



PHYSICAL THERAPY
BOARD OF CALIFORNIA

December 9-10, 2021
BOARD MEETING

Department of Consumer Affairs
2005 Evergreen St., Hearing Room
Sacramento, CA 95815

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY – GOVERNOR GAVIN NEWSOM

PHYSICAL THERAPY BOARD OF CALIFORNIA

2005 Evergreen St., Suite 2600, Sacramento, California 95815

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

www.ptbc.ca.gov

PHYSICAL THERAPY BOARD OF CALIFORNIA NOTICE OF PUBLIC MEETING

December 9, 2021 9 a.m.

December 10, 2021 9 a.m.

Department of Consumer Affairs
2005 Evergreen St., Hearing Room
Sacramento, CA 95815

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.

BOARD MEMBERS

Alicia K. Rabena-Amen, P.T., DPT, *President*

Katarina Eleby, M.A., *Vice President*

Dayle C. Armstrong, Ph.D., P.T., M.S., DPT, *Member*

Jesus Dominguez, P.T., Ph.D., *Member*

Daniel Drummer, P.T., DPT, *Member*

Johnathon Ervin, *Member*

Tonia McMillian, *Member*

BOARD STAFF

Jason Kaiser, *Executive Officer*

Elsa Ybarra, *Assistant Executive Officer*

Liz Constancio, *Manager*

Sarah Conley, *Manager*

Brooke Arneson, *Executive Analyst*

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.



STATE OF CALIFORNIA

dca

DEPARTMENT OF CONSUMER AFFAIRS

Agenda – Thursday, December 9th, 2021

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

1. **Call to Order - 9:00 a.m.**
2. **Roll Call** and Establishment of Quorum
3. **Reading of the Board's Mission Statement**
4. **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).)
5. **Review, Discussion and Possible Board Action on Sunset Review Report Pursuant to BPC Section 2602** – Jason Kaiser
6. **Discussion and Possible Board Action Regarding Sunset Review Subcommittee's Recommendation on Issues to be Identified on the Sunset Review Report Pursuant to Business and Professions Code (BPC) Section 2602** – Jason Kaiser
7. **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
8. **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).)
9. **Recess**

Agenda – Friday, December 10th, 2021

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

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

11. Roll Call and Establishment of Quorum

12. Reading of the Board's Mission Statement

13. 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).)

14. Review, Discussion and Possible Board Action on Sunset Review Report Pursuant to BPC Section 2602 – Jason Kaiser

15. Discussion and Possible Board Action Regarding Sunset Review Subcommittee's Recommendation on Issues to be Identified on the Sunset Review Report Pursuant to Business and Professions Code (BPC) Section 2602 – Jason Kaiser

16. President's Report –Alicia Rabena-Amen

(A) 2021 Adopted Meeting Calendar

(B) 2022 Proposed Meeting Calendar

17. Discussion and Possible Board Action on the 2022 Rulemaking Calendar – Brooke Arneson

18. Discussion Regarding Waivers Issued by the Director of the California Department of Consumer Affairs – Jason Kaiser

(A) DCA Waiver DCA-20-01 Continuing Education

a. First Extension DCA Waiver DCA-20-27

b. Second Extension DCA Waiver DCA-20-53

c. Third Extension DCA Waiver DCA-20-69

d. Fourth Extension DCA Waiver DCA-20-89

e. Fifth Extension DCA Waiver DCA-21-117

f. Sixth Extension DCA Waiver DCA-21-134

g. Seventh Extension DCA Waiver DCA-21-152

h. Eighth Extension DCA Waiver DCA-21-175

i. Ninth Extension DCA Waiver DCA-21-194

(B) DCA Waiver DCA-20-02 Reinstatement of Licensure

a. First Extension DCA Waiver DCA-20-57

b. Second Extension DCA Waiver DCA-21-165

- c. Third Extension DCA Waiver DCA-21-187
 - d. Fourth Extension DCA Waiver DCA-21-200
- (C) DCA Waiver DCA-20-09 Examination Requirement for Continued Physical Therapy Treatment
 - a. First Extension DCA Waiver DCA-20-28
 - b. Second Extension DCA Waiver DCA-20-46
 - c. Third Extension DCA Waiver DCA-20-75
 - d. Fourth Extension DCA Waiver DCA-20-95
 - e. Fifth Extension DCA Waiver DCA-21-122
 - f. Sixth Extension DCA Waiver DCA-21-148
 - g. Seventh Extension DCA Waiver DCA-21-169
 - h. Eighth Extension DCA Waiver DCA-21-189
 - i. Ninth Extension DCA Waiver DCA-21-202
- (D) DCA Waiver DCA-20-25 Extending Time to Satisfy Examination Requirements
 - a. First Extension DCA Waiver DCA-20-66
 - b. Second Extension DCA Waiver DCA-20-78
 - c. Third Extension DCA Waiver DCA-21-107
 - d. Fourth Extension DCA Waiver DCA-21-131
 - e. Fifth Extension DCA Waiver DCA-21-155
 - f. Sixth Extension DCA Waiver DCA-21-177
 - g. Seventh Extension DCA Waiver DCA-21-197

19. 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)

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

21. Board Member Elections

- (A) President
- (B) Vice-President
- (C) FSBPT Delegate
- (D) FSBPT Alternate Delegate
- (E) FSBPT Back-up Alternate Delegate

22. 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

23. 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).)

24. Agenda Items for Future Meeting – March 23-24, 2022 TBD

25. Adjournment

Informational Notes:

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

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 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

**Thursday,
December 9, 2021**

	Present	Absent
Alicia Rabena-Amen, PT, DPT, President		
Katarina Eleby, Vice-President		
Jesus Dominguez, PT, Ph.D.		
Daniel Drummer, PT, DPT		
Johnathon Ervin		
Tonia McMillian		

**Friday,
December 10, 2021**

	Present	Absent
Alicia Rabena-Amen, PT, DPT, President		
Katarina Eleby, Vice-President		
Jesus Dominguez, PT, Ph.D.		
Daniel Drummer, PT, DPT		
Johnathon Ervin		
Tonia McMillian		



Briefing Paper

Date: December 2, 2021

Prepared for: PTBC Members

Prepared by: Brooke Arneson

Subject: 2021 Sunset Review Report

Purpose:

To present the 2021 Sunset Review Report for Review, Adoption, and Submission to the Legislature

Attachments: [2021 Sunset Review Report – Please see the attached Sunset Review Report word document included in the materials email sent out on 12/3/2021](#)

Background:

BPC Sections	Inoperative Date	Repeal Date	Review Cycle	Last Reviewed
2602 and 2607.5 (listed below)	January 1, 2022 (Sunset date)	January 1, 2022	2021/22	2015/16

Business and Professions Code Section 2602: “The Physical Therapy Board of California, hereafter referred to as the board, shall enforce and administer this chapter. This section shall remain in effect only until January 1, 2022, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.”

Business and Professions Code Section 2607.5:

(a) The board may employ an executive officer exempt from the provisions of the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code) and may also employ investigators, legal counsel, physical therapist consultants, and other assistance as it may deem necessary to carry out this chapter. The board may fix the compensation to be paid for services and may incur other expenses as it may deem necessary. Investigators employed by the board shall be provided special training in investigating physical therapy practice activities.

- (b) The Attorney General shall act as legal counsel for the board for any judicial and administrative proceedings and his or her services shall be a charge against it.
- (c) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

The Board reviewed the 2021 Sunset Review Report template and proposed issues to address in the Report at the November 5, 2021 meeting and directed PTBC staff to complete the draft Report in accordance with the Board's suggestions and present the proposed Report for review and adoption at the December 9-10, 2021 meeting.

Action Requested:

Suggested Motion:

Adopt the proposed 2021 Sunset Review Report as revised, delegate to the Board President the authority to review and proof the revised version and authorize the Executive Officer to make any non-substantive changes to the 2021 Sunset Review Report and submit the Report to the Legislature.

Physical Therapy Board of California

Adopted 2021 Meeting Calendar

January							February							March							April						
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
					1	2		1	2	3	4	5	6		1	2	3	4	5	6					1	2	3
3	4	5	6	7	8	9	7	8	9	10	11	12	13	7	8	9	10	11	12	13	4	5	6	7	8	9	10
10	11	12	13	14	15	16	14	15	16	17	18	19	20	14	15	16	17	18	19	20	11	12	13	14	15	16	17
17	18	19	20	21	22	23	21	22	23	24	25	26	27	21	22	23	24	25	26	27	18	19	20	21	22	23	24
24	25	26	27	28	29	30	28							28	29	30	31				25	26	27	28	29	30	
31																											

May							June							July							August						
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
						1			1	2	3	4	5					1	2	3	1	2	3	4	5	6	7
2	3	4	5	6	7	8	6	7	8	9	10	11	12	4	5	6	7	8	9	10	8	9	10	11	12	13	14
9	10	11	12	13	14	15	13	14	15	16	17	18	19	11	12	13	14	15	16	17	15	16	17	18	19	20	21
16	17	18	19	20	21	22	20	21	22	23	24	25	26	18	19	20	21	22	23	24	22	23	24	25	26	27	28
23	24	25	26	27	28	29	27	28	29	30				25	26	27	28	29	30	31	29	30	31				
30	31																										

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
			1	2	3	4						1	2		1	2	3	4	5	6				1	2	3	4
5	6	7	8	9	10	11	3	4	5	6	7	8	9	7	8	9	10	11	12	13	5	6	7	8	9	10	11
12	13	14	15	16	17	18	10	11	12	13	14	15	16	14	15	16	17	18	19	20	12	13	14	15	16	17	18
19	20	21	22	23	24	25	17	18	19	20	21	22	23	21	22	23	24	25	26	27	19	20	21	22	23	24	25
26	27	28	29	30			24	25	26	27	28	29	30	28	29	30					26	27	28	29	30	31	
							31																				

January							February							March							April						
1	New Year's Day						15	President's Day						24	PTBC Meeting WebEx						4	Easter					
6	PTA NPTE						1	28 APTA Sections Meeting Virtual Event						31	César Chávez Day						6	PTA NPTE					
15	APTAs Founders Day APTA Social Media																				20	CPTA Student Conclave Virtual Event					
18	Martin Luther King Jr																				28	PT NPTE					
26	PT NPTE																										

May							June							July							August						
9	Mother's Day						20	Father's Day						4	Independence Day												
6-8	Board Member and Administrator Training Virtual Event						24	24 PTBC Meeting WebEx						6	6 PTA NPTE						17	17 18 FSBPT LIF Virtual Event					
31	Memorial Day													27&28	27&28 PT NPTE												

September							October							November							December						
6	Labor Day						5	5 PTBC Sunset Meeting						11	11 PTBC Sunset Meeting						9	9 10 PTBC Meeting WebEx					
10	10 14 APTA Centennial Gala Washington, DC						9	9 10 CPTA Annual Meeting Virtual Event						11	11 Veteran's Day						25	25 Thanksgiving					
16	16 PTBC Meeting WebEx						22	22 23 FSBPT Annual Meeting Virtual Event																			
							27	27 PT NPTE																			
							31	31 Halloween																			

Physical Therapy Board of California Proposed 2022 Meeting Calendar

January							February							March							April						
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
						1			1	2	3	4	5			1	2	3	4	5						1	2
2	3	4	5	6	7	8	6	7	8	9	10	11	12	6	7	8	9	10	11	12	3	4	5	6	7	8	9
9	10	11	12	13	14	15	13	14	15	16	17	18	19	13	14	15	16	17	18	19	10	11	12	13	14	15	16
16	17	18	19	20	21	22	20	21	22	23	24	25	26	20	21	22	23	24	25	26	17	18	19	20	21	22	23
23	24	25	26	27	28	29	27	28						27	28	29	30	31			24	25	26	27	28	29	30
30	31																										

May							June							July							August						
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
1	2	3	4	5	6	7				1	2	3	4						1	2		1	2	3	4	5	6
8	9	10	11	12	13	14	5	6	7	8	9	10	11	3	4	5	6	7	8	9	7	8	9	10	11	12	13
15	16	17	18	19	20	21	12	13	14	15	16	17	18	10	11	12	13	14	15	16	14	15	16	17	18	19	20
22	23	24	25	26	27	28	19	20	21	22	23	24	25	17	18	19	20	21	22	23	21	22	23	24	25	26	27
29	30	31					26	27	28	29	30			24	25	26	27	28	29	30	28	29	30	31			

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
				1	2	3							1			1	2	3	4	5					1	2	3
4	5	6	7	8	9	10	2	3	4	5	6	7	8	6	7	8	9	10	11	12	4	5	6	7	8	9	10
11	12	13	14	15	16	17	9	10	11	12	13	14	15	13	14	15	16	17	18	19	11	12	13	14	15	16	17
18	19	20	21	22	23	24	16	17	18	19	20	21	22	20	21	22	23	24	25	26	18	19	20	21	22	23	24
25	26	27	28	29	30		23	24	25	26	27	28	29	27	28	29	30				25	26	27	28	29	30	31
							30	31																			

January		February		March		April	
1	New Year's Day	21	President's Day	23 24	PTBC Meeting	6	PTA NPTE
5	PTA NPTE	2 5	APTA Sections Meeting		TBD, Southern CA	TBD	CPTA Student Conclave
	Martin Luther King Jr		San Antonio, Texas				TBD
26	PT NPTE			31	César Chávez Day	17	Easter
						27	PT NPTE

May		June		July		August	
8	Mother's Day	TBD	FSBPT REG Training	4	Independence Day		
20	22	FSBPT BM Training	TBD	6	PTA NPTE		
		Alexandria, VA		23	24	FSBPT LIF	
30	Memorial Day	19	Father's Day			Alexandria, VA	
		23	24	27	28	PT NPTE	
			PTBC Meeting				
			Sacramento, CA				

September		October		November		December	
5	Labor Day	27 29	FSBPT Annual Meeting Orange County, CA	11	Veteran's Day	8 9	PTBC Meeting Sacramento, CA
14 15	PTBC Meeting TBD Bay Area, CA	6	PTA NPTE	24	Thanksgiving		
24 25	CPTA Annual Meeting Anaheim, CA	26	PT NPTE			26	Christmas
		31	Halloween				



Briefing Paper

Date: November 30, 2021

Prepared for: PTBC Members

Prepared by: Administrative Services

Subject: 2022 Rulemaking Calendar

Purpose:

To introduce the proposed 2022 Rulemaking Calendar.

Attachments: 1. [Proposed 2022 Rulemaking Calendar](#)

Background:

Government Code (GC) § 11017.6 requires all agencies annually submit a calendar of anticipated regulatory changes and the timeframe in which they expect to submit those changes. This allows the Office of Administrative Law (OAL) to prepare for anticipated workload in the coming year. Therefore, at each end-of-year meeting, the Board adopts a proposed Rulemaking Calendar. The Rulemaking Calendar prepared pursuant to this section sets forth the Board's rulemaking plan for the year and is published by 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

Generally, Board staff reviews all regulations under Division 13.2 of Title 16 of the California Code of Regulations to identify regulations in need of amending or repealing. However, with the obstacles faced in the last year or so, staff is proposing to focus on completing the rulemaking remaining from former years. Therefore, staff is proposing the attached rulemaking to be added to the 2022 Rulemaking Calendar.

Action Requested:

To adopt the 2022 Rulemaking Calendar as required by Government Code (GC) § 11017.6.

PHYSICAL THERAPY BOARD OF CALIFORNIA
2022 RULEMAKING CALENDAR

**SCHEDULE A: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED
DURING THE YEAR 2021**

The Physical Therapy Board of California has no proposed regulations implementing statutes enacted during the year 2021 to report.

PHYSICAL THERAPY BOARD OF CALIFORNIA
PROPOSED 2022 RULEMAKING CALENDAR

SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2021

Subject: Disciplinary Guidelines

California Code of Regulations Title and Sections Affected: Title 16 Division 13.2
Article 8 Section 1399.15

Statute(s) Being Implemented: Business and Professions Code (BPC) section 315, 315.2, 315.4, 2660, 2660.1, 2661, 2661.5

Responsible Agency Unit: Administrative Services

Contact Person and Phone Number: Brooke Arneson (916) 561-8260

Projected Notice Publication Date: 8/2021

Projected Public Hearing Date: No hearing and none requested

Projected Adoption by Your Agency Date: Language adopted 9/2021

Projected to OAL for Review Date: 12/2021

PHYSICAL THERAPY BOARD OF CALIFORNIA
PROPOSED 2022 RULEMAKING CALENDAR

SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2021

Subject: Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant/Coursework Tool

California Code of Regulations Title and Sections Affected: Title 16 Division 13.2 Article 2 Section 1398.26.1

Statute(s) Being Implemented: Business and Professions Code (BPC) sections 2650 & 2653

Responsible Agency Unit:	Administrative Services
Contact Person and Phone Number:	Brooke Arneson (916) 561-8260
Projected Notice Publication Date:	3/2022
Projected Public Hearing Date:	TBD
Projected Adoption by Your Agency Date:	Language adopted 6/2019
Projected to OAL for Review Date:	6/2022

PHYSICAL THERAPY BOARD OF CALIFORNIA
PROPOSED 2022 RULEMAKING CALENDAR

SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2021

Subject: Clinical Service Requirements for Foreign Educated Applicants

California Code of Regulations Title and Sections Affected: Title 16 Division 13.2
Article 2 Section 1398.26.5

Statute(s) Being Implemented: Business and Professions Code (BPC) sections
2650 & 2653

Responsible Agency Unit: Administrative Services

Contact Person and Phone Number: Brooke Arneson (916) 561-8260

Projected Notice Publication Date: 2/2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: Language adopted 9/18

Projected to OAL for Review Date: 6/2022

PHYSICAL THERAPY BOARD OF CALIFORNIA
PROPOSED 2022 RULEMAKING CALENDAR

SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2021

Subject: Fees

California Code of Regulations Title and Sections Affected: Title 16 Division 13.2
Article 10 Section 1399.50 & 1399.52

Statute(s) Being Implemented: Business and Professions Code (BPC) section
163.5, 2644, 2688

Responsible Agency Unit: Administrative Services

Contact Person and Phone Number: Brooke Arneson (916) 561-8260

Projected Notice Publication Date: 8/2021

Projected Public Hearing Date: No hearing and none requested

Projected Adoption by Your Agency Date: Language adopted 9/2021

Projected to OAL for Review Date: 12/2021

PHYSICAL THERAPY BOARD OF CALIFORNIA
PROPOSED 2022 RULEMAKING CALENDAR

SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2021

Subject: License Renewal Exemptions: Retired License Status

California Code of Regulations Title and Sections Affected: Title 16 Division 13.2 – Proposed to add Article 1.5 and Section 1399.18

Statute(s) Being Implemented: Business and Professions Code (BPC) sections 118, 144, 464, 2647, 2649, 2660, and 2688, Business and Professions Code; Sections 11500 et seq., Government Code

Responsible Agency Unit: Administrative Services

Contact Person and Phone Number: Brooke Arneson (916) 561-8260

Projected Notice Publication Date: 3/2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: Language adopted 9/2021

Projected to OAL for Review Date: 6/2022

PHYSICAL THERAPY BOARD OF CALIFORNIA
PROPOSED 2022 RULEMAKING CALENDAR

SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2021

Subject: Continuing Competency

California Code of Regulations Title and Sections Affected: Title 16 Division 13.2
Article 13 Section 1399.90-1399.99

Statute(s) Being Implemented: Business and Professions Code (BPC) sections
2644 & 2649

Responsible Agency Unit: Administrative Services

Contact Person and Phone Number: Brooke Arneson (916) 561-8260

Projected Notice Publication Date: 6/2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: Language adopted 9/2021

Projected to OAL for Review Date: 2/2023

PHYSICAL THERAPY BOARD OF CALIFORNIA
PROPOSED 2022 RULEMAKING CALENDAR

Report on the status of all uncompleted rulemaking described on previous calendars:

The Physical Therapy Board of California has no uncompleted rulemaking during the previous calendar year to report.



Briefing Paper

Agenda Item 18(A)

Date: November 31, 2021

Prepared for: PTBC Members

Prepared by: Brooke Arneson

Subject: Waivers Issued by the Director of the California Department of Consumer Affairs

Purpose:

To provide an update on the waivers issued by the Director of DCA.

- Attachments:**
1. DCA Waiver DCA-20-01 Continuing Education
 - a. First Extension - DCA Waiver DCA-20-27
 - b. Second Extension - DCA Waiver DCA-20-53
 - c. Third Extension - DCA Waiver DCA-20-69
 - d. Fourth Extension - DCA Waiver DCA-20-89
 - e. Fifth Extension - DCA Waiver DCA-21-117
 - f. Sixth Extension - DCA Waiver DCA-21-134
 - g. Seventh Extension - DCA Waiver DCA-21-152
 - h. Eighth Extension - DCA Waiver DCA-21-175
 - i. Ninth Extension - DCA Waiver DCA-21-194
 2. DCA Waiver DCA-20-02 Reinstatement of Licensure
 - a. First Extension - DCA Waiver DCA-20-57
 - b. Second Extension - DCA Waiver DCA-20-91
 - c. Third Extension - DCA Waiver DCA-21-165
 - d. Fourth Extension - DCA Waiver DCA-21-187
 - e. Fifth Extension - DCA Waiver DCA-21-200
 3. DCA Waiver DCA-20-09 Examination Requirement for Continued Physical Therapy Treatment
 - a. First Extension - DCA Waiver DCA-20-28
 - b. Second Extension - DCA Waiver DCA-20-46
 - c. Third Extension - DCA Waiver DCA-20-75
 - d. Fourth Extension - DCA Waiver DCA-20-95
 - e. Fifth Extension – DCA Waiver DCA-21-122
 - f. Sixth Extension – DCA Waiver DCA-21-148
 - g. Seventh Extension – DCA Waiver DCA-21-169
 - h. Eighth Extension – DCA Waiver DCA-21-189
 - i. Ninth Extension – DCA Waiver DCA-21-202
 4. DCA Waiver DCA-20-25 Extending Time to Satisfy Examination Requirements
 - a. First Extension - DCA Waiver DCA-20-66
 - b. Second Extension - DCA Waiver DCA-20-78
 - c. Third Extension - DCA Waiver DCA-21-107
 - d. Fourth Extension - DCA Waiver DCA-21-131
 - e. Fifth Extension – DCA Waiver DCA-21-155

- f. Sixth Extension – DCA Waiver DCA-21-177
 - g. Seventh Extension – DCA Waiver DCA-21-197
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Update:

Pursuant to the Governor's Executive Order N-39-20 issued March 4, 2020, DCA was granted the authority to provide waivers during the state of emergency resulting from COVID-19. DCA issued eight waiver orders applicable to physical therapist and physical therapist assistant licensees:

1. **DCA-20-01 Continuing Education (3/31/20)** – Temporarily waives the continuing competency renewal requirement for licensees whose license expires between March 31st and June 30th, 2020. Licensees must complete continuing competency requirements within six months of the date of the order.
 - a. **First Extension - DCA-20-27 Extending DCA Waiver DCA-20-01 (7/1/20)** – Extends DCA waiver DCA-20-01 and temporarily waives the continuing competency renewal requirement for licensees whose license expires between July 1st and August 31st, 2020. Licensees must complete continuing competency requirements within six months of the date of the order.
 - b. **Second Extension - DCA-20-53 Extending DCA Waiver DCA-20-01 (8/27/20)** – Supersedes DCA waiver DCA-20-27 and temporarily waives the continuing competency renewal requirement for licensees whose license expires between March 31st and October 31st, 2020. Licensees must complete continuing competency requirements within six months of the date of the order.
 - c. **Third Extension - DCA-20-69 Extending DCA Waiver DCA-20-01 (10/22/20)** – Supersedes DCA waiver DCA-20-53 and temporarily waives the continuing competency renewal requirement for licensees whose license expires between March 31st and December 31st, 2020. Licensees must complete continuing competency requirements within six months of the date of the order.
 - d. **Fourth Extension - DCA-20-89 Extending DCA Waiver DCA-20-01 (12/15/20)** – Supersedes DCA waiver DCA-20-69 and temporarily waives the continuing competency renewal requirement for licensees whose license expires between January 1st and February 28th. Licensees must complete continuing competency requirements within six months of the date of the order.
 - e. **Fifth Extension - DCA-21-117 Extending DCA Waiver DCA-20-01 (2/26/21)** – Supersedes DCA waiver DCA-20-89 and temporarily waives the continuing competency renewal requirement for licensees whose license expires between March 1st and March 31st. Licensees must complete continuing competency requirements within six months of the date of the order.
 - f. **Sixth Extension - DCA-21-134 Extending DCA Waiver DCA-20-01 (3/30/21)** – Supersedes DCA waiver DCA-20-117 and temporarily waives the continuing competency renewal requirement for licensees whose license expires between March 31st and May 31st. Licensees must complete continuing competency requirements within six months of the date of the order.

- g. **Seventh Extension - DCA-21-152 Extending DCA Waiver DCA-20-01 (6/3/21)** – Supersedes DCA waiver DCA-20-134 and temporarily waives the continuing competency renewal requirement for licensees whose license expires between March 31, 2020 and July 31st. Licensees must complete continuing competency requirements within six months of the date of the order.
 - h. **Eighth Extension - DCA-21-175 Extending DCA Waiver DCA-20-01 (7/26/21)** – Supersedes DCA waiver DCA-20-152 and temporarily waives the continuing competency renewal requirement for licensees whose license expires between March 31st and September 30th. Licensees must complete continuing competency requirements within six months of the date of the order.
 - i. **Ninth Extension - DCA-21-194 Extending DCA Waiver DCA-20-01 (9/28/21)** – Supersedes DCA waiver DCA-20-175 and temporarily waives the continuing competency renewal requirement for licensees whose license expires between October 1st and October 31st. Licensees must complete continuing competency requirements within six months of the date of the order.
2. **DCA-20-02 Reinstatement of License (3/3/20)** – Allows licensees to reinstate an inactive or retired license without paying fees or completing continuing competency. Reinstatement pursuant to this order is valid for six months or until the state of emergency ceases to exist, whichever is sooner.
- a. **First Extension - DCA-20-57 Extending DCA Waiver DCA-20-02 (9/17/20)** – Extends DCA waiver DCA-20-02 and allows licensees to reinstate an inactive or retired license without paying fees or completing continuing competency. Reinstatement pursuant to this order is valid for six months or until the state of emergency ceases to exist, whichever is sooner.
 - b. **Second Extension - DCA-21-165 Extending DCA Waiver DCA-20-02 (7/1/21)** – Extends DCA waiver DCA-20-57 and allows licensees to reinstate an inactive or retired license without paying fees or completing continuing competency. Reinstatement pursuant to this order is valid for six months or until the state of emergency ceases to exist, whichever is sooner.
 - c. **Third Extension - DCA-21-187 Extending DCA Waiver DCA-20-02 (8/31/21)** – Extends DCA waiver DCA-20-165 and allows licensees to reinstate an inactive or retired license without paying fees or completing continuing competency. Reinstatement pursuant to this order is valid for six months or until the state of emergency ceases to exist, whichever is sooner.
 - d. **Fourth Extension - DCA-21-200 Extending DCA Waiver DCA-20-02 (10/29/21)** – Extends DCA waiver DCA-20-187 and allows licensees to reinstate an inactive or retired license without paying fees or completing continuing competency. Reinstatement pursuant to this order is valid for six months or until the state of emergency ceases to exist, whichever is sooner.

3. **DCA-20-09 Examination Requirement for Continued Physical Therapy Treatment (5/6/20)** – Temporarily waives the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an “in-person” patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. This order terminates 60 days from the date of the order.
- a. **First Extension - DCA-20-28 Waiver Extending DCA Waiver DCA-20-09 Examination Requirement for Physical Therapy (7/1/20)** – Extends DCA Waiver DCA-20-09 and temporarily waives the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an “in-person” patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. This order terminates an additional 60 days, on September 3, 2020, unless further extended.
 - b. **Second Extension - DCA-20-46 Waiver Extending DCA Waiver DCA-20-09 Examination Requirement for Physical Therapy (8/27/20)** – Extends DCA Waiver DCA-20-28 and temporarily waives the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an “in-person” patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. This order terminates an additional 60 days, on November 2, 2020, unless further extended.
 - c. **Third Extension - DCA-20-75 Waiver Extending DCA Waiver DCA-20-09 Examination Requirement for Physical Therapy (10/22/20)** – Extends DCA Waiver DCA-20-46 and temporarily waives the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an “in-person” patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. This order terminates on December 31, 2020, unless further extended.
 - d. **Fourth Extension - DCA-20-95 Waiver Extending DCA Waiver DCA-20-09 Examination Requirement for Physical Therapy (12/15/20)** – Extends DCA Waiver DCA-20-75 and temporarily waives the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an “in-person” patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. This order terminates on February 28, 2021 unless further extended.
 - e. **Fifth Extension - DCA-21-122 Waiver Extending DCA Waiver DCA-20-09 Examination Requirement for Physical Therapy (2/26/21)** – Extends DCA Waiver DCA-20-95 and temporarily waives the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an “in-person” patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and

evaluation must be performed via appropriate electronic means. This order terminates on April 30, 2021 unless further extended.

- f. Sixth Extension - DCA-21-148 Waiver Extending DCA Waiver DCA-20-09 Examination Requirement for Physical Therapy (4/30/21)** – Extends DCA Waiver DCA-21-122 and temporarily waives the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an “in-person” patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. This order terminates on June 30, 2021 unless further extended.
 - g. Seventh Extension - DCA-21-169 Waiver Extending DCA Waiver DCA-20-09 Examination Requirement for Physical Therapy (7/1/21)** – Extends DCA Waiver DCA-21-148 and temporarily waives the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an “in-person” patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. This order terminates on August 31, 2021 unless further extended.
 - h. Eighth Extension - DCA-21-189 Waiver Extending DCA Waiver DCA-20-09 Examination Requirement for Physical Therapy (8/31/21)** – Extends DCA Waiver DCA-21-169 and temporarily waives the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an “in-person” patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. This order terminates on October 31, 2021 unless further extended.
 - i. Ninth Extension - DCA-21-202 Waiver Extending DCA Waiver DCA-20-09 Examination Requirement for Physical Therapy (10/29/21)** – Extends DCA Waiver DCA-21-189 and temporarily waives the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an “in-person” patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. This order terminates on December 31, 2021 unless further extended.
- 4. DCA-20-25 Extending Time to Satisfy Examination Requirements (6/23/20)** – Temporarily waives physical therapist and physical therapist assistant applicants whose applications are deemed denied without prejudice between March 31, 2020, and July 1, 2020, due to the applicant failing to take and pass the examinations prescribed by Business and Professions Code section 2636, subdivision (a), and California Code of Regulations, title 16, section 1398.28.
- a. First Extension - DCA-20-66 Waiver Extending DCA Waiver DCA-20-25 Extending Time to Satisfy Examination Requirements (9/30/20)** – Extends DCA Waiver DCA-20-25 and temporarily waives physical therapist and physical therapist assistant applicants whose applications are deemed denied without prejudice

between March 31, 2020, and November 30, 2020, due to the applicant failing to take and pass the examinations prescribed by Business and Professions Code section 2636, subdivision (a), and California Code of Regulations, title 16, section 1398.28.

- b. **Second Extension - DCA-20-78 Waiver Extending DCA Waiver DCA-20-25 Extending Time to Satisfy Examination Requirements (11/25/20)** – Extends DCA Waiver DCA-20-66 and temporarily waives physical therapist and physical therapist assistant applicants whose applications are deemed denied without prejudice between December 1, 2020, and January 31, 2021, due to the applicant failing to take and pass the examinations prescribed by Business and Professions Code section 2636, subdivision (a), and California Code of Regulations, title 16, section 1398.28.
- c. **Third Extension - DCA-21-107 Waiver Extending DCA Waiver DCA-20-25 Extending Time to Satisfy Examination Requirements (1/26/21)** – Extends DCA Waiver DCA-20-78 and temporarily waives physical therapist and physical therapist assistant applicants whose applications are deemed denied without prejudice between February 1, 2021, and April 2, 2021, due to the applicant failing to take and pass the examinations prescribed by Business and Professions Code section 2636, subdivision (a), and California Code of Regulations, title 16, section 1398.28.
- d. **Fourth Extension - DCA-21-131 Waiver Extending DCA Waiver DCA-20-25 Extending Time to Satisfy Examination Requirements (1/26/21)** – Extends DCA Waiver DCA-21-107 and temporarily waives physical therapist and physical therapist assistant applicants whose applications are deemed denied without prejudice between April 3, 2021, and June 1, 2021, due to the applicant failing to take and pass the examinations prescribed by Business and Professions Code section 2636, subdivision (a), and California Code of Regulations, title 16, section 1398.28
- e. **Fifth Extension - DCA-21-155 Waiver Extending DCA Waiver DCA-20-25 Extending Time to Satisfy Examination Requirements (6/3/21)** – Extends DCA Waiver DCA-21-131 and temporarily waives physical therapist and physical therapist assistant applicants whose applications are deemed denied without prejudice between June 2, 2021, and August 1, 2021, due to the applicant failing to take and pass the examinations prescribed by Business and Professions Code section 2636, subdivision (a), and California Code of Regulations, title 16, section 1398.28
- f. **Sixth Extension - DCA-21-177 Waiver Extending DCA Waiver DCA-20-25 Extending Time to Satisfy Examination Requirements (7/26/21)** – Extends DCA Waiver DCA-21-155 and temporarily waives physical therapist and physical therapist assistant applicants whose applications are deemed denied without prejudice between August 2, 2021, and September 30, 2021, due to the applicant failing to take and pass the examinations prescribed by Business and Professions Code section 2636, subdivision (a), and California Code of Regulations, title 16, section 1398.28

- g. **Seventh Extension - DCA-21-197 Waiver Extending DCA Waiver DCA-20-25 Extending Time to Satisfy Examination Requirements (9/28/21)** – Extends DCA Waiver DCA-21-177 and temporarily waives physical therapist and physical therapist assistant applicants whose applicants are deemed denied without prejudice between October 1, 2021, and October 31, 2021, due to the applicant failing to take and pass the examinations prescribed by Business and Professions Code section 2636, subdivision (a), and California Code of Regulations, title 16, section 1398.28

Action Requested: None.



Briefing Paper

Date: December 3, 2021

Agenda Item 20

Prepared For: Board Members

Prepared By: Liz Constancio, Administrative Services Manager
Brooke Arneson, Executive Analyst

Subject: Executive Officer Exempt Level Allocation

Purpose:

To request the exempt level of the PTBC's Executive Officer (EO) position be changed from Level N to an appropriate level that meets its current organizational structure. The Board Members have determined this action is necessary in efforts to provide the appropriate exempt level in support of the PTBC's organizational structure.

Attachments:

1. PTBC Request for Exempt Level Change Memorandum
2. PTBC Background
3. PTBC EO Exempt Level/Organizational Structure Overview (12/2021)
4. DCA Healing Arts Exempt Level Comparison (PTBC-12/2021)
5. Exempt Salary Schedule (CalHR-7/2021)
6. PTBC Organization Chart (12/2021)

Background:

The PTBC's Executive Officer (EO) Exempt Level is not appropriately allocated in accordance with the organization structure.

History of the EO Level Increase:

5/24/2017

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

The Board discussed the denial of the Board's request for an increase in the Board's Executive Officer from Level O to Level L. Ms. Rabena-Amen questioned if there was an explanation received of why it was denied and Mr. Kaiser replied, there was not.

MOTION: To charge Mr. Kaiser with investigating, as much to the degree that he can, the reason for the denial and what needs to be achieved in order to be successful with the Board's directive to employ an Executive Officer not just for management of the Board but at the true level of which is accomplished. M/S: Drummer/Dominguez
VOTE: 6-0 Motion carried.

8/23/2017

Discussion and Possible Board Action for the Increase in Board Level and Exempt Status of the Executive Officer – Ricardo DeLaCruz.

Mr. DeLaCruz advised the Board their request to increase the exempt level of the Executive Officer position was denied. The Board expressed at length their frustration about the time invested in presenting the proposal for an exempt level increase believed to have been justified by the size and structure of the Board. The frustration by the Board extends to the investment of time it has taken away from Board business only to be denied without explanation. The Board requested direction to ensure approval of the request.

MOTION: To adopt the proposal, as amended, for the Executive Officer Exempt Level increase from Level O to L as presented in Agenda Item 16 and demand the proposal be presented by OHR as necessary to seek the Exempt Level increase from O to L. The Board has voted to increase the Exempt Level of the Executive Officer from Level O to L and for OHR to work with PTBC staff and appropriate agencies to increase the Executive Officer Exempt Level and authorize the Executive Officer to make any technical or non-substantive changes to the proposal. Should the Board's demand for an Executive Officer Exempt Level increase be denied by the administration, the Board demands that the administration that denied the request, return to the Board to explain the reasons for the denial, including any specific deficiencies in the proposal.

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

11/22/2017

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

Ms. Rabena-Amen reported the Board has the support of DCA in their request to increase the level and status of the Executive Officer; however, a response has not yet been received.

March 22, 2018

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.

6/20/2018

Dr. Rabena-Amen asked about the Executive Officer's salary study that was discussed at the last Quarterly Director's Meeting. Mr. Kaiser responded that the Department will be hiring an outside vendor to complete an assessment of the Executive Officers within the Department to determine if their compensation is fair in consideration of civil service tables and consider each Board's complexity, size, fiscal responsibility and growth and possibly make reclassification recommendations to California Human Resources for each Board. Dr. Rabena-Amen asked what the potential timeline is for the Executive Officer study and Mr. Kaiser responded that the audit would take 8-12 months to complete once a vendor was selected and the recommendations to California Human Resources would be made during the latter part of 2019 or early 2020.

9/13/2018

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

Dr. Rabena-Amen stated that the Board asked for the increase in the exempt level of the Executive Officer be placed on the agenda each year to revisit to look at the growth of the Board and provide a status update of the request. Dr. Rabena-Amen stated that in 2017/18 the Board President submitted a 2nd formal request on behalf of the Board to increase the Executive Officer's exempt level from Level O to Level L. 4 The Board's request was partially approved to increase its Executive Officer exempt level from Level O to Level N. Board members stated their displeasure at not being given a reason for the disapproval of the request to increase the exempt level of the Executive Officer to level L. Ms. Eleby reiterated that this request is a public protection issue as the Executive Officer is misclassified and, therefore, Board staff do not have the proper organizational structure to fulfill the mission of the Board. Ms. Eleby stated that the half increase of the Executive Officer to level N does not resolve the issues the Board outlined in their original request. Mr. Kaiser responded that there are two issues: the Board is not growing in ratio to the licensing population and the Board's office space does not accommodate additional

staff as deemed necessary in this request. Dr. Rabena-Amen solicited Board members to ask their appointing bodies for guidance since the Board is not receiving answers as to why these requests are not being approved. Ms. Bojack advised that the Board be mindful of third-party communication and to follow appropriate protocols within the Administrative Procedure Act (APA) and Board Member Administrative Manual. Ms. Bojack advised against a general instruction to Board members to reach out to their various appointing authorities to avoid inconsistent and/or unauthorized communications on behalf of the Board. Ms. Bojack identified two possible alternatives for consideration that might avoid these concerns: (1) a letter drafted by committee or staff then presented to the Board for adoption, and/or (2) expressing the Board's desired communication via motion at a Board meeting. Members stated that it was not clear on the entity responsible for approving and denying this request as that has not been clarified during the process. Dr. Rabena-Amen petitioned the Board for volunteers on who would like to participate in a committee to address the exempt level increase request. Ms. Bojack recommended that the committee consist of fewer than three members and that the Board clearly identify the scope of the committee's delegated authority as either an advisory or decision-making body, both of which impact the applicability of the Bagley-Keene Open Meetings Act. Mr. Watkins and Ms. Eleby volunteered to be a part of this committee.

MOTION: Whereas the evidence indicates that the current salary compensation for the Executive Officer is clearly insufficient given the growth of the Board and level of responsibility, I move to authorize the establishment of a committee to draft a letter changing the salary category to category L of the PTBC Executive Officer and prepare and draft supporting documentation for presentation at the Board's December 2018 meeting.

M/S: Drummer/Rabena-Amen VOTE: Dominguez- Aye Drummer – Aye Eleby – Aye McMillian – Aye Rabena-Amen - Aye Watkins - Aye 6-0 Motion carried

Dr. Drummer suggested that an additional letter be drafted to support the exempt level increase. He clarified that this secondary letter would not be included in the initial request and would be used as a tool in Board committee member conversations with the Department of Consumer Affairs, California Business Services Agency, California Department of Human Resources, and with the Board Member's appointing authorities. Dr. Drummer also clarified that the secondary letter drafted by the Exempt Level Increase Committee would be presented for Board consideration at the next Board meeting; however, the Exempt Level Increase Committee does not yet have the authority to have those conversations with the Department of Consumer Affairs, California Business Services Agency, California Department of Human Resources, and with the Board Member's appointing authorities.

MOTION: Authorize the Exempt Level Increase Committee to draft an additional letter regarding the Executive Officer exempt level increase that, after approval by the Board, can be used in Board committee member conversations with the Department of Consumer Affairs, California Business Services Agency, California Department of Human Resources, and with the Board Member's appointing authorities. M/S: Drummer/Dominguez

VOTE: Dominguez- Aye Drummer – Aye Eleby – Aye McMillian – Aye Rabena-Amen - Aye Watkins - Aye 6 6-0 Motion carried

12/5/2018

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

Dr. Rabena-Amen stated that the Board asked for the increase in the exempt level of the Executive Officer be placed on the agenda each year to revisit to look at the growth of the Board and provide a status update of the request. Dr. Rabena-Amen added that the Board formed a committee at the previous meeting to draft a letter and prepare and draft supporting documentation for presentation at the December meeting. Ms. Eleby reported on behalf of the committee. She stated that she met with Mr. Watkins and they drafted a letter which they sent to Board staff for feedback. Mr. Kaiser provided the letter to the Board which included staff's feedback. Mr. Watkins reported that the committee suggested a face to face meeting with Business, Consumer Services and Housing Agency (Agency) Secretary, Alexis Podesta to hear the reasons why the requested level of the Executive Officer was not approved. Dr. Drummer thanked the Committee on their hard work on crafting the letter. The Board reviewed and made edits to the letter provided by the committee. Dr. Drummer suggested to revise the signature of the letter and proposed that the Board President sign the letter on behalf of the Board and list the names of the Board members. The Board agreed with this edit. Mr. Watkins clarified that this letter would be the first step for the Board to get information on why the level increase of the Executive Officer was not approved and therefore the letter should stand alone, and request a meeting with Agency, and not be a cover for the entire exempt level increase package. Ms. Bojack, legal counsel, advised that where the letter was not identified on the agenda or included in the meeting materials that the Board might wish to consider taking up the letter at the next Board meeting for a motion. Dr. Drummer responded that the minutes from the September meeting show that the intent of the committee and letter was clear; that at the December meeting action would be taken on the letter. Dr. Rabena-Amen asked counsel for clarification on what the agenda should look like in the future to address this agenda item for the Board to take a motion. Ms. McMillian stated that discussion and possible board action should suffice, and Ms. Eleby agreed. The Board further reviewed and made edits to the letter drafted by the committee. Dr. Rabena-Amen thanked the committee for their hard work on the letter.

MOTION: Adopt the letter as amended, from the committee, and authorize the Board President to present the letter to Alexis Podesta with the Business, Consumer Services and Housing 8 Agency and grant the Board President the authority to make non-substantive changes should any be required. M/S: Drummer/McMillian

VOTE: Dominguez- Aye Drummer – Aye Eleby – Aye McMillian – Aye Rabena-Amen - Aye Watkins – Aye 6-0 Motion carried

March 22, 2019

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

(A) Report from the Exempt Level Increase Committee- Katarina Eleby and TJ Watkins
Mr. Watkins reported on behalf of the Exempt Level Increase Committee. He updated the Board that at the last meeting the Board discussed preparing a letter to Alexis Podesta, Secretary at the California Business, Consumer Services and Housing Agency (BCSH), regarding the previous exempt level increase request. The Committee reached out to BCSH directly and they responded and provided new information. Mr. Watkins thanked Sonya Logman, Deputy Secretary, BCSH for clarifying some of the issues to the Committee and for providing a way to move forward in the Board's next application for an exempt level increase of the executive officer with the desired outcome. Mr. Watkins stated that the Board has a new BCSH liaison as Ms. Logman has been appointed Deputy Cabinet Secretary and stated that the Committee is looking forward to meeting with the new liaison and discussing this request. Mr. Watkins informed the Board the Committee decided to withdraw the letter as they found it unnecessary since the Committee was provided with the tools to make the next request successful in achieving the desired level increase. The Committee reported that they are looking forward to working with both BCSH and DCA with submission of this next request. Dr. Rabena-Amen thanked the Committee for their hard work. Ms. Eleby added that this is important endeavor and the Committee is happy to pursue it on behalf of the Board. Mr. Kaiser presented the proposed exempt level increase package to the Board which included the following:

- (B) PTBC's Executive Officer Exempt Level/Organizational Structure Overview
- (C) DCA Exempt Level Comparison
- (D) Exempt Salary Schedule
- (E) PTBC Organization Chart
- (F) Executive Officer Exempt Level Increase (Previous Package)
- (G) Draft Request for Exempt Level Position Level Change

Mr. Kaiser stated that the exempt level increase package has been updated from the Board's previous package and includes a draft letter that is similar to the letter sent with the previous request. Ms. Bojack, legal counsel stated that her recommendation is for the Board to make a motion to further authorize and delegate the next steps in the process of the exempt level increase. Mr. Watkins responded that the next steps would be for the Board to work with DCA and the new BCSH liaison on creating the strongest exempt level increase package request.

MOTION: Authorize the Exempt Level Increase Committee to continue to work with the Department of Consumer Affairs and the California Business, Consumer Services and Housing Agency and Board staff to research the Exempt Level Increase and prepare a package requesting an exempt level change to be voted on by the Board at the next meeting. M/S: Watkins/Drummer

VOTE: Dominguez- Aye Drummer – Aye Eleby – Aye McMillian – Aye Rabena-Amen - Aye Watkins – Aye 6-0 Motion carried

6/20/2019

Dr. Rabena-Amen requested that the Exempt Status of the Executive Officer issue be placed back on the agenda for the September meeting and that the Board needed to continue to discuss this issue until there is some resolution. Ms. Eleby added that she would like the Exempt Level Increase Committee to continue as it has not yet reached its goal and that it would be helpful to have another committee member who is local to Sacramento. Ms. McMillian volunteered to be appointed to the Exempt Level Increase Committee.

9/18/2019

Discussion and Possible Board Action for the Increase in the Exempt Level of the Executive Officer.

Ms. Eleby reported on behalf of the Exempt Level Increase Committee (Committee). Ms. Eleby stated that the Executive Officer's (EO) salary study that was conducted by DCA, was very timely and the Committee can incorporate those findings into their request. Ms. Constancio, Administration Services Manager, presented the materials for the exempt level change request; which included updates for fiscal years 2017/18 and 2018/19. Mr. Kaiser added that most of the information that was given to the consultant for the EO salary study came from the Board's previous exempt level increase requests. Mr. Kaiser added that incorporating the consultant's statement of opinion from the study regarding imbalance would be helpful in the Board's request package. Ms. Constancio suggested adding the statement of opinion from the consultant to either the cover memo or the background information so that the Board includes the information most relevant to the request. Ms. Constancio stated that the Board has a draft letter that mimics the previous letter the Board included in their request with updated data and she walked the Board through the attachments of the exempt level increase request package including an exempt level salary chart. Dr. Rabena-Amen solicited the Board for their feedback on whether the documents presented provided with Board with enough information to move forward with pursuing the exempt level increase request. The Board agreed they were comfortable moving forward with the request and amended the draft letter and agreed to incorporating the consultant's statement of opinion for the EO salary study into the request to add another third-party opinion to justify the Board's decision. Mr. Kaiser added that former Committee member, TJ Watkins, had a conference with Sonya Logman, former Deputy Secretary of Business and Consumer Relations of the Business, Consumer Services and Housing Agency (BCSH) to further understand the approval process past DCA. Mr. Kaiser informed the Board that Ms. Logman has since moved on to the Governor's Office, and it was Mr. Watkins intent to make the same connection with the Lila Mirrashidi, the new Deputy Secretary of Business and Consumer Relations, at BCSH to find out what their perspective is on these requests as it relates to DCA. Dr. Rabena-Amen added that Ms. Mirrashidi attended the EO salary study meeting and heard the Board's concerns and frustrations. Ms. Eleby stated that the Committee can arrange a meeting with Ms. Mirrashidi once the exempt level increase request is finalized. The Board amended the EO Exempt Level Change Request Draft Memo (PTBC 9/20/19) to include the consultant's statement of opinion from the EO salary study, update the

statistical data in the letter and directed staff to make any necessary nonsubstantive changes. Dr. Rabena-Amen stated she would work with staff and proofread the letter prior to signing it.

MOTION: Vote in support of the PTBC staff to work with DCA and the Office of Human Resources and appropriate agencies in obtaining an exempt level change that is appropriate to the PTBC's EO position allocation and organization structure and to revise the cover letter addressed to Nicole Le to make nonsubstantive changes as mentioned by the Board in this previous conversation.

M/S: Eleby/Drummer VOTE: Dominguez- Aye Drummer – Aye Eleby – Aye McMillian – Aye Rabena-Amen - Aye 5-0 Motion carried

12/12/2019

Dr. Rabena-Amen asked for the Increase of Exempt Level of the Executive Officer be placed on the agenda for the next meeting.

6/25/2020

Discussion and Possible Board Action for the Increase in the Exempt Level of the Executive Officer.

Mr. Kaiser stated that last September, the Board submitted the Board's third request to increase the exempt level of the Executive Officer's position which would allow the Board to avoid compaction issues; most specifically, the Assistant Executive Officer position. Dr. Rabena-Amen thanked DCA Director Kirchmeyer for her immediate help with this request; and updated the Board that they heard back in May 2020 that the request was not approved. Dr. Rabena-Amen added that the California Department of Human Resources (CalHR) recommended that the Board resubmit the request again once the state budgets crisis has passed. Dr. Rabena-Amen suggested to keep the Increase in the Executive Officer level as an agenda item on the agenda going forward for further discussion until it is successfully completed and resubmit the request again as soon as possible. The Board was in unanimous agreement. Mr. Kaiser added that with each resubmittal, our case is more compelling and that PTBC staff will continue to work with DCA's Human Resources on this request. Mr. Kaiser added that the Board could also potentially address this request as an issue in the Board's upcoming Sunset Report. Dr. Dominguez asked if the request package needed to be revised or strengthened and Dr. Rabena-Amen stated that there was no indication that there was anything wrong with the package and the recommendation was to resubmit. Mr. Kaiser added that our exempt level increase package has been used as a model request package at DCA for other Board's because there is no embellishment and is statistical and factual.

Analysis:

Generally, when changes occur, increasing program requirements, such as, scope of responsibility, staff size, budget, complexity, special requirements, etc. merits a salary or level increase.

Since FY 2017-18, PTBCs staffing levels have increased by 25%, which includes an Assistant Executive Officer (SSM II) position, a second level in command to the Executive Officer (SSM II/III) position. PTBCs budget authority has also increased by 27%; and its license population has increased by 14%.

Over the past decade, the PTBC's role and responsibilities have changed significantly resulting in increased program requirements, which includes increased staffing levels, budget authority, operating expenditures, statute and regulatory. The PTBC's Executive Officer Exempt Level has been changed twice (2) since FY 1996-97. The PTBC's current structure as follows:

Working Title: Executive Officer
Exempt Level: N
Salary: 8,323 - 9,274

Authorized Positions: 27.1
Authorized Budget: 5,750,000
Licensee Population: 43,857

In addition, Board Members have discussed in the past changing the EO Exempt Level to L or CEA Level. Should these levels be considered, the PTBC would not require a budget change proposal for additional funding.

Action Requested:

Board Members - Motion to vote in support of the DCA, Office of Human Resources to work with the PTBC staff and appropriate agencies in obtaining an exempt level change that is appropriate to the PTBC's EO position allocation and organization structure.

**Attachments for Agenda Item 20
Executive Officer Exempt Level
Allocation are Forthcoming**