

33 (16) A humane society, or society for the prevention of cruelty
34 to animals, for the specific purpose of complying with Section
35 14502 of the Corporations Code for the appointment of humane
36 officers.

37 (17) Local child support agencies established by Section 17304
38 of the Family Code. When a local child support agency closes a
39 support enforcement case containing state summary criminal
40 history information, the agency shall delete or purge from the file

1 and destroy any documents or information concerning or arising
2 from offenses for or of which the parent has been arrested, charged,
3 or convicted, other than for offenses related to the parent's having
4 failed to provide support for minor children, consistent with the
5 requirements of Section 17531 of the Family Code.

6 (18) County child welfare agency personnel who have been
7 delegated the authority of county probation officers to access state
8 summary criminal history information pursuant to Section 272 of
9 the Welfare and Institutions Code for the purposes specified in
10 Section 16504.5 of the Welfare and Institutions Code. Information
11 from criminal history records provided pursuant to this subdivision
12 shall not be used for a purpose other than those specified in this
13 section and Section 16504.5 of the Welfare and Institutions Code.
14 When an agency obtains records both on the basis of name checks
15 and fingerprint checks, final placement decisions shall be based
16 only on the records obtained pursuant to the fingerprint check.

17 (19) The court of a tribe, or court of a consortium of tribes, that
18 has entered into an agreement with the state pursuant to Section
19 10553.1 of the Welfare and Institutions Code. This information
20 may be used only for the purposes specified in Section 16504.5
21 of the Welfare and Institutions Code and for tribal approval or
22 tribal licensing of foster care or adoptive homes. Article 6
23 (commencing with Section 11140) shall apply to officers, members,
24 and employees of a tribal court receiving state summary criminal
25 history information pursuant to this section.

26 (20) Child welfare agency personnel of a tribe or consortium
27 of tribes that has entered into an agreement with the state pursuant
28 to Section 10553.1 of the Welfare and Institutions Code and to
29 whom the state has delegated duties under paragraph (2) of
30 subdivision (a) of Section 272 of the Welfare and Institutions Code.
31 The purposes for use of the information shall be for the purposes
32 specified in Section 16504.5 of the Welfare and Institutions Code
33 and for tribal approval or tribal licensing of foster care or adoptive
34 homes. When an agency obtains records on the basis of name
35 checks and fingerprint checks, final placement decisions shall be
36 based only on the records obtained pursuant to the fingerprint
37 check. Article 6 (commencing with Section 11140) shall apply to
38 child welfare agency personnel receiving criminal record offender
39 information pursuant to this section.

1 (21) An officer providing conservatorship investigations
2 pursuant to Sections 5351, 5354, and 5356 of the Welfare and
3 Institutions Code.

4 (22) A court investigator providing investigations or reviews
5 in conservatorships pursuant to Section 1826, 1850, 1851, or
6 2250.6 of the Probate Code.

7 (23) A person authorized to conduct a guardianship investigation
8 pursuant to Section 1513 of the Probate Code.

9 (24) A humane officer pursuant to Section 14502 of the
10 Corporations Code for the purposes of performing his or her duties.

11 (25) A public agency described in subdivision (b) of Section
12 15975 of the Government Code, for the purpose of oversight and
13 enforcement policies with respect to its contracted providers.

14 (26) (A) A state entity, or its designee, that receives federal tax
15 information. A state entity or its designee that is authorized by this
16 paragraph to receive state summary criminal history information
17 also may transmit fingerprint images and related information to
18 the Department of Justice to be transmitted to the Federal Bureau
19 of Investigation for the purpose of the state entity or its designee
20 obtaining federal level criminal offender record information from
21 the Department of Justice. This information shall be used only for
22 the purposes set forth in Section 1044 of the Government Code.

23 (B) For purposes of this paragraph, “federal tax information,”
24 “state entity” and “designee” are as defined in paragraphs (1), (2),
25 and (3), respectively, of subdivision (f) of Section 1044 of the
26 Government Code.

27 (c) The Attorney General may furnish state summary criminal
28 history information and, when specifically authorized by this
29 subdivision, federal level criminal history information upon a
30 showing of a compelling need to any of the following, provided
31 that when information is furnished to assist an agency, officer, or
32 official of state or local government, a public utility, or any other
33 entity in fulfilling employment, certification, or licensing duties,
34 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
35 Labor Code shall apply:

36 (1) A public utility, as defined in Section 216 of the Public
37 Utilities Code, that operates a nuclear energy facility when access
38 is needed in order to assist in employing persons to work at the
39 facility, provided that, if the Attorney General supplies the data,

1 he or she shall furnish a copy of the data to the person to whom
2 the data relates.

3 (2) To a peace officer of the state other than those included in
4 subdivision (b).

5 (3) To an illegal dumping enforcement officer as defined in
6 subdivision (j) of Section 830.7.

7 (4) To a peace officer of another country.

8 (5) To ~~a public officers, officer, other than a peace officers,~~
9 ~~officer, of the United States, other states, or possessions or~~
10 ~~territories another state, or a possession or territory of the United~~
11 ~~States, provided that access to records similar to state summary~~
12 ~~criminal history information is expressly authorized by a statute~~
13 ~~of the United States, other states, or possessions or territories the~~
14 ~~other state, or the possession or territory of the United States if~~
15 ~~the information is needed for the performance of their official~~
16 ~~duties.~~

17 (6) To a person ~~when~~ *if* disclosure is requested by a probation,
18 parole, or peace officer with the consent of the subject of the state
19 summary criminal history information and for purposes of
20 furthering the rehabilitation of the subject.

21 (7) The courts of the United States, other states, or territories
22 or possessions of the United States.

23 (8) Peace officers of the United States, other states, or territories
24 or possessions of the United States.

25 (9) To an individual who is the subject of the record requested
26 if needed in conjunction with an application to enter the United
27 States or a foreign nation.

28 (10) (A) (i) A public utility, as defined in Section 216 of the
29 Public Utilities Code, or a cable corporation as defined in
30 subparagraph (B), if receipt of *state summary* criminal history
31 information is needed in order to assist in employing current or
32 prospective employees, contract employees, or subcontract
33 employees who, in the course of their employment, may be seeking
34 entrance to private residences or adjacent grounds. The information
35 provided shall be limited to the record of convictions and arrests
36 for which the person is released on bail or on his or her own
37 recognizance pending trial.

38 (ii) If the Attorney General supplies the data pursuant to this
39 paragraph, the Attorney General shall furnish a copy of the data
40 to the current or prospective employee to whom the data relates.

1 (iii) State summary criminal history information is confidential
2 and the receiving public utility or cable corporation shall not
3 disclose its contents, other than for the purpose for which it was
4 acquired. The state summary criminal history information in the
5 possession of the public utility or cable corporation and all copies
6 made from it shall be destroyed not more than 30 days after
7 employment or promotion or transfer is denied or granted, except
8 for those cases where a current or prospective employee is out on
9 bail or on his or her own recognizance pending trial, in which case
10 the state summary criminal history information and all copies shall
11 be destroyed not more than 30 days after the case is resolved.

12 (iv) A violation of this paragraph is a misdemeanor, and shall
13 give the current or prospective employee who is injured by the
14 violation a cause of action against the public utility or cable
15 corporation to recover damages proximately caused by the
16 violations. A public utility's or cable corporation's request for
17 state summary criminal history information for purposes of
18 employing current or prospective employees who may be seeking
19 entrance to private residences or adjacent grounds in the course
20 of their employment shall be deemed a "compelling need" as
21 required to be shown in this subdivision.

22 (v) This section shall not be construed as imposing a duty upon
23 public utilities or cable corporations to request state summary
24 criminal history information on current or prospective employees.

25 (B) For purposes of this paragraph, "cable corporation" means
26 a corporation or firm that transmits or provides television,
27 computer, or telephone services by cable, digital, fiber optic,
28 satellite, or comparable technology to subscribers for a fee.

29 (C) Requests for federal level criminal history information
30 received by the Department of Justice from entities authorized
31 pursuant to subparagraph (A) shall be forwarded to the Federal
32 Bureau of Investigation by the Department of Justice. Federal level
33 criminal history information received or compiled by the
34 Department of Justice may then be disseminated to the entities
35 referenced in subparagraph (A), as authorized by law.

36 (11) To a campus of the California State University or the
37 University of California, or a four-year college or university
38 accredited by a regional accreditation organization approved by
39 the United States Department of Education, if needed in
40 conjunction with an application for admission by a convicted felon

1 to a special education program for convicted felons, including, but
2 not limited to, university alternatives and halfway houses. Only
3 conviction information shall be furnished. The college or university
4 may require the convicted felon to be fingerprinted, and any inquiry
5 to the department under this section shall include the convicted
6 felon's fingerprints and any other information specified by the
7 department.

8 (12) To a foreign government, if requested by the individual
9 who is the subject of the record requested, if needed in conjunction
10 with the individual's application to adopt a minor child who is a
11 citizen of that foreign nation. Requests for information pursuant
12 to this paragraph shall be in accordance with the process described
13 in Sections 11122 to 11124, inclusive. The response shall be
14 provided to the foreign government or its designee and to the
15 individual who requested the information.

16 (d) ~~Whenever~~ *When* an authorized request for state summary
17 criminal history information pertains to a person whose fingerprints
18 are on file with the Department of Justice and the department has
19 no criminal history of that person, and the information is to be
20 used for employment, licensing, or certification purposes, the
21 fingerprint card accompanying the request for information, if any,
22 may be stamped "no criminal record" and returned to the person
23 or entity making the request.

24 (e) ~~Whenever~~ *When* state summary criminal history information
25 is furnished as the result of an application and is to be used for
26 employment, licensing, or certification purposes, the Department
27 of Justice may charge the person or entity making the request a
28 fee that it determines to be sufficient to reimburse the department
29 for the cost of furnishing the information. In addition, the
30 Department of Justice may add a surcharge to the fee to fund
31 maintenance and improvements to the systems from which the
32 information is obtained. Notwithstanding any other law, a person
33 or entity required to pay a fee to the department for information
34 received under this section may charge the applicant a fee sufficient
35 to reimburse the person or entity for this expense. All moneys
36 received by the department pursuant to this section, Sections
37 11105.3 and 26190, and former Section 13588 of the Education
38 Code shall be deposited in a special account in the General Fund
39 to be available for expenditure by the department to offset costs
40 incurred pursuant to those sections and for maintenance and

1 improvements to the systems from which the information is
2 obtained upon appropriation by the Legislature.

3 (f) Whenever there is a conflict, the processing of criminal
4 fingerprints and fingerprints of applicants for security guard or
5 alarm agent registrations or firearms qualification permits
6 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
7 of the Business and Professions Code shall take priority over the
8 processing of other applicant fingerprints.

9 (g) It is not a violation of this section to disseminate statistical
10 or research information obtained from a record, provided that the
11 identity of the subject of the record is not disclosed.

12 (h) It is not a violation of this section to include information
13 obtained from a record in (1) a transcript or record of a judicial or
14 administrative proceeding or (2) any other public record if the
15 inclusion of the information in the public record is authorized by
16 a court, statute, or decisional law.

17 (i) Notwithstanding any other law, the Department of Justice
18 or a state or local law enforcement agency may require the
19 submission of fingerprints for the purpose of conducting state
20 summary criminal history information checks that are authorized
21 by law.

22 (j) The state summary criminal history information shall include
23 any finding of mental incompetence pursuant to Chapter 6
24 (commencing with Section 1367) of Title 10 of Part 2 arising out
25 of a complaint charging a felony offense specified in Section 290.

26 (k) (1) This subdivision shall apply whenever state or federal
27 summary criminal history information is furnished by the
28 Department of Justice as the result of an application by an
29 authorized agency or organization and the information is to be
30 used for peace officer employment or certification purposes. As
31 used in this subdivision, a peace officer is defined in Chapter 4.5
32 (commencing with Section 830) of Title 3 of Part 2.

33 (2) Notwithstanding any other law, whenever state summary
34 criminal history information is initially furnished pursuant to
35 paragraph (1), the Department of Justice shall disseminate the
36 following information:

37 (A) Every conviction rendered against the applicant.

38 (B) Every arrest for an offense for which the applicant is
39 presently awaiting trial, whether the applicant is incarcerated or

1 has been released on bail or on his or her own recognizance
2 pending trial.

3 (C) Every arrest or detention, except for an arrest or detention
4 resulting in an exoneration, provided, however, that where the
5 records of the Department of Justice do not contain a disposition
6 for the arrest, the Department of Justice first makes a genuine effort
7 to determine the disposition of the arrest.

8 (D) Every successful diversion.

9 (E) Every date and agency name associated with all retained
10 peace officer or nonsworn law enforcement agency employee
11 preemployment criminal offender record information search
12 requests.

13 (F) Sex offender registration status of the applicant.

14 (G) Sentencing information, if present in the department's
15 records at the time of the response.

16 (I) (1) This subdivision shall apply whenever state or federal
17 summary criminal history information is furnished by the
18 Department of Justice as the result of an application by a criminal
19 justice agency or organization as defined in Section 13101, and
20 the information is to be used for criminal justice employment,
21 licensing, or certification purposes.

22 (2) Notwithstanding any other law, whenever state summary
23 criminal history information is initially furnished pursuant to
24 paragraph (1), the Department of Justice shall disseminate the
25 following information:

26 (A) Every conviction rendered against the applicant.

27 (B) Every arrest for an offense for which the applicant is
28 presently awaiting trial, whether the applicant is incarcerated or
29 has been released on bail or on his or her own recognizance
30 pending trial.

31 (C) Every arrest for an offense for which the records of the
32 Department of Justice do not contain a disposition or ~~which~~ *that*
33 did not result in a conviction, provided that the Department of
34 Justice first makes a genuine effort to determine the disposition
35 of the arrest. However, information concerning an arrest shall not
36 be disclosed if the records of the Department of Justice ~~indicate~~
37 *indicate*, or if the genuine effort ~~reveals~~ *reveals*, that the subject
38 was exonerated, successfully completed a diversion or deferred
39 entry of judgment program, or the arrest was deemed a detention,
40 or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to ~~Section 1203.49~~: *1203.4, 1203.4a, 1203.41, 1203.42, 1203.45, 1203.49, or 1170.9*.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in ~~paragraph (1) of this subdivision~~, (1), the Department of Justice shall not disseminate information about an arrest subsequently

1 deemed a detention or an arrest that resulted in the successful
2 completion of a diversion program, exoneration, or a grant of relief
3 pursuant to Section 851.91.

4 (n) (1) This subdivision shall apply whenever state or federal
5 summary criminal history information, to be used for employment,
6 licensing, or certification purposes, is furnished by the Department
7 of Justice as the result of an application by an authorized agency,
8 organization, or individual pursuant to any of the following:

9 (A) Paragraph (10) of subdivision (c), when the information is
10 to be used by a cable corporation.

11 (B) Section 11105.3 or 11105.4.

12 (C) Section 15660 of the Welfare and Institutions Code.

13 (D) A statute that incorporates the criteria of any of the statutory
14 provisions listed in subparagraph (A), (B), or (C), or of this
15 subdivision, by reference.

16 (2) With the exception of applications submitted by
17 transportation companies authorized pursuant to Section 11105.3,
18 and notwithstanding any other law, whenever state summary
19 criminal history information is initially furnished pursuant to
20 paragraph (1), the Department of Justice shall disseminate the
21 following information:

22 (A) Every conviction, except a conviction for which relief has
23 been granted pursuant to Section ~~1203.49~~, 1203.4, 1203.4a,
24 1203.41, 1203.42, 1203.45, 1203.49, or 1170.9, rendered against
25 the applicant for a violation or attempted violation of an offense
26 specified in subdivision (a) of Section 15660 of the Welfare and
27 Institutions Code. However, with the exception of those offenses
28 for which registration is required pursuant to Section 290, the
29 Department of Justice shall not disseminate information pursuant
30 to this subdivision unless the conviction occurred within ~~10~~ seven
31 years of the date of the agency's request for information or the
32 conviction is over ~~10~~ seven years old but the subject of the request
33 was incarcerated *or on probation or parole* within ~~10~~ seven years
34 of the agency's request for information.

35 (B) Every arrest for a violation or attempted violation of an
36 offense specified in subdivision (a) of Section 15660 of the Welfare
37 and Institutions Code for which the applicant is presently awaiting
38 trial, whether the applicant is incarcerated or has been released on
39 bail or on his or her own recognizance pending trial.

40 (C) Sex offender registration status of the applicant.

1 (D) Sentencing information, if present in the department's
2 records at the time of the response.

3 (o) (1) This subdivision shall apply whenever state or federal
4 summary criminal history information is furnished by the
5 Department of Justice as the result of an application by an
6 authorized agency or organization pursuant to Section 379 or 550
7 of the Financial Code, or a statute that incorporates the criteria of
8 either of those sections or this subdivision by reference, and the
9 information is to be used for employment, licensing, or certification
10 purposes.

11 (2) Notwithstanding any other law, whenever state summary
12 criminal history information is initially furnished pursuant to
13 paragraph (1), the Department of Justice shall disseminate the
14 following information:

15 (A) Every conviction rendered against the applicant for a
16 violation or attempted violation of an offense specified in Section
17 550 of the Financial Code, except a conviction for which relief
18 has been granted pursuant to Section ~~1203.49~~, *1203.4*, *1203.4a*,
19 *1203.41*, *1203.42*, *1203.45*, *1203.49*, or *1170.9*.

20 (B) Every arrest for a violation or attempted violation of an
21 offense specified in Section 550 of the Financial Code for which
22 the applicant is presently awaiting trial, whether the applicant is
23 incarcerated or has been released on bail or on his or her own
24 recognizance pending trial.

25 (C) Sentencing information, if present in the department's
26 records at the time of the response.

27 (p) (1) This subdivision shall apply whenever state or federal
28 criminal history information is furnished by the Department of
29 Justice as the result of an application by an agency, organization,
30 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
31 by a transportation company authorized pursuant to Section
32 11105.3, or a statute that incorporates the criteria of that section
33 or this subdivision by reference, and the information is to be used
34 for employment, licensing, or certification purposes.

35 (2) Notwithstanding any other law, whenever state summary
36 criminal history information is initially furnished pursuant to
37 paragraph (1), the Department of Justice shall disseminate the
38 following information:

39 (A) Every conviction rendered against the applicant, except a
40 conviction for which relief has been granted pursuant to Section

1 ~~1203.49. 1203.4, 1203.4a, 1203.41, 1203.42, 1203.45, 1203.49,~~
2 ~~or 1170.9.~~

3 (B) Every arrest for an offense for which the applicant is
4 presently awaiting trial, whether the applicant is incarcerated or
5 has been released on bail or on his or her own recognizance
6 pending trial.

7 (C) Sex offender registration status of the applicant.

8 (D) Sentencing information, if present in the department's
9 records at the time of the response.

10 (q) All agencies, organizations, or individuals defined in
11 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
12 Department of Justice for subsequent notification pursuant to
13 Section 11105.2. This subdivision shall not supersede sections that
14 mandate an agency, organization, or individual to contract with
15 the Department of Justice for subsequent notification pursuant to
16 Section 11105.2.

17 (r) This section does not require the Department of Justice to
18 cease compliance with any other statutory notification
19 requirements.

20 (s) The provisions of Section 50.12 of Title 28 of the Code of
21 Federal Regulations are to be followed in processing federal
22 criminal history information.

23 (t) Whenever state or federal summary criminal history
24 information is furnished by the Department of Justice as the result
25 of an application by an authorized agency, organization, or
26 individual defined in subdivisions (k) to (p), inclusive, and the
27 information is to be used for employment, licensing, or certification
28 purposes, ~~the authorized agency, organization, or individual shall~~
29 ~~expeditiously furnish a copy of the information to the person to~~
30 ~~whom the information relates if the information is a basis for an~~
31 ~~adverse employment, licensing, or certification decision. When~~
32 ~~furnished other than in person, the copy shall be delivered to the~~
33 ~~last contact information provided by the applicant.~~ *purposes, the*
34 *department shall first furnish a copy of the Criminal Offender*
35 *Record Information (CORI) to the subject of the request. After*
36 *furnishing a copy to the subject, but prior to furnishing a report*
37 *to a third party, the department shall allow the subject a reasonable*
38 *opportunity of not less than five days to challenge the accuracy*
39 *or completeness of any matter contained in the CORI. The*
40 *department shall make the necessary corrections pursuant to*

1 *Section 11126 prior to furnishing the information to the requesting*
2 *agency, organization, or individual.*
3

4
5 **All matter omitted in this version of the bill**
6 **appears in the bill as introduced in the**
7 **Senate, February 16, 2018. (JR11)**
8

O



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY - GOVERNOR EDMUND G. BROWN JR.

Physical Therapy Board of California

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Bill Analysis

Bill Number:	SB 1448	Version:	Amended 5/25/18
Author:	Hill	Sponsor:	Author
Subject:	Healing Arts	Status:	Assembly. Pending Referral
	Licensees:		
	Probation Status:		
	Disclosure		

Adopted Position:

None.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

1. Requires health practitioner licensing boards to create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority. Requires the central file to be created and maintained to provide an individual historical record for each licensee and must include specified information including the following: any conviction of a crime, any judgment or settlement in excess of \$3,000, any public complaints as specified, and any disciplinary information, as specified. States that the content of the central file that is not public record under any other provision of law is confidential. Allows a licensee to submit any exculpatory or explanatory statements or other information to be included in the central file. (Business and Professions Code (BPC) § 800)
2. Requires the Medical Board of California (MBC), the Osteopathic Medical Board of California (OMBC), the California Board of Podiatric Medicine (BPM), and the Physician Assistant Board to disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee including temporary restraining orders issued, interim suspension orders issued, revocations, suspensions, probations, or limitations on practice ordered by the boards (including those made part of a probationary order or stipulated agreement), public letters of reprimand issued, infractions, citations, or fines imposed. (BPC § 803.1)
3. Requires MBC to post the current status of its licensees on its website; any revocations, suspensions, probations, or limitations on practice, including those made part of a probationary order or stipulated agreement; historical information regarding probation orders by MBC, or the board of another state or jurisdiction, completed or terminated, including the operative accusation resulting in the discipline by that board; and other information about a licensee's status and history. (BPC § 2027).



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This Bill

1. Requires, on and after July 1, 2019, licensees of MBC and OMBC (according to circumstances outlined in 5) and 6) below) and licensees of BPM, Acupuncture Board, Board of Chiropractic Examiners, and the Naturopathic Medicine Committee to provide a patient or the patient's guardian or healthcare surrogate with a disclosure prior to the patient's first visit if the licensee is on probation on or after July 1, 2019 that contains the following: a) The licensee's probationary status. b) The length of the probation and the end date. c) All practice restrictions placed on the licensee by the licensing board. d) The board's phone number.) e) An explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information site.
2. Requires licensees to obtain a signed copy of the disclosure outlined above from the patient or the patient's guardian or health surrogate. Provides an exemption to the disclosure requirement if the patient is unconscious or otherwise unable to comprehend the disclosure and if a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the receipt of disclosure; if the visit occurs in an emergency room and the licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit and; if the licensee does not have a direct treatment relationship with the patient.
3. Requires the health practitioner licensing boards in 1) above, to provide the following information on their online license information sites for licensees on probation and practicing under probationary licenses:
 - a) The causes alleged in the operative accusation for probation imposed pursuant to a stipulated settlement along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt for probation imposed pursuant to a stipulated settlement.
 - b) The causes for probation stated in the final probationary order for probation imposed by the board's adjudicated decision.
 - c) The causes by which the probationary license was imposed for a licensee granted a probationary license.
 - d) The length of the probation and an end date.
 - e) All practice restrictions placed on the license.
4. Requires licensees of MBC and OMBC to comply with the notification requirements set forth in this bill, if there is a final adjudication by MBC or OMBC following an administrative hearing, or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:
 - a) The commission of any act of sexual abuse, misconduct or relations with a patient or client.



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- b) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.
 - c) Criminal conviction involving harm to patient safety or health.
 - d) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.
5. Requires MBC and OMBC licensees to comply with the notification requirements set forth in this bill if an accusation or statement of issues alleged that the licensee committed any of the acts in a) to d) above in situations where the licensee pleads no-contest or agrees to a similar compromise that does not include any prima facie showing or admission of guilt of fact but does include an express acknowledgement that notification would serve to protect the public interest.

Purpose/Background

Purpose:

The Author is the Sponsor of this bill. According to the Author, "Senate Bill 1448 would make California the first state to require that doctors notify their patients if they are on probation by the Medical Board of California for wrongdoing, including sexual misconduct. Hospitals and malpractice insurers are already notified when a doctor is placed on probation, but patients are left in the dark. The only way they can find out their doctor's probation status is if they have computer and internet access and try to navigate the Medical Board's website and read through lengthy legal documents. 82% of Americans favor the idea of doctors having to tell patients they are on probation, and why. (Source: 2016 Consumer Reports survey of 1,203 U.S. adults.) On average about 124 doctors (out of 140,000 licensed physicians) are placed on probation each year by the California Medical Board for a variety of offenses. SB 1448 breaks the silence on misconduct and ensures that future patients are fully informed."

The Author states that "Doctors who face probation in the future would have a choice: Either pursue a hearing by an administrative law judge or agree to terms of probation with the Medical Board. SB 1448 would require that notifying patients of their status is a condition of accepting probation. This does not infringe on a doctor's due process. Even if a doctor decided to pursue an ALJ hearing, SB 1448 is still necessary since the ALJ might recommend probation. SB 1448 would make sure that patients are informed of the doctors probation status."

Background:

Public notification of disciplinary actions. Healing arts boards within the DCA that license health professionals have the authority to set their own priorities and policies and take disciplinary action on their licensees. A determination of probation is a step in a lengthy disciplinary process, conducted in accordance with the Administrative Procedures Act, and offering due process for accused licensees. Licensees may be



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placed on probation following the Attorney General's filing of an accusation for a variety of reasons such as gross negligence/incompetence (a common reason for probation), substance abuse, inappropriate prescribing, sexual misconduct, conviction of a felony or other miscellaneous violations. Boards utilize disciplinary guidelines which are regulations that allow boards to establish consistency in disciplinary penalties for similar offenses on a statewide basis and create uniform guidelines for violations of a particular practice act. Guidelines are used by Administrative Law Judges, attorneys, licensees and others involved in a regulatory program's disciplinary process.

When a licensee is placed on probation, generally they continue to practice and interact with patients, often under restricted conditions. As such, increasing the ability of patients and the public to obtain information about health care professionals they interact with has also been the subject of various Legislative and regulatory actions. A number of health licensing boards within the DCA already have requirements similar to those contained in this bill. The Board of Behavioral Sciences, Board of Optometry and Physical Therapy Board are authorized through regulations to require licensees to provide notification of probationary status to clients as a term of probation. Other boards require notification of probationary status to be provided to employers (Dental Hygiene Committee of California, California Board of Occupational Therapy, Board of Pharmacy, Board of Registered Nursing, Respiratory Care Board of California, Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, Board of Vocational Nursing and Psychiatric Technicians) and to employees (Veterinary Medical Board).

The MBC posts information regarding probation on its Web site, distributes the information to its email list and includes final enforcement actions and a summary of the violations leading to those actions, which may include probation. However, the groups most likely to benefit from this information are the least likely to have access to electronic communications. According to a recent Pew Research Center U.S. analysis, seniors, the most likely group to seek healthcare, are also the group most likely to say they never go online. About four in 10 adults ages 65 and older (39 percent) do not use the Internet, compared with only three percent of 18- to 29- year-olds. One-in-five African Americans, 18 percent of Hispanics and five percent of English-speaking Asian Americans do not use the Internet, compared with 14 percent of whites.

Patients may be especially deserving of greater access to information about health care licensees on probation given the potential for future disciplinary action. The 2008 California Research Bureau (CRB) study reported that physicians who have received serious sanctions in the past are far more likely to receive additional sanctions in the future. According to the CRB report, "These findings strongly imply that disciplinary histories provide patients with important information about the likely qualities of different physicians." The CRB cited research that examined physician discipline data provided by Federation of State Medical Boards.



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As the author notes, “hospitals and malpractice insurers are already notified when a doctor is placed on probation, but patients are left in the dark. The only way they can find out their doctor’s probation status is if they have computer and internet access and try to navigate the Medical Board’s website and read through lengthy legal documents...On average about 124 doctors (out of 140,000 licensed physicians) are placed on probation each year by the California Medical Board for a variety of offenses.”

Fiscal Impact:

1. Likely ongoing costs in the low hundreds of thousands of dollars per year for increased enforcement costs and disciplinary hearings for physicians licensed by the Medical Board (Contingent Fund of the Medical Board of California).
2. There could also be additional costs to the other affected boards and programs (Osteopathic Medical Board, the Board of Podiatric Medicine, and the Board of Chiropractic Examiners) for disciplinary hearings. The precise amounts are unknown but are expected to be absorbable within existing resources (Osteopathic Medical Board of California Contingent Fund, Board Podiatric Medicine Fund, State Board of Chiropractic Examiners Fund, and Naturopathic Doctors Fund).

Support and Opposition

Arguments in Support:

The Center for Public Interest Law (CPIL) supports this bill, stating that “Patients place their lives in the hands of their health professionals every day. When MBC places a physician on probation for serious offenses, it often places certain conditions upon that physician’s ability to continue practicing medicine. For example, if a male physician is disciplined for sexual misconduct with a patient, the Board may require a female chaperone to be present during all examinations with female patients as a condition of allowing that physician to continue practicing. Yet patients are typically unaware of any such conditions or the fact that their doctor is on probation at all. While the Medical Board does post disciplinary information on its website (and some of the boards subject to this bill are NOT required to post the same information required of MBC), that information is useful only if: (1) the patient knows of the existence of the Medical Board, and that it is the state agency that licenses and regulates physicians; and (2) the Medical Board posts information about physicians on its website; and (3) the Medical Board posts disciplinary decisions on its website; and (4) the patient has a computer and is computer-literate, and is able to access this information (consider patients in nursing home facilities, who might be in most need of this information); and (5) the patient is willing and able to parse a 50-page decision that is replete with legal jargon and eventually (on page 45 of a 50-page decision) lists the terms and conditions of the physician’s probationary status. And even if patients are aware of the Board’s website,



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they cannot be expected to consistently check for new disciplinary actions, particularly when they have an existing relationship with their physician.”

According to the Consumer Attorneys of California, “Under current procedures for probation, doctors are not required to disclose their probation status to their patients. This provides an opportunity for unscrupulous doctors to violate the terms of their probation and deprives patients the opportunity to make an informed decision regarding their medical provider. Recent scandals, including the serial molestation of hundreds of girls, including U.S.A. Olympic gymnasts by Larry Nassar, demonstrate the potential for abuse and need for transparency during the disciplinary process. SB 1448 would ensure that patients are fully informed by requiring doctors to notify patients of their probation status, the terms and conditions of their probation, and tell them how to find more information.”

The Consumer Federation of California writes that “SB 1448’s requirements are not onerous - only those doctors whom the Medical Board has determined merit serious disciplinary action would be required to report their status. This amounts to less than one half of one percent of the total active licensee population. SB 1448 requirement for physicians to disclose their probationary status directly to their patients is essential in light of the varied availability of internet in California, as well as the fact that seniors are most likely to seek healthcare yet are also the group most likely to say they never go online. Information relating to a doctor’s probationary status should be provided affirmatively.”

Consumer Watchdog states that “Patients have a right to know if their doctor has been disciplined for causing patient harm. Women from all walks of life, from hospital employees to Olympic athletes, have come forward to tell their stories of sexual assault at the hands of their doctors and to demand lawmakers act to protect other patients from the same abuse.” The organization also writes that “Placing the burden on the public to know about an obscure state government website, then wade through and decipher legal documents about a doctor’s history of misconduct, is equivalent to sealing a doctor’s disciplinary records to the public. The vast majority of patients have no idea they have a right look up a doctor’s record beyond Yelp reviews. This is why disclosure before a patient’s appointment, as required by SB 1448, is so critical to patient safety. Patients will never learn otherwise...SB 1448 is also necessary because physician regulators at the Medical Board of California have repeatedly dismissed proposals that the Board require disclosure as a condition of all probation agreements.”

Support:

- Center for Public Interest Law
- Consumer Attorneys of California
- Consumer Federation of California
- Consumer Watchdog



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Arguments in Opposition

Arguments in Opposition. The California Academy of Family Physicians opposes this bill stating that “the patient notification process outlined in this bill will ultimately cut into the time in which patient care can be provided. When the MBC issues probation as a fair disciplinary action, they are consciously allowing a physician to continue to practice based on that particular case and circumstance. The practical impact of SB 1448 on a physician practice is to increase the action to that similar to suspension, one that significantly impacts physician’s ability to practice. SB 1448 will also have the consequence of influencing physician’s decision making about defense against an MBC accusation. It will discourage settlements and encourage more physicians to pursue full hearings, which will slow the hearing process for all cases before the MBC This results in a bad outcome for overall patient protection.”

According to the Osteopathic Physicians and Surgeons of California, “the addition of an onerous reporting requirement for physicians is unlikely to provide additional protections for patients, but instead will cause confusion and take away time available for valuable patient care...This type of reporting requirement would also serve as a deterrent for physicians who voluntarily seek assistance. An additional concern for the [Osteopathic Medical Board] is that physicians who would otherwise stipulate to a probationary order would, rather than settling, request administrative hearings for a chance to avoid probation, which would result in additional enforcement costs to the board.”

Opposition:

- California Academy of Family Physicians
- Osteopathic Physicians and Surgeons of California

Action Required:

None.

AMENDED IN SENATE MAY 25, 2018

AMENDED IN SENATE APRIL 9, 2018

SENATE BILL

No. 1448

Introduced by Senator Hill

February 16, 2018

An act to add Sections 1007, 2228.1, 2228.5, 2459.4, 3663.5, and 4962 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1448, as amended, Hill. Healing arts licensees: probation status: disclosure.

Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons. Existing law establishes the California Board of Podiatric Medicine within the Medical Board of California for the licensing, regulation, and discipline of podiatrists. Existing law, the Osteopathic Act, enacted by an initiative measure, establishes the Osteopathic Medical Board of California for the licensing and regulation of osteopathic physicians and surgeons and requires the Osteopathic Medical Board of California to enforce specified provisions of the Medical Practice Act with respect to its licensees. Existing law, the Naturopathic Doctors Act, establishes the Naturopathic Medicine Committee within the Osteopathic Medical Board of California for the licensing and regulation of naturopathic doctors. Existing law, the Chiropractic Act, enacted by an initiative measure, establishes the State Board of Chiropractic Examiners for the licensing and regulation of chiropractors. Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board for the licensing and regulation of

acupuncturists. Existing law authorizes each of these regulatory entities to discipline its licensee by placing her or him on probation, as specified.

This bill, on and after July 1, 2019, would require ~~those regulatory boards~~ *the California Board of Podiatric Medicine, the Naturopathic Medicine Committee, the State Board of Chiropractic Examiners, and the Acupuncture Board* to require a licensee to provide a separate disclosure, as specified, to a patient or a patient's guardian or health care surrogate before the patient's first visit if the licensee is on probation pursuant to a probationary order made on and after July 1, 2019. *The bill, on and after July 1, 2019, would require the Medical Board of California and the Osteopathic Medical Board of California to require a licensee to provide a separate disclosure, as specified, to a patient or a patient's guardian or health care surrogate before the patient's first visit if the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, under specified circumstances.* The bill would also require ~~those regulatory boards~~ *the California Board of Podiatric Medicine, the Naturopathic Medicine Committee, the State Board of Chiropractic Examiners, the Acupuncture Board, the Medical Board of California, and the Osteopathic Medical Board of California* to provide specified information relating to licensees on probation on the regulatory entity's online license information Internet Web site.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Patient's Right to Know Act of 2018.
- 3 SEC. 2. Section 1007 is added to the Business and Professions
- 4 Code, to read:
- 5 1007. (a) On and after July 1, 2019, except as otherwise
- 6 provided in subdivision (c), the board shall require a licensee to
- 7 provide a separate disclosure that includes the licensee's probation
- 8 status, the length of the probation and the probation end date, all
- 9 practice restrictions placed on the licensee by the board, the board's
- 10 telephone number, and an explanation of how the patient can find
- 11 further information on the licensee's probation on the licensee's
- 12 profile page on the board's online license information Internet
- 13 Web site, to a patient or the patient's guardian or health care

1 surrogate before the patient's first visit following the probationary
2 order while the licensee is on probation pursuant to a probationary
3 order made on and after July 1, 2019.

4 (b) A licensee required to provide a disclosure pursuant to
5 subdivision (a) shall obtain from the patient, or the patient's
6 guardian or health care surrogate, a separate, signed copy of that
7 disclosure.

8 (c) A licensee shall not be required to provide a disclosure
9 pursuant to subdivision (a) if any of the following applies:

10 (1) The patient is unconscious or otherwise unable to
11 comprehend the disclosure and sign the copy of the disclosure
12 pursuant to subdivision (b) and a guardian or health care surrogate
13 is unavailable to comprehend the disclosure and sign the copy.

14 (2) The visit occurs in an emergency room or an urgent care
15 facility or the visit is unscheduled, including consultations in
16 inpatient facilities.

17 (3) The licensee who will be treating the patient during the visit
18 is not known to the patient until immediately prior to the start of
19 the visit.

20 (4) The licensee does not have a direct treatment relationship
21 with the patient.

22 (d) On and after July 1, 2019, the board shall provide the
23 following information, with respect to licensees on probation and
24 licensees practicing under probationary licenses, in plain view on
25 the licensee's profile page on the board's online license information
26 Internet Web site.

27 (1) For probation imposed pursuant to a stipulated settlement,
28 the causes alleged in the operative accusation along with a
29 designation identifying those causes by which the licensee has
30 expressly admitted guilt and a statement that acceptance of the
31 settlement is not an admission of guilt.

32 (2) For probation imposed by an adjudicated decision of the
33 board, the causes for probation stated in the final probationary
34 order.

35 (3) For a licensee granted a probationary license, the causes by
36 which the probationary license was imposed.

37 (4) The length of the probation and end date.

38 (5) All practice restrictions placed on the license by the board.

39 (e) "Board" for purposes of this section means the State Board
40 of Chiropractic Examiners.

SEC. 3. Section 2228.1 is added to the Business and Professions Code, to read:

2228.1. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation and the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, ~~2019~~ 2019, in any of the following circumstances:

(1) *A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:*

(A) *The commission of any act of sexual abuse, misconduct, or relations with a patient or client, including, but not limited to, any of the acts described in Section 726 or 729.*

(B) *Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.*

(C) *Criminal conviction involving harm to patient safety or health.*

(D) *Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.*

(2) *An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraph (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.*

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

1 (c) A licensee shall not be required to provide a disclosure
2 pursuant to subdivision (a) if any of the following applies:

3 (1) The patient is unconscious or otherwise unable to
4 comprehend the disclosure and sign the copy of the disclosure
5 pursuant to subdivision (b) and a guardian or health care surrogate
6 is unavailable to comprehend the disclosure and sign the copy.

7 (2) The visit occurs in an emergency room or an urgent care
8 facility or the visit is unscheduled, including consultations in
9 inpatient facilities.

10 (3) The licensee who will be treating the patient during the visit
11 is not known to the patient until immediately prior to the start of
12 the visit.

13 (4) The licensee does not have a direct treatment relationship
14 with the patient.

15 (d) On and after July 1, 2019, the board shall provide the
16 following information, with respect to licensees on probation and
17 licensees practicing under probationary licenses, in plain view on
18 the licensee's profile page on the board's online license information
19 Internet Web site.

20 (1) For probation imposed pursuant to a stipulated settlement,
21 the causes alleged in the operative accusation along with a
22 designation identifying those causes by which the licensee has
23 expressly admitted guilt and a statement that acceptance of the
24 settlement is not an admission of guilt.

25 (2) For probation imposed by an adjudicated decision of the
26 board, the causes for probation stated in the final probationary
27 order.

28 (3) For a licensee granted a probationary license, the causes by
29 which the probationary license was imposed.

30 (4) The length of the probation and end date.

31 (5) All practice restrictions placed on the license by the board.

32 (e) Section 2314 shall not apply to this section.

33 SEC. 4. Section 2228.5 is added to the Business and Professions
34 Code, to read:

35 2228.5. (a) On and after July 1, 2019, except as otherwise
36 provided in subdivision (c), the board shall require a licensee to
37 provide a separate disclosure that includes the licensee's probation
38 status, the length of the probation and the probation end date, all
39 practice restrictions placed on the licensee by the board, the board's
40 telephone number, and an explanation of how the patient can find

1 further information on the licensee's probation on the licensee's
2 profile page on the board's online license information Internet
3 Web site, to a patient or the patient's guardian or health care
4 surrogate before the patient's first visit following the probationary
5 order while the licensee is on probation pursuant to a probationary
6 order made on and after July 1, 2019.

7 (b) A licensee required to provide a disclosure pursuant to
8 subdivision (a) shall obtain from the patient, or the patient's
9 guardian or health care surrogate, a separate, signed copy of that
10 disclosure.

11 (c) A licensee shall not be required to provide a disclosure
12 pursuant to subdivision (a) if any of the following applies:

13 (1) The patient is unconscious or otherwise unable to
14 comprehend the disclosure and sign the copy of the disclosure
15 pursuant to subdivision (b) and a guardian or health care surrogate
16 is unavailable to comprehend the disclosure and sign the copy.

17 (2) The visit occurs in an emergency room or an urgent care
18 facility or the visit is unscheduled, including consultations in
19 inpatient facilities.

20 (3) The licensee who will be treating the patient during the visit
21 is not known to the patient until immediately prior to the start of
22 the visit.

23 (4) The licensee does not have a direct treatment relationship
24 with the patient.

25 (d) On and after July 1, 2019, the board shall provide the
26 following information, with respect to licensees on probation and
27 licensees practicing under probationary licenses, in plain view on
28 the licensee's profile page on the board's online license information
29 Internet Web site.

30 (1) For probation imposed pursuant to a stipulated settlement,
31 the causes alleged in the operative accusation along with a
32 designation identifying those causes by which the licensee has
33 expressly admitted guilt and a statement that acceptance of the
34 settlement is not an admission of guilt.

35 (2) For probation imposed by an adjudicated decision of the
36 board, the causes for probation stated in the final probationary
37 order.

38 (3) For a licensee granted a probationary license, the causes by
39 which the probationary license was imposed.

40 (4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) Section 2314 shall not apply to this section.

(f) For purposes of this section:

(1) “Board” means the California Board of Podiatric Medicine.

(2) “Licensee” means a person licensed by the California Board of Podiatric Medicine.

SEC. 5. Section 2459.4 is added to the Business and Professions Code, to read:

2459.4. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee’s probation status, the length of the probation and the probation end date, all practice restrictions placed on the licensee by the board, the board’s telephone number, and an explanation of how the patient can find further information on the licensee’s probation on the licensee’s profile page on the board’s online license information Internet Web site, to a patient or the patient’s guardian or health care surrogate before the patient’s first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, ~~2019~~: 2019, in any of the following circumstances:

(1) *A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:*

(A) *The commission of any act of sexual abuse, misconduct, or relations with a patient or client, including, but not limited to, any of the acts described in Section 726 or 729.*

(B) *Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.*

(C) *Criminal conviction involving harm to patient safety or health.*

(D) *Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.*

(2) *An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraph (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment that the disclosure*

1 *requirements of this section would serve to protect the public*
2 *interest.*

3 (b) A licensee required to provide a disclosure pursuant to
4 subdivision (a) shall obtain from the patient, or the patient's
5 guardian or health care surrogate, a separate, signed copy of that
6 disclosure.

7 (c) A licensee shall not be required to provide a disclosure
8 pursuant to subdivision (a) if any of the following applies:

9 (1) The patient is unconscious or otherwise unable to
10 comprehend the disclosure and sign the copy of the disclosure
11 pursuant to subdivision (b) and a guardian or health care surrogate
12 is unavailable to comprehend the disclosure and sign the copy.

13 (2) The visit occurs in an emergency room or an urgent care
14 facility or the visit is unscheduled, including consultations in
15 inpatient facilities.

16 (3) The licensee who will be treating the patient during the visit
17 is not known to the patient until immediately prior to the start of
18 the visit.

19 (4) The licensee does not have a direct treatment relationship
20 with the patient.

21 (d) On and after July 1, 2019, the board shall provide the
22 following information, with respect to licensees on probation and
23 licensees practicing under probationary licenses, in plain view on
24 the licensee's profile page on the board's online license information
25 Internet Web site.

26 (1) For probation imposed pursuant to a stipulated settlement,
27 the causes alleged in the operative accusation along with a
28 designation identifying those causes by which the licensee has
29 expressly admitted guilt and a statement that acceptance of the
30 settlement is not an admission of guilt.

31 (2) For probation imposed by an adjudicated decision of the
32 board, the causes for probation stated in the final probationary
33 order.

34 (3) For a licensee granted a probationary license, the causes by
35 which the probationary license was imposed.

36 (4) The length of the probation and end date.

37 (5) All practice restrictions placed on the license by the board.

38 (e) A violation of this section shall not be punishable as a crime.

39 (f) For purposes of this section:

40 (1) "Board" means the Osteopathic Medical Board of California.

1 (2) “Licensee” means a person licensed by the Osteopathic
2 Medical Board of California.

3 SEC. 6. Section 3663.5 is added to the Business and Professions
4 Code, to read:

5 3663.5. (a) On and after July 1, 2019, except as otherwise
6 provided in subdivision (c), the committee shall require a licensee
7 to provide a separate disclosure that includes the licensee’s
8 probation status, the length of the probation and the probation end
9 date, all practice restrictions placed on the licensee by the
10 committee, the committee’s telephone number, and an explanation
11 of how the patient can find further information on the licensee’s
12 probation on the licensee’s profile page on the committee’s online
13 license information Internet Web site, to a patient or the patient’s
14 guardian or health care surrogate before the patient’s first visit
15 following the probationary order while the licensee is on probation
16 pursuant to a probationary order made on and after July 1, 2019.

17 (b) A licensee required to provide a disclosure pursuant to
18 subdivision (a) shall obtain from the patient, or the patient’s
19 guardian or health care surrogate, a separate, signed copy of that
20 disclosure.

21 (c) A licensee shall not be required to provide a disclosure
22 pursuant to subdivision (a) if any of the following applies:

23 (1) The patient is unconscious or otherwise unable to
24 comprehend the disclosure and sign the copy of the disclosure
25 pursuant to subdivision (b) and a guardian or health care surrogate
26 is unavailable to comprehend the disclosure and sign the copy.

27 (2) The visit occurs in an emergency room or an urgent care
28 facility or the visit is unscheduled, including consultations in
29 inpatient facilities.

30 (3) The licensee who will be treating the patient during the visit
31 is not known to the patient until immediately prior to the start of
32 the visit.

33 (4) The licensee does not have a direct treatment relationship
34 with the patient.

35 (d) On and after July 1, 2019, the committee shall provide the
36 following information, with respect to licensees on probation and
37 licensees practicing under probationary licenses, in plain view on
38 the licensee’s profile page on the committee’s online license
39 information Internet Web site.

1 (1) For probation imposed pursuant to a stipulated settlement,
2 the causes alleged in the operative accusation along with a
3 designation identifying those causes by which the licensee has
4 expressly admitted guilt and a statement that acceptance of the
5 settlement is not an admission of guilt.

6 (2) For probation imposed by an adjudicated decision of the
7 committee, the causes for probation stated in the final probationary
8 order.

9 (3) For a licensee granted a probationary license, the causes by
10 which the probationary license was imposed.

11 (4) The length of the probation and end date.

12 (5) All practice restrictions placed on the license by the
13 committee.

14 (e) A violation of this section shall not be punishable as a crime.

15 SEC. 7. Section 4962 is added to the Business and Professions
16 Code, to read:

17 4962. (a) On and after July 1, 2019, except as otherwise
18 provided in subdivision (c), the board shall require a licensee to
19 provide a separate disclosure that includes the licensee's probation
20 status, the length of the probation and the probation end date, all
21 practice restrictions placed on the licensee by the board, the board's
22 telephone number, and an explanation of how the patient can find
23 further information on the licensee's probation on the licensee's
24 profile page on the board's online license information Internet
25 Web site, to a patient or the patient's guardian or health care
26 surrogate before the patient's first visit following the probationary
27 order while the licensee is on probation pursuant to a probationary
28 order made on and after July 1, 2019.

29 (b) A licensee required to provide a disclosure pursuant to
30 subdivision (a) shall obtain from the patient, or the patient's
31 guardian or health care surrogate, a separate, signed copy of that
32 disclosure.

33 (c) A licensee shall not be required to provide a disclosure
34 pursuant to subdivision (a) if any of the following applies:

35 (1) The patient is unconscious or otherwise unable to
36 comprehend the disclosure and sign the copy of the disclosure
37 pursuant to subdivision (b) and a guardian or health care surrogate
38 is unavailable to comprehend the disclosure and sign the copy.

1 (2) The visit occurs in an emergency room or an urgent care
2 facility or the visit is unscheduled, including consultations in
3 inpatient facilities.

4 (3) The licensee who will be treating the patient during the visit
5 is not known to the patient until immediately prior to the start of
6 the visit.

7 (4) The licensee does not have a direct treatment relationship
8 with the patient.

9 (d) On and after July 1, 2019, the board shall provide the
10 following information, with respect to licensees on probation and
11 licensees practicing under probationary licenses, in plain view on
12 the licensee's profile page on the board's online license information
13 Internet Web site.

14 (1) For probation imposed pursuant to a stipulated settlement,
15 the causes alleged in the operative accusation along with a
16 designation identifying those causes by which the licensee has
17 expressly admitted guilt and a statement that acceptance of the
18 settlement is not an admission of guilt.

19 (2) For probation imposed by an adjudicated decision of the
20 board, the causes for probation stated in the final probationary
21 order.

22 (3) For a licensee granted a probationary license, the causes by
23 which the probationary license was imposed.

24 (4) The length of the probation and end date.

25 (5) All practice restrictions placed on the license by the board.

26 (e) A violation of this section shall not be punishable as a crime.

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Physical Therapy Board of California

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY - GOVERNOR EDMUND G. BROWN JR.

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Briefing Paper

Date: June 1, 2018

Prepared for: PTBC Members

Prepared by: Brooke Arneson

Subject: Rulemaking Report

Purpose: To update the Board on the status of proposed rulemaking in progress and to provide an update on the rulemaking process.

Attachments:

1. [2017/18 Rulemaking Tracking Form](#)
2. [Updated DCA Rulemaking Process](#)

Background:

At the November 2017 meeting, the Board adopted the 2018 Rulemaking Calendar as required by Government Code (GC) § 11017.6. The rulemaking calendar prepared pursuant to this section sets forth the Board's rulemaking plan for the year and is published by the Office of Administrative Law (OAL) in the California Regulatory Notice Register (Notice Register); the Notice Register is available on OAL's website: http://www.oal.ca.gov/Notice_Register.htm

From the 2018 Rulemaking Calendar, staff developed a rulemaking tracking form on which all rulemaking progress is noted and reported to the Board at its quarterly meetings.

Effective September 7, 2016 all regulatory packages must be submitted to the Department of Consumer Affairs for Business, Consumer Services, and Housing Agency (Agency) review, prior to publicly noticing with the Office of Administrative Law (OAL). A copy of the current DCA Rulemaking process is included.

Action Requested:

No action is requested on presentation of the rulemaking report.

2018 Rulemaking Tracking Form

Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant/Coursework Tool



11/28/2016

5/25/17

11/15/2017

OAL No.:

Notes:

Placed on the 2018 Rulemaking Calendar that was adopted at the Board meeting on November 15, 2017. This regulation was also placed on the 2017 Rulemaking Calendar. Proposed regulatory language was presented at the May 2017 Board Meeting. PTBC staff and DCA legal are working on preparing the initial rulemaking package for completing the new review process implemented by DCA.

Examination Passing Standard/Setting Examination Score



11/28/2016

5/25/17

5/25/17

11/15/2017

OAL No.:

Notes:

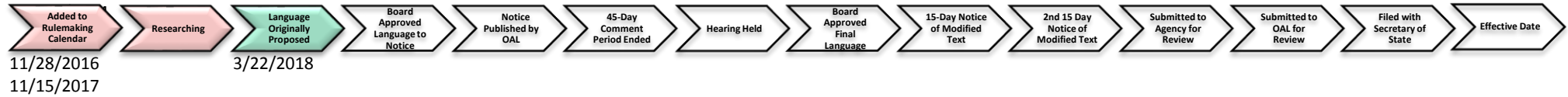
Placed on the 2018 Rulemaking Calendar that was adopted at the Board meeting on November 15, 2017. This regulation was also placed on the 2017 Rulemaking Calendar. Proposed regulatory language was presented at the May 2017 Board Meeting. The Board approved the proposed language and directed PTBC staff to initiate the formal rulemaking process. PTBC are in the process of incorporating DCA Legal's edits and will submit the rulemaking package with all supporting documents to legal for further review by mid-June 2018.

Teal: Current Status Burgundy: Completed

Agenda Item 15(A) – Rulemaking Update

2018 Rulemaking Tracking Form

Disciplinary Guidelines



OAL No.:

Notes:

Placed on the 2018 Rulemaking Calendar that was adopted at the Board meeting on November 15, 2017. This regulation was also placed on the 2017 Rulemaking Calendar. The Board approved the proposed language at the March 2017 meeting and directed PTBC staff to initiate the formal rulemaking process. Final language was approved at the March 2018 Board meeting. PTBC staff are finalizing the Notice and ISOR to send to DCA Legal for review mid-June 2018.

Continuing Competency



11/15/2017

OAL No.:

Notes:

Placed on the 2018 Rulemaking Calendar that was adopted at the Board meeting on November 15, 2017.

Teal: Current Status Burgundy: Completed

2018 Rulemaking Tracking Form

License Renewal Exemptions: Retired License Status



11/15/2017

OAL No.:

Notes:

Placed on the 2018 Rulemaking Calendar that was adopted at the Board meeting on November 15, 2017.

Clinical Service Requirements for Foreign Educated Applicants



11/15/2017

OAL No.:

Notes:

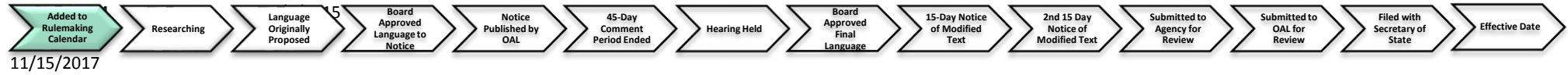
Placed on the 2018 Rulemaking Calendar that was adopted at the Board meeting on November 15, 2017. PTBC staff will be working with DCA legal on providing the Board with language for Board consideration at a future meeting.

Teal: Current Status Burgundy: Completed

Agenda Item 15(A) – Rulemaking Update

2018 Rulemaking Tracking Form

Unprofessional Conduct



OAL No.:

Notes:
Placed on the 2018 Rulemaking Calendar that was adopted at the Board meeting on November 15, 2017.

Teal: Current Status Burgundy: Completed

Agenda Item 15(A) – Rulemaking Update

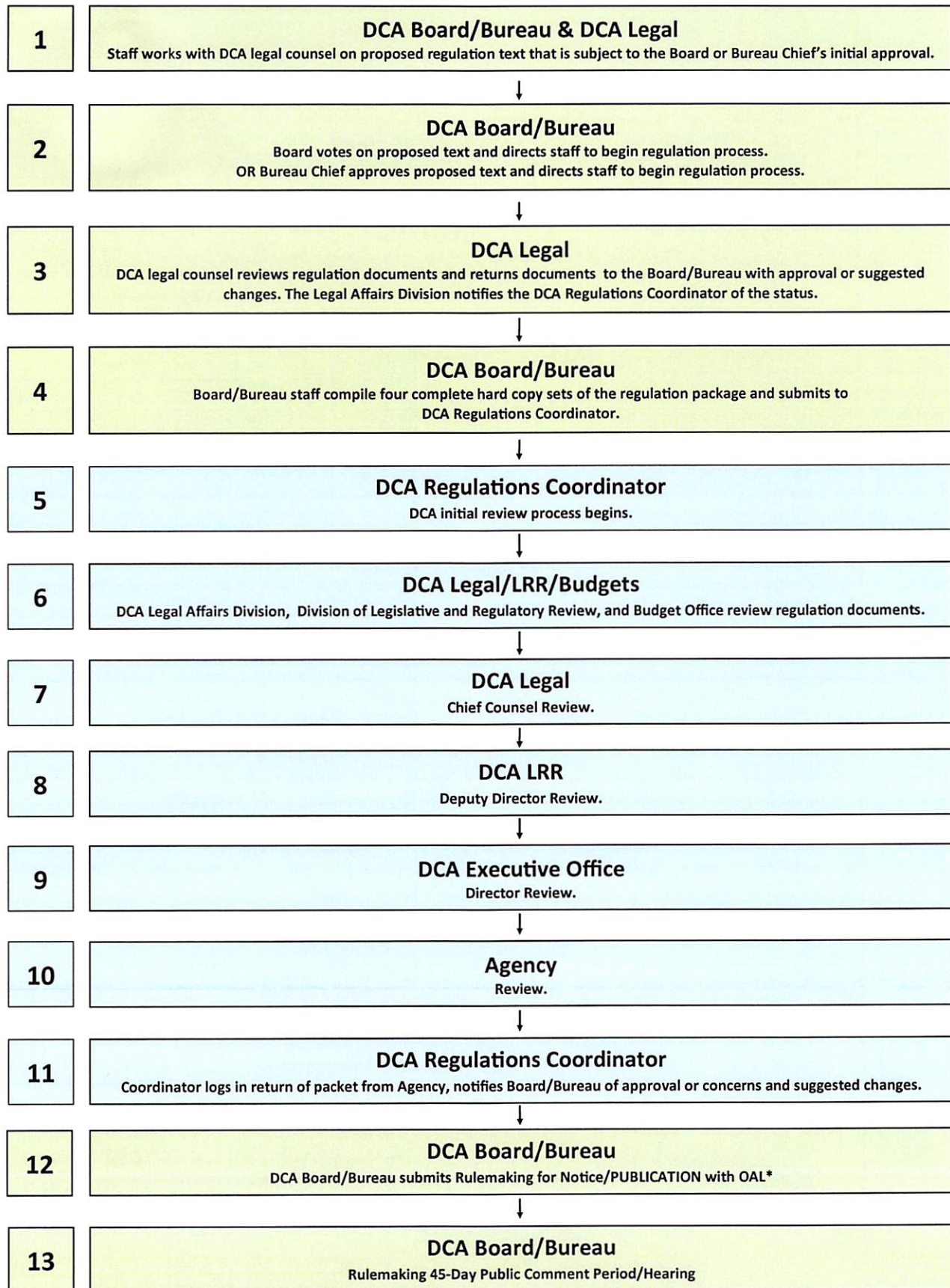
Processing Times

- A rulemaking file must be completed within one year of the publication date of the Notice of Proposed Action. The OAL issues the Notice File Number upon filing the Notice of Proposed Action.
- The DCA is allowed thirty calendar days to review the rulemaking file prior to submission to the Department of Finance (DOF).
- The DOF is allowed thirty days to review the rulemaking file prior to submission to the OAL.
- The OAL is allowed thirty working days to review the file and determine whether to approve or disapprove it. The OAL issues the Regulatory Action Number upon submission of the rulemaking file for final review.
- Pursuant to Government Code section 11343.4, as amended by Section 2 of Chapter 295 of the Statutes of 2012 (SB 1099, Wright), regulation effective dates are as follows:

Date Filed with the Secretary of State	Effective Date
September 1 st – November 30 th	January 1 st
December 1 st – February 29 th	April 1 st
March 1 st – May 31 st	July 1 st
June 1 st – August 31 st	October 1 st

REGULAR RULEMAKING PROCESS—DCA BOARDS/BUREAUS

INITIAL PHASE



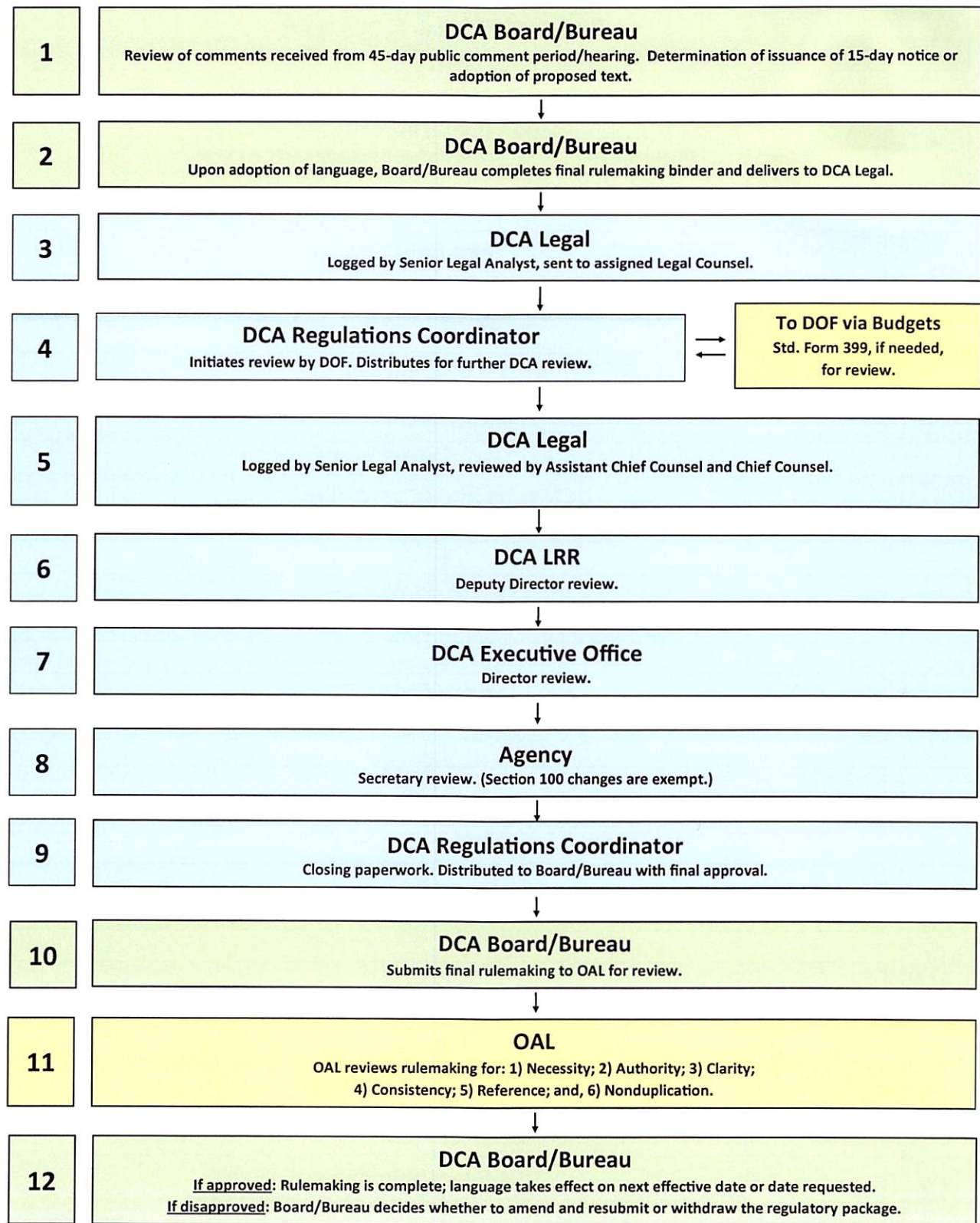
Legend

DCA – Department of Consumer Affairs
LRR – Division of Legislative Regulatory Review
OAL – Office of Administrative Law

* If any changes to language last approved by the Board are needed, a vote by the Board may be necessary.

REGULAR RULEMAKING PROCESS—DCA BOARDS/BUREAUS

FINAL PHASE



Legend

DCA – Department of Consumer Affairs
LRR – Division of Legislative Regulatory Review
OAL – Office of Administrative Law
DOF – Department of Finance
Std. Form 399 – Economic and Fiscal Impact Statement



Physical Therapy Board of California

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Briefing Paper

Date: May 25, 2018

Agenda Item 19(A)

Prepared for: PTBC Members

Prepared by: Carl Nelson

Subject: Budget Report

Purpose:

To provide an update on the PTBC's Budget activities for (Jan-Mar), CY 2017-18.

Background:

The PTBC Budget Report is a quarterly review of the expenditures and revenues, including budget activities and analysis for the current fiscal year. The report reflects data collected from the CalStars report and is generated by staff quarterly: Jul-Sep (Q1), Oct-Dec (Q2), Jan-Mar (Q3) and Apr-Jun (Q4).

July 1, 2017, the DCA migrated to a new accounting system, Fi\$cal. Due to this changeover, all Budget reporting mechanisms such as the CalStars monthly expenditure and revenue report, which is relied on by PTBC budget staff in compiling reports, have been suspended until further notice.

This year (CY2017-18), the PTBC is authorized \$4,983,000 (Governor's Budget), which includes personnel services, operating expenses and equipment, and authorized 21.4 positions to support program requirements.

Program Updates:

The DCA Budget and Accounting staff continue to work on reconciling revenue and expenditure accounts in the new Fi\$cal system. The PTBC receives updates on year-to-date expenditures; however, no revenue reports have been reconciled. The PTBC will continue to monitor the status and will report updates accordingly.

Also, the Board received approval to transfer an additional \$200,000 into its Architectural Revolving Fund (ARF), increasing funds to \$400,000 for future moving costs.

Analysis:

The PTBC spent \$1,598,916 in Personnel Services and \$1,828,860 in Operating Expenses and Equipment (OE&E) (less reimbursements). Overall, the PTBC spent 1% less over FY2016-17 year-to-date (Q3).

The PTBC collected \$1,392,931 in revenue during Q3 and \$2,844,683 year-to-date. Overall, the PTBC collected approximately 3% less during Q3 and 39% less year-to-date over FY2016-17.

Action Requested: None.

Physical Therapy Board of California
Expenditure Statistics Report
CY 2017-18 | Q3 (Jan - Mar 2018)

Expenditure Statistics Report

Budget Line Items	FY 2016 17		CY 2017 18			
	Q3	YTD	Authorized	YTD	Percent	Balance
	Jan - Mar	(As of 3/31/17)	Budget	(As of 3/31/18)	Budget Spent	Remaining
PERSONNEL SERVICES						
Civil Services Permanent	254,870	746,002	1,198,000	873,078	73%	324,922
Temp help	40,685	83,647	0	81,982	-	(81,982)
Statutory Exempt	21,897	65,052	77,000	70,424	91%	6,576
Board Members	9,800	33,600	25,000	29,400	118%	(4,400)
Overtime	1,659	43,021	0	0	-	0
Staff Benefits	180,448	515,788	739,000	544,032	74%	194,968
TOTAL PERS SVS	509,359	1,487,110	2,039,000	1,598,916	78%	440,084
OPERATING EXPENSES & EQUIPMENT						
General Services Totals	75,523	261,716	462,500	232,272	50%	230,228
Fingerprints	8,525	25,303	99,000	29,560	30%	69,440
General Expense	4,130	14,227	17,000	14,784	87%	2,216
Minor Equipment	0	3,107	16,000	979	6%	15,021
Major Equipment	0	0	0	0	-	0
Printing	6,628	17,648	20,000	31,102	156%	(11,102)
Communications	2,633	6,141	13,000	5,735	44%	7,265
Postage	2,156	6,154	24,000	4,975	21%	19,025
Insurance	0	0	0	43	-	(43)
Travel in State	9,661	19,391	18,000	13,649	76%	4,351
Training	420	775	1,000	0	0%	1,000
Facilities Operations	28,355	111,305	118,000	85,870	73%	32,130
C&P Services Interdepartmental	0	0	500	379	76%	121
C&P Services External	13,015	57,665	136,000	45,196	33%	90,804
Departmental Services Totals	225,995	671,287	950,500	708,011	74%	242,489
OIS Pro Rata	150,750	447,750	598,000	448,500	75%	149,500
Indirect Distributed Cost	64,245	189,747	302,000	226,500	75%	75,500
Interagency Services	0	0	500	0	0%	500
DOI Pro Rata	1,749	5,247	7,000	5,250	75%	1,750
Communications Pro Rata	8,751	26,253	18,000	13,500	75%	4,500
PPRD Pro Rata	501	1,503	19,000	14,250	75%	4,750
Consolidated Data Center	-1	376	2,000	11	1%	1,989
Data Processing	0	411	4,000	0	0%	4,000
Central Admin Services Pro Rata	0	0	0	0	-	0
Exams Totals	863	6,988	8,000	0	0	8,000
Exam Administrative External	863	6,988	8,000	0	0%	8,000
Enforcement Totals	424,786	1,017,367	1,622,000	888,577	55%	733,423
Attorney General	90,975	183,982	655,000	251,838	38%	403,162
Office of Admin Hearings	18,145	18,145	110,000	45,270	41%	64,730
Evidence/Witness	16,832	31,652	100,000	22,869	23%	77,131
Court Reporters	334	588	0	850	-	(850)
DOI Investigation	298,500	783,000	757,000	567,750	75%	189,250
TOTAL OE & E	727,167	1,957,358	3,043,000	1,828,860	60%	1,214,140
TOTALS, PERS SVS/OE&E	1,236,526	3,444,468	5,082,000	3,427,776	67%	1,654,224
Scheduled Reimbursements	-10,956	-31,661	-99,000	-71,147	-	(47,922)
Un-Scheduled Reimbursements	-19,438	-108,566	0	0	-	0
TOTAL REIMBURSEMENTS	-30,394	-140,227	-99,000	-71,147		
TOTALS, PERS SVS/OE&E (-REIM)	1,206,132	3,304,241	4,983,000	3,356,629	67%	1,606,302



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Briefing Paper

Date: May 30, 2018

Agenda Item 19(B)

Prepared for: PTBC Members

Prepared by: Liz Constancio

Subject: Outreach Report

Purpose:

To provide PTBC's Outreach activities and statistics for Jan – Mar (Q3), CY 2017-18.

Attachments: 1. [Website Statistics](#)
2. [Facebook Statistics](#)

Background:

The PTBC Outreach Report is a quarterly review of the Web-site and Facebook activities and analysis of those activities for the current fiscal year in comparison to the previous fiscal year. The web-site statistics is collected from Google Analytics and Facebook statistics is collected directly from the Facebook "insight reports" on a quarterly basis: Jul -Sep (Q1), Oct-Dec (Q2), Jan-Mar (Q3) and Apr- Jun (Q4).

Program Updates:

This quarter (Q3), the PTBC focused its communication and education efforts on its application and licensure process. The PTBC staff, including the Executive Officer conducted presentations regarding the licensing process, as well as education on PTBC's role and responsibilities as a regulatory agency. The PTBC presented at: University of Pacific (Jan 31); Fresno State (Feb 8); and, Sacramento City College (Mar 20).

Analysis:

Website

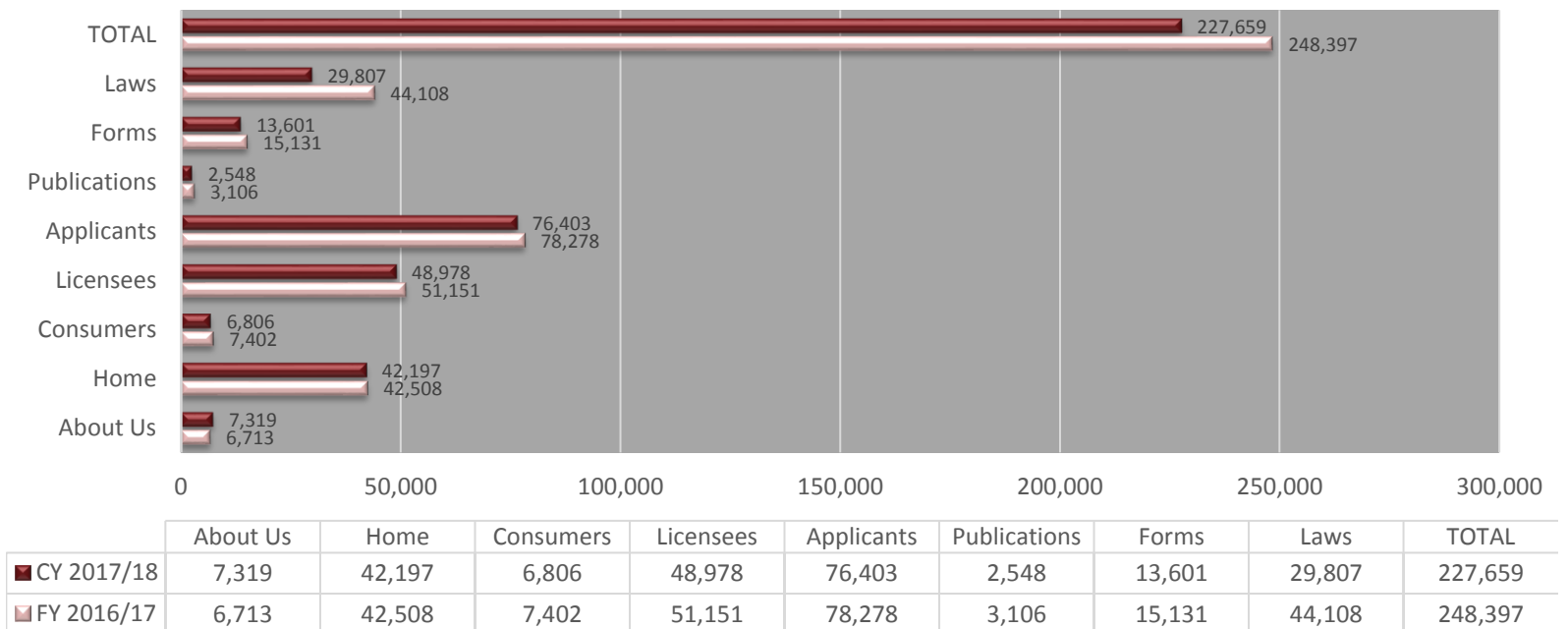
The PTBC had 227,659 people access (web-hits) through its home-page tabs (Home, Consumers, Licensees, Applicants, Publications, Forms and Laws). The "About Us" tab had a slight increase of 9%. All other tabs had slight decreases in web-hits, with the "Laws" tab having the most significant decrease of 32%. Overall, the number of web-hits for the quarter (Q3) decreased by 8% and by 3% year-to-date (YTD) over last fiscal year (2016-17).

Facebook

The PTBC had 22,798 people access (traffic) its Facebook page and received 71 "likes". The PTBC had a significant increase of 376% in "Consumers" traffic, followed by the "Engaged" traffic at 278%. over last fiscal year (2016-17). Overall, the Facebook traffic increased by 69% for the quarter (Q3) and decreased by less than 1% year-to-date (YTD) over last fiscal year (2016-17).

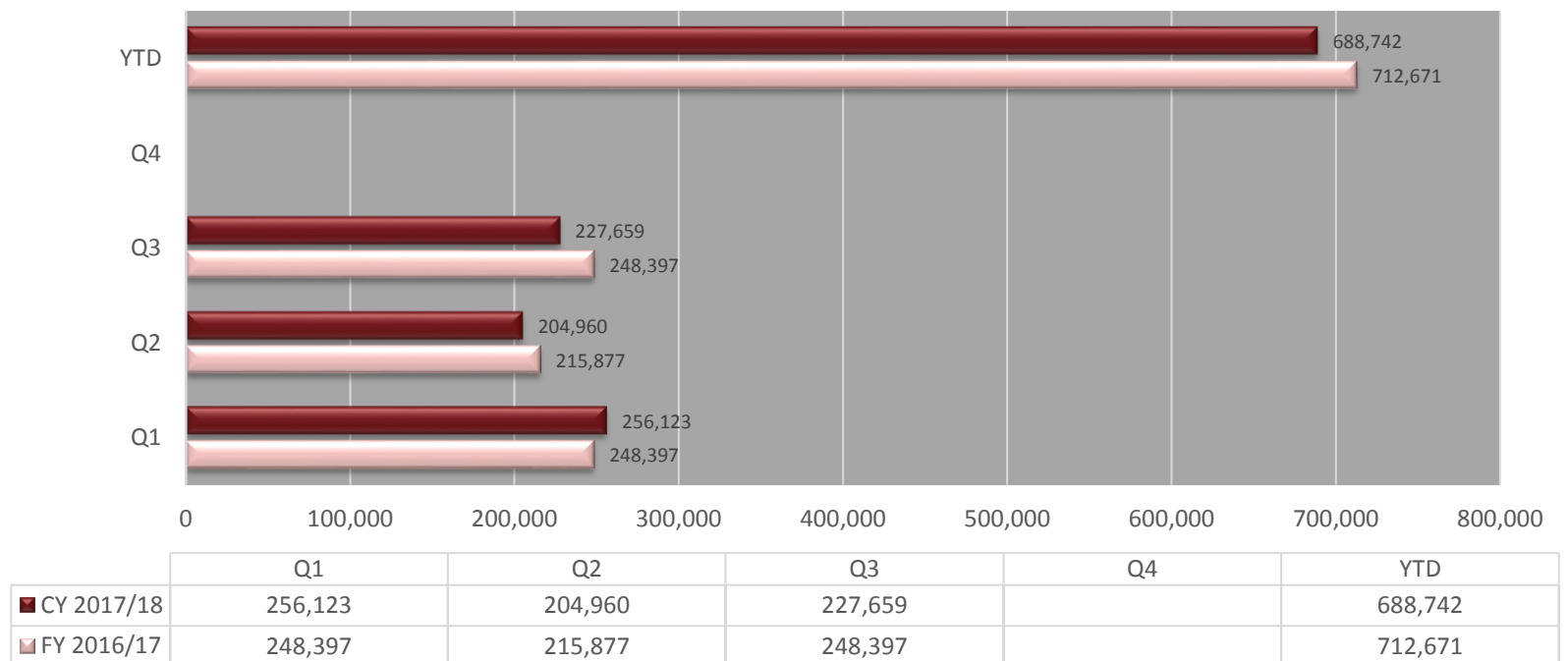
Action: None.

Website Activity (Quarterly)

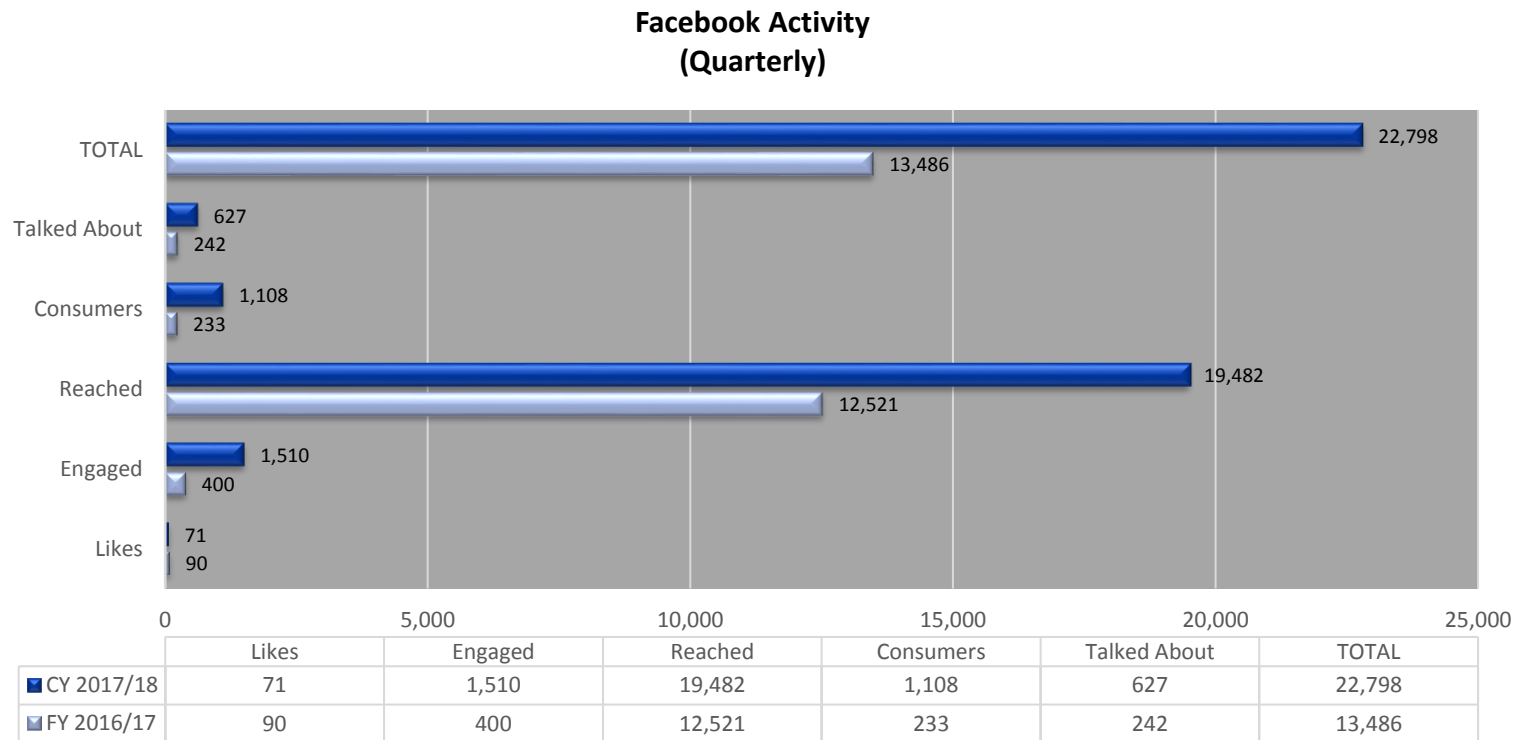


The graph reveals an 8% decrease in website hits during Q3, over previous fiscal year (16/17).

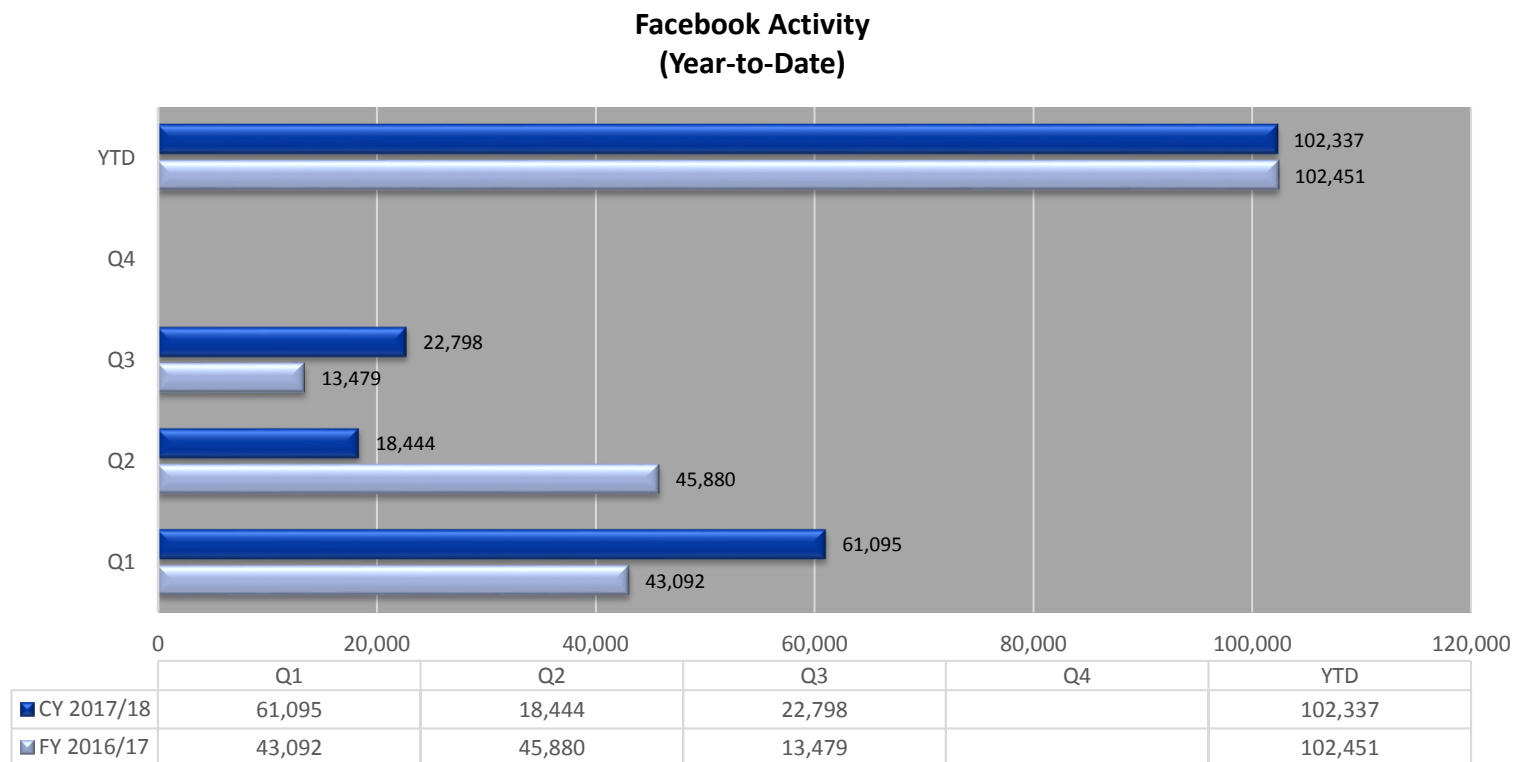
Website Activity (Year-to-date)



The graph reveals an overall 3% decrease in website hits over fiscal year (16/17) year-to-date.



The graph reveals a 376% increase in "Consumers" during Q3 over previous fiscal year (16/17).



The graph reveals Q3 showing an overall decrease of less than 1% over fiscal year (16/17) year-to-date.



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Briefing Paper

Date: 5/14/18
Prepared for: PTBC Members
Prepared by: Sarah Conley
Subject: Application Services Report

Purpose:

To provide an update on the most recent activities and state of the Application Services program.

Attachments:

1. [Application Services Program Statistics](#)
2. [Examination Statistics](#)

Update:

There continues to be an increase in the number of applications received, although the total percentage increase is not as pronounced this quarter as it was last quarter.

The Applications Services program has recently increased communication with the California physical therapist and physical therapist assistant education programs and has received positive feedback. The programs expressed appreciation for the increased communication and efforts of the Board to facilitate a smoother process for the applicants as well as the programs.

Action Requested:

None.

Physical Therapy Board of California
Application Services Report
Fiscal Year 2017/18 Q3

Application Services Report Program Statistics

Applications Received

	Fiscal Year 2016/17							Fiscal Year 2017/18							Year → Year Change		
	Q1		Q2		Q3		Q4	YTD through Q3	Q1		Q2		Q3			Q4	YTD through Q3
	Jul	Sep	Oct	Dec	Jan	Mar	Apr		Jun	Jul	Sep	Oct	Dec	Jan		Mar	
PT	484		290		302			1076	506		373		294			1173	⬆️ 9%
NAPT	75		79		58			212	39		38		60			137	⬇️ -35%
PTA	139		228		129			496	169		248		82			499	⬆️ 1%
NAPTA	18		20		23			61	15		21		21			57	⬇️ -7%
E-PTA	2		4		4			10	3		3		3			9	⬇️ -10%
Total	718		621		516			1855	732		683		460			1875	⬆️ 1%

Licenses Issued

	Fiscal Year 2016/17									Fiscal Year 2017/18									Year → Year Change
	Q1		Q2		Q3		Q4		YTD through Q3	Q1		Q2		Q3		Q4		YTD through Q3	
	Jul	Sep	Oct	Dec	Jan	Mar	Apr	Jun		Jul	Sep	Oct	Dec	Jan	Mar	Apr	Jun		
PT	630		480		317				1427	634		459		410				1503	⬆️ 5%
PTA	184		159		198				541	212		98		201				511	⬇️ -6%
Total	814		639		515				1968	846		557		611				2014	⬆️ 2%

PT - Graduate of an accredited physical therapist program located in the U.S.

NAPT - Graduate of a non-accredited physical therapist program located outside the U.S. applying for PT licensure

PTA - Graduate of an accredited physical therapist assistant program located in the U.S.

NAPTA - Graduate of a non-accredited physical therapist program located outside the U.S. applying for PTA licensure

E-PTA - PTA applicant with training and experience equivalent to that obtained in an accredited PTA program

Application Services Report Examination Statistics

National PT and PTA Examination - California Statistics

Accredited PT Program

	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	371	246	117		734	375	237	185		797	↑ 9%
Fail	29	44	22		95	36	42	42		120	↑ 26%
Total	400	290	139		829	411	279	227		917	↑ 11%
Pass Rate	93%	85%	84%		87%	91%	85%	81%		87%	→ 0%

Non Accredited PT Program

	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	9	15	5		29	15	8	3		26	↓ -10%
Fail	24	35	24		83	20	33	19		72	↓ -13%
Total	33	50	29		112	35	41	22		98	↓ -13%
Pass Rate	27%	30%	17%		25%	43%	20%	14		27%	↑ 2%

Accredited PTA Program

	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	181	71	138		390	187	45	154		386	↓ -1%
Fail	48	36	31		115	37	29	43		109	↓ -5%
Total	229	107	169		505	224	74	197		495	↓ -2%
Pass Rate	79%	66%	82%		76%	83%	61%	78%		78%	↓ -2%

Non Accredited PTA Program

	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	2	8	5		15	5	7	6		18	↑ 20%
Fail	11	15	10		36	7	5	7		19	↓ -47%
Total	13	23	15		51	12	12	13		37	↓ -27%
Pass Rate	15%	35%	33%		28%	42%	58%	46%		49%	↑ 21%

California Law Examination (CLE)

Accredited Program

	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	893	503	399		1,795	692	525	434		1,651	↓ -8%
Fail	433	270	243		946	252	211	195		658	↓ -30%
Total	1,326	773	642		2,741	944	757	626		2,327	↓ -15%
Pass Rate	67%	65%	62%		65%	73%	69%	69%		71%	↑ 6%

Physical Therapy Board of California
Application Services Report
Fiscal Year 2017/18 Q3

Non Accredited Program											
	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	71	55	49		175	44	45	40		129	↓-26%
Fail	48	53	41		142	41	39	31		111	↓-22%
Total	119	108	90		317	85	84	71		240	↓-24%
Pass Rate	60%	51%	54%		55%	82%	54%	56%		54%	↓-1%

National PT and PTA Examination - National Statistics											
Accredited PT Program											
	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	4,980	1,452	1,137		7,569	4,870	1,601	1,261		7,732	↑ 2%
Fail	451	398	226		1,075	511	356	322		1,189	↑ 11%
Total	5,431	1,850	1,363		8,644	5,381	1,957	1,583		8,921	↑ 3%
Pass Rate	92%	78%	83%		84%	91%	82%	80%		87%	↑ 3%

Non Accredited PT Program											
	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	346	301	215		862	267	213	144		624	⬆️ 28%
Fail	548	676	498		1,722	570	754	427		1,751	⬆️ 2%
Total	894	977	713		2,584	837	967	571		2,375	⬆️ -8%
Pass Rate	39%	31%	30%		33%	32%	22%	25%		26%	⬆️ -7%

Accredited PTA Program											
	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	3,252	1,444	989		5,685	3,200	1,552	869		5,621	↓-1%
Fail	681	606	414		1,701	628	455	393		1,476	↑13%
Total	3,933	2,050	1,403		7,386	3,828	2,007	1,262		7,097	↓-4%
Pass Rate	83%	70%	70%		74%	84%	77%	69%		79%	↑5%

Non Accredited PTA Program											
	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	75	102	63		240	85	96	78		259	⬆️8%
Fail	75	82	63		220	84	74	54		212	⬇️-4%
Total	150	184	126		460	169	170	132		471	⬆️2%
Pass Rate	50%	55%	50%		52%	50%	56%	59%		55%	⬆️3%

Physical Therapy Board of California
Application Services Report
Fiscal Year 2017/18 Q3

Jurisprudence Examination - National Statistics											
Accredited Program											
	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	2,262	1,290	1,063		4,615	2,003	1,334	1,135		4,472	↓ -3%
Fail	697	450	378		1,525	426	390	354		1,170	↓ -23%
Total	2,959	1,740	1,441		6,140	2,429	1,724	1,489		5,642	↓ -8%
Pass Rate	76%	74%	74%		75%	82%	77%	76%		79%	↑ 4%

Non Accredited Program											
	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Pass	145	120	121		386	86	89	72		247	↓ -36%
Fail	74	82	76		232	63	60	44		167	↓ -28%
Total	219	202	197		618	149	149	116		414	↑ 33%
Pass Rate	66%	59%	61%		62%	58%	60%	62%		60%	↓ -2%



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Briefing Paper

Date: 5/14/18
Prepared for: PTBC Members
Prepared by: Sarah Conley
Subject: License Maintenance Report

Purpose:

To provide an update on the most recent activities and the state of the License Maintenance program.

Attachments: [License Maintenance Statistics](#)

Update:

The increase in the number of Active licenses remains at 4%. The number of Inactive licenses has decreased 4% since Q3 last year; this is a smaller decrease than last quarter. The 55% increase in the number of Retired licenses is 15% less than the increase last quarter.

License renewal, name change and verification transactions all increased over Q3 last year, while address change and duplicate license request transactions decreased.

Action Requested:

None.

Physical Therapy Board of California
License Maintenance Services Report
Fiscal Year 2017/18 Q3

License Maintenance Services Report Program Statistics

Active License Status

	FY 2016/17	Fiscal Year 2017/18					Year → Year Change
	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
PT	24261	24664	24926	25123		25123	↑ 4%
PTA	6402	6562	6596	6745		6745	↑ 5%
Total	30663	31226	31522	31868		31868	↑ 4%

Inactive License Status

	FY 2016/17	Fiscal Year 2017/18					Year → Year Change
	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
PT	1271	1255	1210	1235		1235	↓ -3%
PTA	338	335	317	317		317	↓ -6%
Total	1609	1590	1527	1552		1552	↓ -4%

Retired License Status

	FY 2016/17	Fiscal Year 2017/18					Year → Year Change
	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
PT/PTA	181	217	254	280		280	↑ 55%

Active Specialty Certifications

	FY 2016/17	Fiscal Year 2017/18					Year → Year Change
	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
KEMG	27	28	28	28		28	↑ 4%
ENMG	21	19	19	19		19	↓ -10%
Total	48	47	47	47		47	↓ -2%

Transactions Processed

	FY 2016/17	Fiscal Year 2017/18					Year → Year Change
	YTD through Q3	Q1	Q2	Q3	Q4	YTD through Q3	
Renewals	11006	3999	3753	3784		11536	↑ 5%
Addresses	3729	1273	1090	1061		3424	↓ -8%
Names	321	123	147	105		375	↑ 17%
Duplicates	327	122	75	90		287	↓ -12%
Verifications	814	303	305	385		993	↑ 22%
Total	16197	5820	5370	5425		16615	↑ 3%



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Briefing Paper

Date: April 26, 2018
Prepared for: PTBC Members
Prepared by: Veronica Gutierrez, Yasha Crutcher
Subject: Continuing Competency Services Report

Purpose:

To provide an update on the most recent activities and state of the Continuing Competency Services program.

Attachments: [Continuing Competency Audit Statistics](#)

Background:

Licensees are required to certify at the time of renewal that they complied with the continuing competency requirement for renewal set forth in Business and Professions Code section 2649. To ensure compliance, the PTBC is mandated to conduct random continuing competency audits. Audit samples are collected quarterly in keeping with the PTBC's overall statistical record keeping and reporting standard. The audit sample is pulled at the beginning of a quarter for licensees who renewed in the previous quarter. Audits are conducted, then the results are reported the following quarter. The whole audit process from sample collection to reporting results runs six months or two fiscal year quarters. Please note, however, this does not mean each audit takes six months to complete.

Update:

A total of 105 physical therapists and 85 physical therapist assistants were selected for audit for FY 2017/18 Q2 (Oct-Dec). Audits of physical therapists who renewed in Q2 are complete with a pass rate of 95%. Staff continues to work on physical therapist assistant audits, so data available thus far has been included, but the pass rate will be reported at the next meeting.

Action Requested:

None.

Physical Therapy Board of California
Continuing Competency Report
Fiscal Year 2017/18 Q2

Continuing Competency Audit Statistics

Physical Therapist

	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q4	Q1	Q2	Q3	Q4	YTD through Q2	
Pass			136	97	233	134	100			234	
Fail			10	12	22	12	5			17	
Pending			0	0	0	0	0			0	
Total			146	109	255	146	105			251	
Pass Rate			93%	88%	91%	92%	95%			93%	

Physical Therapist Assistant

	Fiscal Year 2016/17					Fiscal Year 2017/18					Year → Year Change
	Q1	Q2	Q3	Q4	YTD through Q4	Q1	Q2	Q3	Q4	YTD through Q2	
Pass			37	27	64	43	37			80	
Fail			2	3	5	2	0			2	
Pending			0	0	0	0	48			48	
Total			39	30	69	45	85			130	
Pass Rate			95%	90%	93%	96%	Pending			Pending	

Approval Agencies and Courses

Approval Agencies	135
Courses	14,573



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Issue Paper

Date: 4/26/2018

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

Subject: ABA Physical Therapy Associates Approval Agency Recognition Withdrawal

Purpose:

To advise the Board that ABA Physical Therapy Associates has requested Recognition to be withdrawn.

Background:

ABA Physical Therapy Associates received PTBC Approval Agency Recognition on December 18th, 2012. In an effort to update the PTBC's Continuing Competency Recognized Approval Agency records, staff sent a request for information to all Recognized Approval Agencies via email on October 27, 2016. Pursuant to California Code of Regulations (CCR) section 1399.95, subdivisions (i) and (j), a Recognized Approval Agency is obligated to respond to requests for information from the PTBC. ABA Physical Therapy Associates requested for Recognition to be withdrawn because they have been purchased by Agile Physical Therapy and no longer exist as an Approval Agency.

Date Sent	Delivery Method	Result
10/27/2016	Emailed Approval Agency	No response.
01/13/2017	Emailed Approval Agency	No response.
02/28/2017	Emailed Approval Agency	No response.
02/26/2018	Received letter from Approval Agency	Approval agency requested recognition to be withdrawn.

Action Requested:

Staff recommends the Board move to withdraw Approval Agency Recognition from ABA Physical Therapy Associates.

**Physical Therapy Board of California**

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**Issue Paper**

Date: April 20, 2018

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

Subject: Boehme Workshops, Inc. Approval Agency Recognition Termination

Purpose:

To advise the Board that Boehme Workshops, Inc. has failed to comply with the PTBC's request for information.

Background:

Boehme Workshops, Inc. received PTBC Approval Agency Recognition on July 16, 2010. In an effort to update the PTBC's Continuing Competency Recognized Approval Agency records, staff sent a request for information to all Recognized Approval Agencies via email on October 27, 2016. Pursuant to California Code of Regulations (CCR) section 1399.95, subdivisions (i) and (j), a Recognized Approval Agency is obligated to respond to requests for information from the PTBC. Boehme Workshops, Inc. failed to respond to the PTBC's request for updated information. After several unsuccessful attempts to reach Boehme Workshops, Inc. staff initiated an online research. A thorough investigation was made; staff concluded that Boehme Workshops, Inc. no longer exists.

Below is a list of all communication attempts with Boehme Workshops, Inc.

Date Sent	Delivery Method	Result
October 27, 2016	Emailed Approval Agency	No response.
January 13, 2017	Emailed Approval Agency	No response.
February 28, 2017	Emailed Approval Agency	No response.
April 20, 2017	Emailed Approval Agency	No response.
July 18, 2017	Emailed Approval Agency	No response.
August 3, 2017	Called Approval Agency and left message	No response
November 14, 2017	Called Approval Agency	Director's husband stated agency was no longer in business and that wife was not going to be available to speak to us.
April 20, 2018	Mailed certified letter	Received an email response stating that agency no longer offers courses.

*Please note, Boehme Workshops, Inc. website is no longer active.

Action Requested:

Staff recommends the Board move to withdraw Approval Agency Recognition from Boehme Workshops, Inc.



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Issue Paper

Date: April 16, 2018

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

Subject: Withdrawal of CHA Hollywood Presbyterian Medical Center Approval Agency Recognition

Purpose:

To advise the Board that CHA Hollywood Presbyterian Medical Center has requested to withdraw its recognition as an Approval Agency.

Background:

CHA Hollywood Presbyterian Medical Center received PTBC Approval Agency Recognition on April 24, 2012. In an effort to update the PTBC's Continuing Competency Recognized Approval Agency records, staff sent a request for information to all Recognized Approval Agencies via email on October 27, 2016. Pursuant to California Code of Regulations (CCR) section 1399.95, subdivisions (i) and (j), a Recognized Approval Agency is obligated to respond to requests for information from the PTBC. CHA Hollywood Presbyterian Medical Center requested to withdraw recognition as an Approval Agency. CHA Hollywood Presbyterian Medical Center failed to report updated information to the PTBC. After several attempts to contact CHA Hollywood Presbyterian Medical Center directly, staff initiated online research to acquire updated contact information. With thorough investigation, staff established with CHA Hollywood Presbyterian Medical Center that they no longer offer Continuing Competency courses; however, CHA Hollywood Presbyterian Medical Center then ceased correspondence to substantiate recognition as an Approval Agency.

Below is a list of all communication attempts with CHA Hollywood Presbyterian Medical Center:

Date Sent/Received	Delivery Method	Result
October 27, 2016	Emailed Approval Agency	No response
January 13, 2017	Emailed Approval Agency	Received email message; delivery failure
February 13, 2017	Emailed approval agency with new contact information found on agency's website	Approval Agency provided new contact information
February 13, 2017	Emailed Agency new RCT request	No response to RCT request
March 7, 2017	Received email from approval agency	Approval agency stated they have not been conducting any training
June 20, 2017	New contact given from agency. Emailed new RCT request to approval agency	No response from approval agency
July 18, 2017	Received email from Approval Agency	Approval agency stated they are no longer a provider
July 24, 2017	Sent Certified Letter	Sent certified letter to confirm if agency wants to keep Recognition. No response.
August 8, 2017	Emailed approval agency	Emailed approval agency to confirm if agency wants to keep Recognition. No response.

Action Requested:

Staff recommends the Board move to withdraw Approval Agency Recognition from CHA Hollywood Presbyterian Medical Center



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Issue Paper

Date: April 16, 2018

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

Subject: Encompass Consulting & Education, LLC Approval Agency Recognition Termination

Purpose:

To advise the Board that Encompass Consulting & Education, LLC has failed to comply with the PTBC's request for information.

Background:

Encompass Consulting & Education, LLC received PTBC Approval Agency Recognition on December 15, 2010. In an effort to update the PTBC's Continuing Competency Recognized Approval Agency records, staff sent a request for information to all Recognized Approval Agencies via email on October 27, 2016. Pursuant to California Code of Regulations (CCR) section 1399.95, subdivisions (i) and (j), a Recognized Approval Agency is obligated to respond to requests for information from the PTBC. Encompass Consulting & Education, LLC failed to respond to staff's first request, so additional communication was initiated. After several unsuccessful attempts to reach Encompass Consulting & Education, LLC staff initiated an online research. A thorough investigation was made; staff concluded that Encompass Consulting & Education, LLC no longer exists.

Below is a list of all communication attempts with Encompass Consulting & Education, LLC:

Date Sent	Delivery Method	Result
October 27, 2016	Emailed Approval Agency	No response
January 13, 2017	Emailed Approval Agency	No response
February 28, 2017	Emailed Approval Agency	No response
March 1, 2017	Received email	Received Delivery Status email: Unable to deliver message within specific time
March 7, 2017		Efforts to obtain approval agency's contact information via research
April 11, 2017	Called Approval Agency	No return response of voicemail request
April 20, 2017	Emailed Approval Agency for Questionnaire	No response
July 21, 2017	Called Approval Agency	No answer/voicemail
July 24, 2017	Called Approval Agency	Mr. Franko advised that contact on file, Pauline Franko, no longer offered continuing education courses and that the company had closed
July 28, 2017	Follow up call to contact info on file	Voicemail message was left for Pauline Franko to return call to confirm recognition withdrawal; however, no response.
August 8, 2017	Mailed Certified letter	No response to request if Agency would like to continue with Recognition.
December 20, 2017	Called Approval Agency	Approval Agency advised they wish to withdrawn Recognition

*Please note, Encompass Consulting & Education, LLC website is no longer active.

Action Requested:

Staff recommends the Board move to withdraw Approval Agency Recognition from Encompass Consulting & Education, LLC.

**Physical Therapy Board of California**

2005 Evergreen Street, Suite 1350, Sacramento, California 95815

Phone: (916) 561-8200 Fax: (916) 263-2560

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**Issue Paper**

Date: 4/26/2018

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

Subject: Evidence in Motion (Previously International Spin and Pain Institute) Approval Agency
Recognition Withdrawal

Purpose:To advise the Board that Evidence in Motion has requested Recognition to be withdrawn.

Background:

Evidence in Motion received PTBC Approval Agency Recognition on June 14th, 2011. In an effort to update the PTBC's Continuing Competency Recognized Approval Agency records, staff sent a request for information to all Recognized Approval Agencies via email on October 27, 2016. Pursuant to California Code of Regulations (CCR) section 1399.95, subdivisions (i) and (j), a Recognized Approval Agency is obligated to respond to requests for information from the PTBC. Evidence in Motion requested for Recognition to be withdrawn.

Date Sent	Delivery Method	Result
10/27/2016	Emailed Approval Agency	No response.
01/13/2017	Emailed approval agency	No response.
02/28/2017	Emailed approval agency	No response.
07/21/2017	Emailed Approval Agency	Approval Agency responded with new contact information.
12/06/2017	Emailed Approval Agency	Approval agency advised would respond to PTBC via phone on 12/07/18 with a response.
12/07/2017		No response.
01/04/2018	Emailed Approval Agency	Approval Agency requested Recognition to be withdrawn.
04/19/2018	Sent Certified Mail	No response.

Action Requested:

Staff recommends the Board move to withdraw Recognition from Evidence in Motion.



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Issue Paper

Date: 4/26/2018

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

Subject: Medical Consulting Media, Inc. Approval Agency Recognition Withdrawal

Purpose:

To advise the Board that Medical Consulting Media, Inc. has requested Recognition to be withdrawn.

Background:

Medical Consulting Media, Inc. received PTBC Approval Agency Recognition on May 16th, 2012. In an effort to update the PTBC's Continuing Competency Recognized Approval Agency records, staff sent a request for information to all Recognized Approval Agencies via email on October 27, 2016. Pursuant to California Code of Regulations (CCR) section 1399.95, subdivisions (i) and (j), a Recognized Approval Agency is obligated to respond to requests for information from the PTBC. Medical Consulting Media, Inc. requested for Recognition to be withdrawn because they are no longer providing continuing education services.

Date Sent	Delivery Method	Result
10/27/2016	Emailed approval agency	No response.
01/13/2017	Emailed approval agency	No response.
01/14/2017		Received undeliverable response back
4/20/2017	Emailed approval agency	Approval agency responded to questionnaire
7/21/2017	Emailed to approval agency's new contact information.	No response.
12/18/2017	Emailed approval agency	Approval agency requested recognition to be withdrawn.

Action Requested:

Staff recommends the Board move to withdraw Approval Agency Recognition from Medical Consulting Media, Inc.



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Issue Paper

Date: 4/26/2018

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

Subject: Online CEU's.com, Inc. Approval Agency Recognition Termination

Purpose:

To advise the Online CEU's.com, Inc. has failed to comply with the PTBC's request for information.

Background:

Online CEU's.com, Inc. received PTBC Approval Agency Recognition on September 5th, 2012. In effort to update the PTBC's Continuing Competency Recognized Approval Agency records, staff sent a request for information to all Recognized Approval Agencies via email on October 27, 2016. Pursuant to California Code of Regulations (CCR) section 1399.95, subdivisions (i) and (j), a Recognized Approval Agency is obligated to respond to requests for information from the PTBC. Online CEU's.com, Inc. failed to respond to staff's first request, so additional communication was initiated. After several unsuccessful attempts to reach Online CEU's.com, Inc. staff initiated an online research. A thorough investigation was made; staff concluded that Online CEU's.com, Inc. no longer exists.

Below is a list of all communication attempts with Online CEU's.com, Inc.

Date Sent	Delivery Method	Result
10/27/2016	Emailed approval agency	No response.
01/13/2017	Emailed approval agency	No response.
02/28/2017	Emailed approval agency	No response.
04/20/2017	Emailed approval agency	No response.
11/09/2017	Emailed approval agency via their website	No response.
12/04/2017	Emailed approval agency via their website	No response.
04/18/2018	Mailed certified letter to approval agency	No response.

Action Requested:

Staff recommends the Board to terminate Online CEU's.com, Inc. recognition of approval.



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Issue Paper

Date: 4/26/2018

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

Subject: Rehab eLearn Approval Agency Recognition Termination

Purpose:

To advise the Rehab eLearn has failed to comply with the PTBC's request for information.

Background:

Rehab eLearn received PTBC Approval Agency Recognition on April 25th, 2012. In effort to update the PTBC's Continuing Competency Recognized Approval Agency records, staff sent a request for information to all Recognized Approval Agencies via email on October 27, 2016. Pursuant to California Code of Regulations (CCR) section 1399.95, subdivisions (i) and (j), a Recognized Approval Agency is obligated to respond to requests for information from the PTBC. Rehab eLearn failed to respond to staff's first request, so additional communication was initiated.

Below is a list of all communication attempts with Rehab eLearn:

Date Sent	Delivery Method	Result
10/27/2016	Emailed approval agency	No response.
01/13/2017	Emailed approval agency	No response.
02/28/2017	Emailed approval agency	No response.
04/20/2017	Emailed approval agency	No response.
11/07/2017	Researched approval agency's website	Website shown disabled with advice to contact approval agency via email. No response.
4/18/2018	Sent Certified Mail	No response

Action Requested:

Staff recommends the Board to terminate Rehab eLearn recognition of approval.



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Issue Paper

Date: April 16, 2018

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

Subject: Withdrawal of Saint Francis Memorial Hospital Approval Agency Recognition

Purpose:

To advise the Board that Saint Francis Memorial Hospital has requested to withdraw its recognition as an Approval Agency.

Background:

Saint Francis Memorial Hospital received PTBC Approval Agency Recognition on April 26, 2011. In an effort to update the PTBC's Continuing Competency Recognized Approval Agency records, staff sent a request for information to all Recognized Approval Agencies via email on October 27, 2016. Pursuant to California Code of Regulations (CCR) section 1399.95, subdivisions (i) and (j), a Recognized Approval Agency is obligated to respond to requests for information from the PTBC. Saint Francis Memorial Hospital failed to respond to staff's first request, so additional communication was initiated.

After several attempts to contact Saint Francis Memorial Hospital directly, staff initiated an online research to acquire updated contact information. With thorough investigation, staff established with Saint Francis Memorial Hospital that they no longer offer continuing competency courses; however, CHA Hollywood Presbyterian Medical Center then ceased correspondence to substantiate recognition as an Approval Agency.

Below is a list of all communication attempts with Saint Francis Memorial Hospital.

Date Sent	Delivery Method	Result
October 27, 2016	Emailed Approval Agency	No response
January 13, 2017	Emailed Approval Agency	No response
February 28, 2017	Emailed Approval Agency	Recipient address rejected
March 7, 2017		Efforts to obtain approval agency's contact information via research
April 20, 2017	Emailed Approval Agency	No response
July 18, 2017	Called Approval Agency	Unable to establish contact
August 3, 2017	Emailed Approval Agency with new email contact.	Approval Agency agreed to review RCT
August 16, 2017	Received email from Approval Agency	Approval Agency stated they have not provided courses since 2013 but wanted to remain in Recognized status.
November 7, 2017	Called Approval Agency	Spoke with Michael Gallardo, who stated he would email Carla Helmbrecht our message
November 13, 2017	Emailed Approval Agency	Approval Agency responded the following day that they would like to maintain Recognition as an Approval Agency.
November 15, 2017	Emailed Approval Agency	No response to request for RCT and Survey
November 28, 2017	Called & Emailed Approval Agency	No response
December 6, 2017	Called Approval Agency	No response
December 18, 2018	Emailed Approval Agency	No response
January 3, 2018	Called and emailed Approval Agency	Carla Helmbrecht advised that Agency would like to withdraw recognition; however, a written request was not received from Approval Agency

Action Requested:

Staff recommends the Board move to withdraw Approval Agency Recognition from Saint Francis Memorial Hospital.



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Issue Paper

Date: April 16, 2018

Prepared for: PTBC Board Members

Prepared by: Continuing Competency Services (CCS) Staff

Subject: Sonoma Psycho-Oncology Approval Agency Recognition Termination

Purpose:

To advise the Board that Sonoma Psycho-Oncology has requested to withdraw its recognition as an Approval Agency.

Background:

Sonoma Psycho-Oncology received PTBC Approval Agency Recognition on December 13, 2011. In an effort to update the PTBC's Continuing Competency Recognized Approval Agency records, staff sent a request for information to all Recognized Approval Agencies via email on October 27, 2016. Pursuant to California Code of

Regulations (CCR) section 1399.95, subdivisions (i) and (j), a Recognized Approval Agency is obligated to respond to requests for information from the PTBC. Sonoma Psycho-Oncology verbally requested to withdraw its recognition as an Approval Agency; however, a statement in writing was never received.

Below is a list of all communication attempts with Sonoma Psycho-Oncology:

Date Sent	Delivery Method	Result
October 27, 2016	Emailed Approval Agency	No response
January 13, 2017	Emailed Approval Agency	No response
February 28, 2017	Emailed Approval Agency	No response
April 20, 2017	Emailed Approval Agency	No response
August 3, 2017	Called Approval Agency	No response to voicemail
November 7, 2017	Emailed Approval Agency	No response
November 15, 2017	Called Approval Agency	Agency stated that they would like its recognition withdrawn as they longer offer courses.

Action Requested:

Staff recommends the Board move to withdraw Approval Agency Recognition from Sonoma Psycho-Oncology.



Physical Therapy Board of California

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY - GOVERNOR EDMUND G. BROWN JR.

Physical Therapy Board of California

Consumer Protection Services Program

2005 Evergreen St. Suite 1350, Sacramento, California 95815

Phone: (916) 561-8200, Ext. 8215 Fax: (916) 263-2560 TOLL FREE 1-800-832-2251

Internet: www.ptbc.ca.gov EMAIL cps@dca.ca.gov



Briefing Paper

Date: June 6, 2018

Prepared for: PTBC Members

Prepared by: Elsa Ybarra

Subject: Consumer Protection Services Program (CPS)

Purpose: Update on Consumer Protection Services Program - FY 2017/18 Quarter 3 (January – March 2018)

Attachments: (1) [Enforcement Performance Measures \(PM\)](#)
 (2) [Consumer Protection Services Report](#)
 (3) [Disciplinary Summary](#)

Attachment 1: Enforcement Performance Measures

The Enforcement Performance Measures report is reported on the DCA's public website on a quarterly basis and is used by all DCA organizations to provide the public its Performance Measures. http://www.dca.ca.gov/about_dca/enforcement.shtml

PM Reports for FY 2017-2018, Quarters 1 - 3 are being prepared by the Department; however, to date, are not available.

Attachment 2: Consumer Protection Services Report

The CPS report provides detailed data in certain areas of the enforcement program and includes year end statistics in comparison to last FY.

PM3, over 90% of the cases, that did not warrant discipline, were closed within the one-year target.

PM4, the average number of days to complete an enforcement case transmitted to the AG's office for formal discipline did not meet the target. Three cases that did not meet the target required an extensive investigation due to the type of violations.

Attachment 3: Disciplinary Summary List

Disciplinary Summary of formal discipline and citations issued. Disciplinary actions are of public record and are available through the DCA License Search. <https://search.dca.ca.gov/>

Action Requested: No Action Required

**Report Not Available from the Department of Consumer Affairs at the Time Board
Meeting Materials Were Submitted**

Consumer Protection Services Statistics Report

Complaint Intake

	FY 2016/17						
	YTD						
PM1: Complaints Received	366	107	104	112			↓
PM1: Convictions/Arrest Received	252	47	74	61			↓
PM1: Total Received	618	154	178	173			↓

PM2: Intake/Avg. Days		2	2	3			↓

		Fiscal Year 2017/18					
		Q2	Q3	Q4	YTD		
PM3: Cycle Time-Investigation		130	58	119	102		↓
PM3a: Intake Only		2	2	2	2		→
PM3b: Investigation Only		119	56	105	93		↓
PM3c: Post Investigation Only		3	2	2	2		↓

		Fiscal Year 2017/18					
		Q1	Q2	Q3	Q4	YTD	
Up to 90 Days		98	118	107		73%	↓
91 - 180 Days		19	12	17		11%	↓
181 Days - 1 Year (364)		19	4	21		10%	↑
1 to 2 Years (365-730)		5	4	13		5%	↑
2 to 3 Years (731- 1092)		2	0	1		1%	↓
Over 3 Years (1093 +)		3	0	0		1%	↑

Citations

	FY 2016/17	Fiscal Year 2017/18					Year → Year Change
	YTD	Q1	Q2	Q3	Q4	YTD	
Final Citations	29	5	0	15		20	↓ -31%
Average Days to Close	383	145	0	272		139.0	↓ -64%

Transmittals to Attorney General (AG)

	FY 2016/17	Fiscal Year 2017/18					Year → Year Change
	YTD	Q1	Q2	Q3	Q4	YTD	
PM4: AG Cases	587	458	760	785		668	↑ 14%
PM4a: Intake Only	2	2	6	11		6	↑ 217%
PM4b: Investigation Only	245	136	377	448		320	↑ 31%
PM4c: Pre-AG Transmittal	1	12	1	25		13	↑ 1167%
PM4d: Post-AG Transmittal	338	315	380	305		333	↓ -1%

AG Cases Initiated		16	7	29		↑
AG Cases Pending		33	25	46		↑
SOIs Filed		4	2	3		↑
Accusations Filed		8	3	4		↑

AG Transmittals						
	FY 2016/17	Fiscal Year 2017/18				
	YTD	Q1	Q2	Q3	Q4	YTD
Total Closed After Transmission	22	13	12	7		32
Total Average Days to Complete	587	459	760	785		668.0

Total Orders Aging/Final Decision						
	FY 2016/17	Fiscal Year 2017/18				
	YTD	Q1	Q2	Q3	Q4	YTD
Up to 90 Days	0%	0	0	0		0%
91 - 180 Days	5%	0	1	0		3%
181 Days - 1 Year (364)	18%	3	2	3		25%
1 to 2 Years (365-730)	50%	9	5	1		47%
2 to 3 Years (731- 1092)	14%	1	1	0		6%
Over 3 Years (1093 +)	14%	0	3	3		19%

Other Legal Actions						
	FY 2016/17	Fiscal Year 2017/18				
	YTD	Q1	Q2	Q3	Q4	YTD
Interim Suspension or PC 23 Ordered	3	0	1	2		3

Disciplinary Summary

The following is a list of disciplinary actions taken by the Physical Therapy Board of California for the months of January, February, & March 2018. The Decisions become operative on the Effective Date, with the exception of situations where the licensee has obtained a court ordered stay. Stay orders do not occur in stipulated decisions, which are negotiated settlements waiving court appeals.

Copies of Accusations, Decisions, or Citations may be obtained by visiting our website at www.ptbc.ca.gov. In addition to obtaining this information from our website, you may also request it by telephone, fax, or mail. Please address your request to:

Physical Therapy Board of California
2005 Evergreen Street, Suite 1350
Sacramento, CA 95815
(916) 561-8200/ FAX (916) 263-2560

.....
January 2018

GROENWOLD, ROELFINA INEKE (PT 20907)

Violation of B & P Code: 822. Stipulated Surrender of License and Order Effective 01/03/18, License Surrendered.

SAYAT, LEOVIGILDO JR (PT 29513)

Violation of B & P Codes: 490, 2605(d), 2660(a), 2660(e), 2660(j), 2660(r), and 2661. Violation of CCR: 1399.20 and 1399.24(d). Decision and Order Effective 01/08/18, License Revoked.

February 2018

LUNA, JUSTIN JOSEPH (PT 294338)

Violation of B & P Codes: 480, 2239(a), 2605, 2660.2, 2660(a), 2660(e), and 2661. Violation of CCR: 1399.20. Stipulated Settlement and Disciplinary Order Effective 02/26/18, Probation term to run concurrent with probationary term ordered in Physical Therapy Board Case No. 1D 2013 74620.

PAYNE-MURPHY, MARGARET (PT 9526)

Violation of B & P Codes: 2620.7, 2630, 2630.3, 2630.4, 2660(g), 2660(h), 2660(i), 2660(k), and 2660(n). Violation of CCR: 1398.13, 1398.44, and 1399. Stipulated Settlement and Disciplinary Order Effective 02/15/18, 35 Months' Prob.

PLEVNEY, BRENDA LYNN (PT 10914)

Violation of B & P Codes: 725, 2261, 2620.7, 2609, 2660(g), 2660(h), and 2660(k). Violation of CCR: 1399.85 and 1398.13. Stipulated Settlement and Disciplinary Order Effective 02/28/18, 3 Yrs. Prob.

March 2018

GRIMSBY, KATHLEEN WELTER (PT 16153)

Violation of B & P Codes: 2620.7, 2605, 2660(a), 2660(g), 2660(h), 2660(j), and 2660(s). Violation of CCR: 1398.11, 1398.13, and 1398.37. Stipulated Settlement for Public Reprimand and Disciplinary Order Effective 03/01/18, Public Reproval.

O'NEIL, APRIL JOY (PTA 2012)

Violation of B & P Codes: 490, 493, 2239, 2660(a), 2660(e), and 2661. Violation of CCR: 1399.20 and 1399.24. Stipulated Settlement and Disciplinary Order Effective 07/08/16, 5 Yrs. Prob.

SKINNER, PAULA CURTIN (PT 6510)

Violation of B & P Codes: 125, 810(b), 2052, 2264, 2286, 2406, 2408, 2660(a), 2660(j), 2660(q), and 2660(t).
Petition for Interim Order of Suspension of License Filed 03/01/18, License Suspended.

Initial Probationary Licenses (IPL) Issued

January through March 2018

(NONE)

Licenses Denied

January 2018

(NONE)

February 2018

GALUTERA, AARON MIKAEL (APPLICANT)

License Denied 02/07/18

March 2018

ZAGAL, RAUL GIL (APPLICANT)

License Denied 03/22/18

Glossary of Terms

B & P Code – Business and Professions Code

H & S Code – Health and Safety Code

R & R – Rules and Regulations

CCR – California Code of Regulations

Accusations: Charges and allegations, which still must undergo rigorous tests of proof at later administrative hearings.

Petition to Revoke Probation: A Petition to Revoke Probation is filed when a licensee is charged with violation of a prior disciplinary decision.

Probationary License: Where good cause exists to deny a license, the licensing agency has the option to issue a conditional license subject to probationary terms and conditions.

Statement of Issues Filed: When an applicant for licensure is informed the license will be denied for cause, the applicant has a right to demand a formal hearing, usually before an Administrative Law Judge. The process is initiated by the filing of a Statement of Issues, which is similar to an accusation.

Surrender of License: License surrender as part of a disciplinary order.

Statement of Issues Decision: These are decisions rendered after the filing of a Statement of Issues.

Stipulated Decision: Negotiated settlements waiving court appeals.



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Briefing Paper

Date: June 5, 2018
Prepared for: PTBC Members
Prepared by: Monny Martin, PTBC Probation Monitor
Subject: Probation Monitoring Program

Purpose: Update on Probation Monitoring Program for Q3 - FY 2017-2018

Attachments: [Probation Monitoring Report \(A\)](#)

Background:

This is a report on the Board's Probation Monitoring Program through the third quarter of FY 2017-2018. Please refer to attachment A-1 which contains the probation statistics for FY 2017-2018.

Currently there are 84 licensees on probation for various causes from Driving Under the Influence to Sexual Misconduct. Besides the 84 licensees on probation and in the state of California, there are an additional 10 probationers tolling (out of state) and not receiving credit toward the completion of probation. There were also 2 licensees that completed probation in the quarter.

Of the 74 licensees that are not currently tolling, 19 are currently enrolled and participating in the Board's Drug and Alcohol Recovery Monitoring Program, equaling 26% of all licensees on probation that aren't tolling.

Action Requested:

No Action Required.

Probation Statistics Report

Probation							
	FY 2016/17	Fiscal Year 2017/18					Year → Year Change
	YTD	Q1	Q2	Q3	Q4	YTD	
Entered Probationer	12	4	3	2		9	↓ -25%
Completed Probation	14	2	7	3		12	↓ -14%
Probation Terminated/Surrendered	4	1	0	0		1	↓ -75%
Non-Compliant w/Probation	0	0	1	1		2	↑ 100%
Total Probationers	104	93	89	84		84	↓ -19%

Maximus							
	FY 2016/17	Fiscal Year 2017/18					Year → Year Change
	YTD	Q1	Q2	Q3	Q4	YTD	
Entered Maximus	11	2	0	0		2	↓ -82%
Completed Maximus	3	0	1	0		1	↓ -67%
Total Maximus Participants	20	22	22	19		19	↓ -5%
Determined To Be Clinically Inappropriate	0	0	0	0		0	
Terminated - Public Risk	1	0	1	1		2	
Withdrawn (Expense) - Post-Dec	1			1		1	