

**PHYSICAL THERAPY BOARD OF CALIFORNIA
RULEMAKING FILE**

***TITLE 16, CALIFORNIA CODE OF REGULATIONS
DIVISION 13.2***

Article 8, Discipline and Reinstatement, 1399.15, Guidelines for Issuing Citations and Imposing Discipline

Submitted to: Office of Administrative Law
By: Rebecca Marco, Regulation Coordinator
Physical Therapy Board of California
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PHYSICAL THERAPY BOARD OF CALIFORNIA

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CLOSING STATEMENT/CERTIFICATION

I, Rebecca Marco, am the agency official who compiled this rulemaking file with the assistance of my employees and agents. I certify that I have complied with the requirements of Business and Professions Code section 313.2. I declare under penalty of perjury under the laws of the State of California that the record in this matter closed on December 16, 2021. The record was reopened and reclosed on January 28, 2022, and the file and this copy of the file are complete.

Executed this 28th day of January 2022, at Sacramento, California.



Rebecca Marco
Physical Therapy Board of California

Notice

TITLE 16. Physical Therapy Board of California
Notice Concerning Regulatory Action Regarding
Disciplinary Guidelines Revisions

NOTICE IS HEREBY GIVEN that the Physical Therapy Board of California (Board) proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing, from any interested person, or the person's authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request, in writing, addressed to the individuals listed under "Contact Person" in this Notice.

WRITTEN COMMENT PERIOD

Any interested person, or that person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at 916 263-2560, or by e-mail to ptbc.rulemaking@dca.ca.gov. The written comment period closes at **5:00 p.m. on Tuesday, August 31, 2021**. The Board will consider only comments received at the Board's office by that time. Submit comments to the Contact Person identified in the Contact Person section below.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Business and Professions Code (BPC) section 2615, and to implement, interpret or make specific BPC sections 315, 315.2, 315.4, 2660, 2660.1, 2660.2, 2661, 2661.5, as well as GOV Code sections 11400.20 and 11425.50, subsection (e), the Board is considering changes to title 16, division 13.2 of the California Code of Regulations (CCR), as follows:

A. INFORMATIVE DIGEST:

In reaching its disciplinary decisions, the Board uses the Guidelines for Issuing Citations and Imposing Discipline (Guidelines), incorporated by reference into 16 CCR 1399.15. Currently, the Board uses the Revised, December 2013, 5th Edition of the Guidelines, which were adopted by regulation in 2014.

Proposed Amendment to 16 CCR 1399.15

This rulemaking proposes to amend 16 CCR 1399.15, to incorporate by reference the Guidelines (Revised September 2020, 6th Edition), replacing the Guidelines (Revised December 2013, 5th Edition). It is necessary to incorporate the Guidelines by reference due to the size of the document. The current Guidelines are posted on the Board's website at: https://www.ptbc.ca.gov/forms/model_guide_citations.pdf.

Proposed Amendments to the Guidelines (incorporated by reference)

The current Disciplinary Guidelines (5th Edition, December 2013), incorporated by reference in section 1399.15, must be amended to reflect the Board's mandate to educate licensees in matters relevant to the current probationary environment in accordance with the Physical Therapy Practice Act (Act).

The Legislature also enacted Assembly Bill (AB) 2138, (Chiu, Chapter 995, Statutes 2018) "to reduce licensing and employment barriers for people who are rehabilitated." This measure adjusted various provisions of law to allow individuals with criminal convictions to become licensed if certain conditions exist relating to those convictions. Thus, the Guidelines must be amended to reflect those changes. In addition, they are being amended to make various technical, non-substantive changes, and for housekeeping matters, such as changes in the members of the Board and to revise the name of the governor of California.

B. Anticipated Benefits of Proposed Regulations

This regulatory action will update the Board's Guidelines used in its enforcement decisions and will amend 16 CCR 1399.15 to incorporate these updated Guidelines by reference as the Revised September 2020, 6th Edition. The proposed amendments will benefit the Board, licensees, and consumers by making the Guidelines consistent with current law, along with the current educational and probationary environment, clarifying the terms and conditions of probation (to reduce the likelihood of misinterpretation to licensees and others), and strengthening consumer protection.

C. Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Board conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

D. Document Incorporated by Reference

The Guidelines for Issuing Citations and Imposing Discipline (Revised September 2020, 6th Edition).

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Revised March 2019)

FISCAL IMPACT ESTIMATES:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Business Impact:

The Board made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states, nor will it have any significant impact on the creation of jobs or new businesses, or the elimination of jobs or existing businesses, or the expansion of businesses in the State of California. This initial determination is based on the fact that these proposed amendments to the regulatory changes do not impose additional requirements that impact the conduct of physical therapy in California, unless the licensee is disciplined or under probation from having violated the law. Further, the Board has determined that that the proposed regulation will benefit the health and welfare of California residents by clarifying the terms and conditions of probation for physical therapists and physical therapist assistants, subject to discipline, and will therefore strengthen consumer protection to their potential patients. This proposal is not anticipated to benefit worker safety or the state's environment.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any costs impacts that a representative private person business will necessarily incur in reasonable compliance with the proposed action. While discipline may involve costs to be paid by a licensee, after due process, these updates do not increase fees or costs and in no event would impose costs or fees upon licensees in compliance with law. The representative private persons or directly affected businesses are physical therapists or physical therapist assistants that are regulated by the Board.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has made an initial determination that the proposed regulatory action will have no effect on small businesses. This initial determination is based on the fact that these proposed amendments to the Guidelines will simply make this document consistent with current law, amend the document to reflect changes that occurred in the educational and probationary environment since the last update, clarify terms and conditions of probation, and improve consumer protection.

CONSIDERATION OF ALTERNATIVES:

In accordance with GOV sec. 11346.5(a)(13), the Board must determine that no reasonable alternative, which it considered to the regulation or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which this regulatory action is proposed, would be as effective and less burdensome to affected private persons than the proposed action described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments, orally or in writing that are relevant to the above determinations.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available, for inspection and review, all of the information upon which this proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and any document incorporated by reference, along with the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be inspected and reviewed, upon request, from the person designated in this Notice under Contact Person or from the Physical Therapy Board of California, located at 2005 Evergreen Street, Suite 2600, Sacramento, California 95815, or on the Board's website at: http://www.ptbc.ca.gov/laws/prop_regs/index.shtml.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Rebecca Marco
2005 Evergreen Street, Suite 2600
Sacramento, California 95815
Telephone: (916) 318-0564
Fax: (916) 263-2560
Email Address: ptbc.rulemaking@dca.ca.gov

The backup contact person is:

Elsa Ybarra
2005 Evergreen Street, Suite 2600
Sacramento, California 95815
Telephone: (916) 561-8262
Fax: (916) 263-2560
Email Address: ptbc.rulemaking@dca.ca.gov

Website Access

Materials regarding this proposal can also be found at:
http://www.ptbc.ca.gov/laws/prop_regs/index.shtml.

Proposed
Text

PHYSICAL THERAPY BOARD OF CALIFORNIA

PROPOSED LANGUAGE

Proposed amendments to the regulatory language are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

The Physical Therapy Board of California proposes to amend section 1399.15 in Article 8 of Division 13.2, Title 16 of the California Code of Regulations, as follows:

1399.15 Guidelines for Issuing Citations and Imposing Discipline

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the “Guidelines for Issuing Citations and Imposing Discipline”, (~~Revised December 2013~~September 2020, ~~5th~~ 6th Edition; hereafter, “Guidelines”) which are hereby incorporated by reference. Subject to paragraph (c), deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts warrant such a deviation -for example: The presence of mitigating or aggravating factors; the age of the case; evidentiary problems.

(b) Notwithstanding the Guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

As used in this section, the term “sex offense” shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an offense.

(2) Any offense defined in §sections 261.5, 313.1, ~~647b, or 647~~, subdivisions (a) or (d), or 647(b) of the Penal Code or a finding that a person committed such an offense.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would be punishable as one or more of the offenses specified in this section.

(c) If the conduct found to be a violation involves drugs, alcohol, or both, and the individual is permitted to practice under conditions of probation, a clinical diagnostic evaluation shall be ordered as a condition of probation in every case, without deviation.

(1) Each of the “Conditions Applying the Uniform Standards,” as set forth in the Guidelines, shall be included in any order subject to this subsection, but may be imposed contingent upon the outcome of the clinical diagnostic evaluation.

- (2) The Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (Revised ~~April 2014~~March 2019; hereafter, "Uniform Standards"), which are hereby incorporated by reference, shall be used in applying the probationary conditions imposed pursuant to this subsection.
- (d) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

Note: Authority cited: Section 2615, Business and Professions Code.

Reference: Sections 315, 315.2, 315.4, 2660, 2660.1, 2660.2, 2661, and 2661.5, Business and Professions Code; and Section 11400.20 and 11425.50(e), Government Code.

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Dean Grafilo, Director
March 2019



Substance Abuse Coordination Committee

Dean Grafilo, Chair
Director, Department of Consumer Affairs

Michelle Wong
CA Department of Health Care Services

Ben Bodea
Acupuncture Board

Kim Madsen
California Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

Anthony Lum
Dental Hygiene Committee of California

Karen Fischer
Dental Board of California

Kimberly Kirchmeyer
Medical Board of California

Heather Martin
California Board of Occupational Therapy

Shara Murphy
California State Board of Optometry

Elaine Yamaguchi
**Board of Vocational Nursing and
Psychiatric Technicians**

Angie Burton
Osteopathic Medical Board of California

Rebecca Mitchell
Naturopathic Medicine Committee

Virginia Herold
California State Board of Pharmacy

Jason Kaiser
Physical Therapy Board of California

Lynn Forsyth
Physician Assistant Committee

Brian Naslund
Board of Podiatric Medicine

Antonette Sorrick
Board of Psychology

Joseph Morris
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board of California

Paul Sanchez
**Speech-Language Pathology & Audiology &
Hearing Aid Dispenser Board**

Jessica Siefertman
Veterinary Medical Board

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#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board’s testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing

frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

VI. LICENSED SUPERVISION DURING PRACTICE

A board may reduce testing frequency to a minimum of 24 times per year for any person who is a practicing licensee if the licensee receives a minimum of 50% supervision per day by a supervisor licensed by the board.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing

as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, any alternative to the licensee's drug testing requirements (including frequency) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two

years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier
License Type
Probation/Diversion Effective Date
General Range of Testing Frequency by/for Each Probationer/Diversion Participant
Dates Testing Requested
Dates Tested
Identify the Entity that Performed Each Test
Dates Tested Positive
Dates Contractor (if applicable) was informed of Positive Test
Dates Board was informed of Positive Test
Dates of Questionable Tests (e.g. dilute, high levels)
Date Contractor Notified Board of Questionable Test
Identify Substances Detected or Questionably Detected
Dates Failed to Appear
Date Contractor Notified Board of Failed to Appear
Dates Failed to Call In for Testing
Date Contractor Notified Board of Failed to Call In for Testing
Dates Failed to Pay for Testing
Date(s) Removed/Suspended from Practice (identify which)
Final Outcome and Effective Date (if applicable)

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

- (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- (2) must be licensed or certified by the state or other nationally certified organization;
- (3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- (4) shall report any unexcused absence within 24 hours to the board, and,
- (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

- (1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no

monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

- (3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
 - (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.
 3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
 4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

Initial Statement Of Reasons

PHYSICAL THERAPY BOARD OF CALIFORNIA

INITIAL STATEMENT OF REASONS

Hearing Date: A hearing has not been scheduled in this matter.

Subject Matter of Proposed Regulations: Guidelines for Issuing Citations and Imposing Discipline

Section(s) Affected: California Code of Regulations, Title 16, Division 13, Article 8, Section 1399.15

Background

The mandate of the Physical Therapy Board of California (Board) is to protect the public from the incompetent, unprofessional and fraudulent practice of physical therapy while its mission is “to advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act.” Licensees who violate the law are subject to discipline, which is achieved using disciplinary guidelines. These Guidelines for Issuing Citations and Imposing Discipline (Guidelines) address the challenge of providing public protection and of enabling a licensee to practice his or her profession. In addition to protecting the public and rehabilitating a licensee, the Board finds imposing the discipline set forth in the guidelines will further public protection by promoting uniformity, certainty, fairness, and deterrence.

The Guidelines are for the public, individuals subject to issuance of a citation and fine, as well as those involved in the disciplinary process, such as Administrative Law Judges, Deputy Attorneys General, Members of the Board, who review proposed decisions and stipulations and make final decisions, the Board’s Executive Officer and staff, and Respondents and their Counsel.

In 2008, the Legislature passed Senate Bill 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) (“SB 1441”) in response to public and internal concerns with the diversion programs across the various healing arts boards of the Department of Consumer Affairs (DCA). SB 1441 established the Substance Abuse Coordination Committee (SACC) within DCA; the DCA SACC was tasked with developing uniform standards in sixteen specific areas for use in dealing with substance-abusing healing arts licensees. The DCA SACC was comprised of Executive Officers of the DCA’s healing arts boards and a representative of the California Department of Alcohol and Drug Programs and was chaired by the Director of the DCA. In April 2011, Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (“Uniform Standards”) was published and this Board incorporated those Uniform Standards by reference into the Board’s regulations.

Senate Bill 796 (Hill, Chapter 600, Statutes of 2017) (“SB 796”) required DCA to reconvene the SACC to review the existing criteria for Uniform Standard #4 and determine whether the

existing criteria should be updated to reflect recent developments in testing research and technology. The DCA SACC held meetings throughout 2018 to meet this legislative mandate.

The Uniform Standards were revised in March 2019 by the DCA SACC, and those revisions were published to DCA Boards in March 2021. The Board is updating its incorporation of the revised Uniform Standards.

Specific Purpose of Each Adoption, Amendment, or Repeal

1. **Problem being addressed:**

The current Guidelines for Issuing Citations and Imposing Discipline (hereafter, Disciplinary Guidelines or Guidelines) (5th Edition, December 2013), incorporated by reference in California Code of Regulations (CCR), title 16, division 13.2, article 8, section 1399.15, must be amended to reflect the Board's mandate to educate licensees in matters relevant to the current probationary environment in accordance with the Physical Therapy Practice Act (Act).

In 2018, the Legislature enacted Assembly Bill 2138, (Chiu, Chapter 995, Statutes 2018) (AB 2138) "to reduce licensing and employment barriers for people who are rehabilitated." Therefore, it amended Business and Professions Code (BPC) Section 480 to restrict the ability to use prior convictions or acts when denying licenses.

Beginning July 1, 2020, the Board may not deny a license to an applicant because the applicant was convicted of a crime, or due to acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. Additionally, it requires the Board to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering denying or disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. Also, the Board may not deny an applicant or a licensee, based solely on a misdemeanor conviction, if the licensee or applicant meets the applicable requirements of the criteria of rehabilitation that the Board develops. The regulatory changes to 16 CCR sections 1399.20, 1399.21, and 1399.22 necessitate modifications to the Guidelines.

The Board is also adding an additional specific condition of probation, entitled "Notification of Probation Status to Assistive Personnel," so that a probationer will be required to notify present and future assistive personnel, under their supervision, and notify the Probation Monitor that they have complied with this term of probation. This new condition will be in addition to the already-standard conditions that require notification of patients and employers. This change furthers this policy to ensure supervised staff are aware of the licensee's probationary status and conditions.

The Board also seeks to include language that it provides in its model orders, which it uses in the disciplinary process, to provide consistency in its orders and additional transparency to all parties.

Finally, the Board seeks to correct grammatical and typographical errors, found in the current edition, and make various technical, non-substantive, changes for clarity and readability.

The Guidelines will continue to be incorporated by reference given the length of the document. It would be unduly cumbersome to place the text in the California Code of Regulations.

Updating the Uniform Standards addresses the Legislative Mandate of SB 796 and reflects recent developments in testing research and technology. The Uniform Standards will continue to be incorporated by reference given the length and formatting of the document and given that multiple healing arts boards are using it. It would be unduly cumbersome to place the text in the California Code of Regulations multiple times.

2. Anticipated benefits from this regulatory action:

This regulatory action will amend 16 CCR 1399.15 to incorporate by reference the 6th Edition of the Guidelines and the 2019 Uniform Standards. This will benefit the Board, licensees, and the public by updating the Guidelines and Uniform Standards and clarifying the terms and conditions of probation for physical therapists and physical therapist assistants subject to discipline so as to strengthen consumer protection.

DCA has directed healing arts boards to adopt the Uniform Standards in regulation to ensure that public safety remains the paramount mission of these boards, and to implement consistent practices for all healing arts boards when dealing with substance-abusing licensees.

3. Specific purpose of each amendment:

The primary purpose of this regulatory amendment is to incorporate by reference the 6th Edition, which makes updates to the Guidelines and clarifies the terms and conditions of probation for physical therapists and physical therapist assistants subject to discipline and strengthens consumer protection. Secondly, a purpose of this regulatory amendment is to incorporate by reference the 2019 Uniform Standards, discussed below.

Factual Basis/Rationale:

Currently, 16 CCR 1399.15 incorporates by reference the 5th Edition, December 2013, Guidelines, as amended in 2013. In the past seven years since the last amendment, the Board has identified areas in need of non-substantive and technical amendments to improve clarity in the conditions of probation reflected in the changing probationary environment. The amendments proposed are necessary to enhance consumer protection.

The summary of changes to the Guidelines and the reasons therefore are as follows:

- The Board seeks to amend the **TABLE OF CONTENTS** based upon the proposal to change the title of the “Drug & Alcohol Recovery Monitoring Program – Requirements and Costs,” and to add two new sections to the Guidelines.

These amendments to the table of contents are non-substantive and are proposed for ease of reference. The justification for the title change and the two new sections are addressed later in this Initial Statement of Reasons (pages 4-5).

- The Board seeks to amend the section titled “**STATEMENT OF PURPOSE, INTENT AND EXPECTATIONS**” to:
 - 1) replace the symbol “&” to the word “and;”
 - 2) capitalize the letter “G” in “Guidelines;”
 - 3) refer to the Guidelines for Issuing Citations and Imposing Discipline” to simply “Guidelines;”
 - 4) amend the revision date to the revised 6th Edition date;
 - 5) add the word “section” to Penal Code “section” 23;
 - 6) delete the word “disciplinary” when combined with reference to the “Guidelines;”
 - 7) correct the words “Stipulation” to “Stipulated Settlement” and “Proposed Settlement” to accurately read Stipulated Settlement; and,
 - 8) combine and reword the last two sentences in the second to the last paragraph of the Guidelines to ultimately read: “Any “Stipulated Settlement” that departs from the Guidelines shall be accompanied by a memorandum identifying the departures and the facts supporting the departure, as well as any mitigating or aggravating circumstances.”
 - 9) added parenthesis around the numbers (1), (2) and (3) and an “s” to the word “Substance” in the category identified as “Conditions Applying the Uniform Standards Specific to Alcohol and/or Controlled Substances” to indicate there could be multiple substances for which these conditions would apply.

Amendments numbered 1-6 are non-substantive and are proposed for clarity. Amendment to number 7 is to eliminate multiple titles for identifying the same document commonly known as a Stipulated Settlement to address confusion.

Amendment to number 8 is to ensure that in all cases the mitigating and aggravating circumstances are detailed in the memorandum from the Deputy Attorney General. While this is an internal direction to another state agency and does not affect the rights or responsibilities of licensees, it is listed for transparency of government operations so that a licensee or representative understands that circumstances justifying a departure from the guidelines will be provided to the Board via memorandum with the negotiated agreement for the Board’s approval.

- The Board seeks to amend the section titled “**LEGAL AUTHORITY**”, which is the text of the California Code of Regulations, Title 16, Division 13.2, Article 8, subsection 1399.15 to:
 - 1) add Government Code sections 11400.20 and 11425.50(e) to the authority;

- 2) add the complete title and location of the “Guidelines;”
- 3) updates the revision date of the “Guidelines” incorporated by reference;
- 4) makes a grammatical correction; and,
- 5) reorders the Penal Code citations in subsection (b)(2).

These amendments are necessitated by the amendments to the Disciplinary Guidelines, which are incorporated by reference.

- The Board seeks to add the titles to each of the BPC sections cited under “**AUTHORITY TO EXAMINE DUE TO MENTAL ILLNESS AND/OR PHYSICAL IMPAIRMENT.**”

This amendment is to identify the title to each BPC section for ease of reference.

- The Board seeks to modify the title “**DEFINITION OF ABUSE REHABILITATION PROGRAM**” to:
 - 1) include the definitive word “Substance;”
 - 2) to replace the existing introductory paragraph, within the text under the title, to be more concise; and,
 - 3) include grammatical edits to improve legibility.

These proposed changes are for clarity and do not have a regulatory effect.

- The Board seeks to amend the “**SUBSTANCE ABUSE REHABILITATION PROGRAM**” to:
 - 1) add clarity to the specific expectations of those participants in the program;
 - 2) delete program fees; and,
 - 3) other editorial changes.

The Substance Abuse Rehabilitation Program is administrated by a vendor that contracts with eight of the California health professional licensing Boards to manage the health professionals recovery program. The contract vendor is the expert in the field of substance abuse and is autonomous from the Board in determining when a participant has successfully completed the program since each participant’s recovery is individual. Therefore, this amendment removes all timeframe references to eliminate unrealistic completion expectations by the participant.

In addition, since all fees are negotiated within the contract all fees were removed and participants are directed to the vendors website for the most current information; thereby, eliminating the necessity to modify the Guidelines when the fees change.

- The Board seeks to add the “**INITIAL PRACTICE RESTRICTIONS**” section to prepare participants for the restrictions placed on their ability to practice while awaiting the results of the clinical diagnostic evaluation.

The addition of this section is to address a continuing problem whereby probationers have expressed issues of being unaware that they shall not be allowed to return to practice until they have thirty (30) days of negative drug tests. This is in compliance with the existing requirements in Uniform Standard #2 implemented in April, 2011 pursuant to SB 1441 (Ridley-Thomas, Chapter 548, Statutes 2008) (SB 1441) and was incorporated by reference in CCR

section 1399.15(c)(2) on April 1, 2013. This information is presented for convenience and to alleviate current confusion by some probationers; no additional requirements are created by this text.

- The Board seeks to amend the section entitled “**DENIAL OF LICENSURE AND ISSUANCE OF AN INITIAL PROBATIONARY LICENSE,**” to address changes required in AB 2138.

These changes add the specificity required by BPC section 480 to conform the Guidelines to the changes that became operative on July 1, 2020, as a result of AB 2138. The reasons for a denial of a license are reproduced in the Guidelines for convenience to the applicant.

- The Board seeks to amend the sections titled “**CITATION.**”

The edits to the Citation section are non-substantive and are made to conform stylistically.

- The Board seeks to amend the section titled “**PUBLIC REPROVALS & REPRIMANDS**” to include grammatical edits to improve legibility.

Additionally, the Board removed the third example of a minor violation “Failure to maintain patient records, such as an isolated incident...” and replaced it with simply “Minor documentation violations.” It was determined that a violation of failure to maintain patient records is not considered a minor violation as it could be detrimental to patient care. The record keeping and proper maintenance of the record is critical for other health care professionals to know how the patient is responding to treatment and how to progress the patient further.

- The Board seeks to amend the “**GUIDELINES SPECIFIC TO VIOLATION,**” as follows:
 - 1) relocate the BPC section headings from the end of the title to the beginning;
 - 2) amend or add references to related statutes and regulations where applicable; and
 - 3) modify certain model probation conditions, specific to each violation, by adding or removing conditions based on their appropriateness for the particular violations stated.

Amendments to Guidelines Specific to Violation #'s 1 & 2 above, are non-substantive and are proposed for clarity; #3 above, will be described in more detail below.

- The Board also seeks to add BPC sections: 480(a)(1), 480(a)(1)(A), 480(a)(1)(B), 480(a)(2), 480(a)(2)(e), 2630.5, 2693, 2694, 17500 and California Code of Regulations sections 1399.35, 1399.37, 1399.39 to the “**GUIDELINES SPECIFIC TO VIOLATION;**” as a specific violation.

BPC sections 480(a)(1) thru 480(a)(2)(e) - Added since the board wants the applicant to be aware of the authority to deny the license. This became more critical with the amendments pursuant to AB 2138.

BPC section 2630.5 – Added to the BPC pursuant to SB 198.

BPC sections 2693, 2694, 17500 and 16 CCR section 1399.35, 1399.37, 1399.39 – Added because these were inadvertently omitted from the existing Guidelines but licensees are subject to discipline when these sections are violated.

The minimum level of discipline is public reproof, as authorized in BPC section 495, and maximum level of discipline is revocation, as authorized in BPC 2660. The minimum and maximum disciplinary outcomes to the BPC and CCR sections, added above, are to maintain consistency with historic board policy, as adopted by the Board with the implementation of the 2nd edition of the Guidelines in 2005.

- The Board seeks to amend the Terms and/or Conditions (A-EE and 1-23) within the BPC sections: 123, 490, 725, 810, 2237, 2238, 2239, 2289, 2620.7, 2630, 2630.3, 2630.4, 2633, 2633.5, 2660(a), 2660(d), 2660(f), 2660(g), 2660(h), 2660(i), 2660(j), 2660(k), 2660(l), 2660(p), 2660(s), 2660(t), 2660(u), 2660(v) and 16 CCR sections 1399.10 and 1399.12 as follows:
 - BPC 123 added probationary terms: D, K, L, M, N, P
 - BPC 490 added probationary terms: O, BB, CC, DD, EE and deleted probationary terms M, P, T, U
 - BPC 725 added probationary terms: C, J, K, M, N, P
 - BPC 810 added probationary terms: J, K, L, M, N
 - BPC 2237 added probationary terms J, O, Q, BB, CC DD, EE and deleted probationary terms M, P, T and U
 - BPC 2238 added probationary terms J, O, Q, BB, CC, DD, EE and deleted probation terms M, P, T and U
 - BPC 2239 added probationary terms O, Q, BB, CC, DD, EE and deleted probation terms L, M, P, T and U
 - BPC 2289 added probationary terms C, J, P and deleted probationary terms G and O
 - BPC 2620.7 added probationary terms N, P and deleted probationary term O
 - BPC 2630 added probationary terms C, D, K, M, N and P
 - BPC 2630.3 added probationary terms B, P and deleted probationary terms J, K, L and O
 - BPC 2630.4 added probationary terms B, M, N, Q and deleted probationary terms J and O
 - BPC 2633 added probationary terms B and N
 - BPC 2633.5 added probationary terms B and N
 - BPC 2660(a) added probationary terms A through EE
 - BPC 2660(d) added probationary terms K and P
 - BPC 2660(f) added probationary terms A, B, C, D, J, K, L, M, N, O, V, W, X, Y, Z, and AA, BB, CC, DD, EE
 - BPC 2660(g) added probationary terms A, B, N, P
 - BPC 2660(h) added probationary terms F, P and deleted probationary term O
 - BPC 2660(i) added probationary terms A, B, C, F, J, K, L, M, N, O, P
 - BPC 2660(j) added probationary terms A, B, C, D, E, J, K, L, M, N, O, P
 - BPC 2660(k) added probationary term N and deleted probationary term E
 - BPC 2660(l) added probationary terms J, N, O, P
 - BPC 2660(p) added probationary terms J, N, O, P
 - BPC 2660(s) added probationary term J, N, P
 - BPC 2660(t) added probationary term P
 - BPC 2660(u) added probationary term P and deleted probationary term O
 - BPC 2660(v) added probationary term N, P and deleted probationary term O

California Code of Regulations sections:

- 16 CCR 1399.10 added probationary term L, N, O, P
- 16 CCR 1399.12 added probationary term L, N, P

Additionally, the Board amended sections of the Guidelines Specific to Violation and Probation Conditions Specific to Violation, as follows:

- 1) added level of discipline “Minimum to Maximum” to each violation code for consistency throughout the document and for transparency.
- 2) cited terms of probation that were added to the Guidelines as part of this rulemaking
- 3) BPC section 2660(f) also adds the minimum and maximum discipline. The minimum discipline added to BPC section 2660(f), above, complies with the Uniform Standards #2, which requires the suspension of the license during the Clinical Diagnostic Evaluation and the ability to practice safely has been determined. The maximum discipline is to maintain consistency with historic Board policy.
- 4) relocates conditions “A” through “EE” in the Probation Conditions Specific to Violation causing re-alphabetizing; adds terms J, U, V, Y; relocates term U to W; and splits term X into two terms - X (Uniform #1) & Y (Uniform #2) for consistency with the Uniform Standards, as explained below.

- The Board seeks to amend BPC sections 2633.7, 2636.5, 2639, 2639.1, 2649, 2653 with specific conditions as “none”;

This is to make it clear there are no conditions of probation in addition to the standard conditions.

- The Board seeks to amend or add Citation and/or Discipline minimum and maximums to BPC sections 2660(f), 2691, and California Code of Regulations Code sections 1399.97, 1399.98, 1399.99 and Health and Safety Code (HSC) section 123110;

The minimum and maximum citation fines are defined in BPC section 125.9 and 16 CCR 1399.25, as \$100 - \$5000. The minimum discipline is authorized in BPC section 495 and is public reproof. The maximum discipline is authorized in BPC section 2660 and is revocation. The minimum and maximum citation and disciplinary outcomes, which were added above, are to maintain consistency with historic board policy, as adopted by the Board with the implementation of the 2nd edition of the Guidelines, in 2005, and are being added for convenience of the user.

The amendment to the minimum discipline in HSC section 123110 is to conform with the authority as stated above, “minimum” being a “public reproof”.

- The Board seeks to delete BPC sections 2234(b), 2234(c), 2235, 2236, 2261, 2262, 2263, 2264, 2271, 2273, 2286 and 2288.

Historically the Board relied on these Medical Board of California statutes as cause for discipline when violated; however, when Senate Bill 198 (SB 198), (Lieu, Chapter 389, Statutes 2014) was enacted into law, it gave the Board its own authority, eliminating the

necessity to rely on these statutes. Several references to the Medical Board of California's statutes are thus being removed in the Guidelines.

- The Board seeks to amend the section titled “**PROBATION CONDITIONS – STANDARD PROBATION CONDITIONS**” as follows:

1) Cost Recovery (#3) –

The first paragraph was stricken and replaced in its entirety, since it was revised considerably. For this paragraph, the board deleted the option to pay a reduced cost if paid within thirty days and replaced it with the option to establish a payment plan throughout probation. The board felt this was a better accommodation to lessen the burden on the probationer. The Board is entitled to full cost recovery pursuant to BPC 2661.5; it is not the intent for licensees to pay for the administrative cost incurred by the Board by forgiving cost recovery if paid within 30 days. The Board has found through experience that the current system of reduction of cost, in most cases, was ineffective in that the probationer was still unable to pay costs within the 30 days. As a result, the Board is establishing the option of a payment plan and replacing the requirement to pay within 330 days of the Decision by allowing the respondent to pay the full amount 180 days prior to completing probation -- which in some cases could be up to five years. In lieu of seeking further disciplinary action (revocation) for failure to pay cost recovery in full, the Board voted to extend the time of probation as an incentive to the probationers to pay cost recovery in order to terminate probation. This is also consistent with the requirements of BPC 2661.5(e)(1), which prohibits renewal or reinstatement of a license for any person who has failed to pay ordered cost recovery.

The second paragraph continues the same diction for consistency with the first paragraph and BPC 2661.5(e)(1).

2) Interviews with the Board's Probation Monitor or its Designee (#9) -

This change reflects that these interviews are, usually, conducted by a Probation Monitor, who is a member of the Board's staff. Additional modes of appearance are proposed, which may allow for telephone or video conference options, at the Board's discretion, which may save time and resources for a probationer. This may also be useful or even necessary for social distancing measures, when appropriate.

3) Notification of Probationer Status to Employers (#10) -

This standard condition will require a probationer to provide the Board specific information within 10 days. In addition to the nonsubstantive changes for gender neutrality and grammar, the change specifies that the 10-day period begins on the date of the Board's order; prior to new employment; or prior to a change of employer, supervisor or contractor. The timeline for reporting was unclear to probationers, therefore, the board felt clarification was necessary. The board decided to tie the 10-day reporting requirement to the effective date of the Decision and Order to ensure the probation monitor was notified of the probationer's employment. This is necessary for monitoring purposes.

4) Prohibited Use of Aliases (#14) -

This language was amended to be gender neutral.

5) Intermittent Work (#15)

This defines what form or practice (paid or volunteer work) satisfies the term of probation. A suspension is a form of non-practice which does not satisfy this term since non-practice does not demonstrate to the Board that the Respondent can safely practice and is in compliance with the Physical Therapy Practice Act. A Respondent becomes suspended when they do not comply with the terms and conditions of the Decision and Order. As an example, if a Respondent was ordered to take the California Law Examination (CLE) as a condition of probation and fails the exam, their license would become suspended until they have satisfied that term by passing the CLE.

The Board added clarification to the probationer's obligations while residing in California and considered non-practice. The Board found it necessary to reiterate that the Respondent is still required to comply with any terms and conditions whether the Respondent is in practice or not to address the issue of Respondents leaving their practice to avoid compliance of their terms and conditions of probation, including all financial obligations.

This also addresses the repeated question about whether "volunteer" work would satisfy the probationary requirement; clarifies any period of non-practice caused by suspension (i.e. for non-compliance of a specified term requiring action within a specific time frame) or otherwise will not satisfy the work requirement; specifies that a Board-ordered suspension is not a period which satisfies terms of probation which is declaratory of existing law; and, adds language that describes and defines the term "non-practice," in terms of periods that do not count towards Respondent's probation. This definition, although based in common sense, is necessary due to questions by probationers.

6) Tolling of Probation (#16) -

This does not change the meaning or intent of the term "tolling," but rather adds clarity and addresses the repeated question from Respondents as to whether volunteer time satisfies this condition. Any practice, paid or not, within California, counts. Payment for practice does not alter probation. Practicing in another jurisdiction cannot count toward completion of probation, however, because it is not under the Board's jurisdiction and the Board cannot monitor probationer for compliance, which is contrary to public protection. Similarly, as mentioned above (Intermittent Work #15), suspension cannot count toward probation, as that would negate the purpose of probation as a method to ensure a probationer is able to practice safely before license restrictions can be removed. Finally, this answers the question regarding financial obligations when probation is tolled by clarifying that a financial obligation is not on hold even though a probationer is not actively practicing.

7) Maintenance of Valid License (#17) -

This standard condition will be utilized to ensure that a probationer maintains an active current license while license is suspended and that all requirements for licensure are met, including when probation is tolled. This term was added to ensure public protection from unlicensed practice.

8) Request to Surrender License Due to Retirement, Health, or Other Reasons (#19) -
A Respondent may request to surrender a license to the Board; the requirement that such a request be in writing is necessary to better track, verify, and respond to such requests. This revised condition clarifies that upon such a surrender of the probationary license, the probationer can not practice physical therapy and must deliver their wallet license and wall certificate to the Board within 15 days to avoid any fraudulent practice or use of the license that is no longer valid. This condition is necessary to ensure public protection from unlicensed practice. The (current) language indicating Respondent's license would be tolled upon surrender was inaccurate and the Board has no authority to toll a surrendered license, thus it is being deleted. A surrendered license is a revoked license. Pursuant to BPC 2661.7, a person whose license has been revoked that wants to practice again must file a Petition for Reinstatement.

9) Written Exam (#21) -
Corrects citation to the BPC requirement from 2676 to 2649.

10) Practice while on Probation (#22) -
Placing a licensee on probation is not meant to be punitive, but is to monitor a licensee at practice while maintaining consumer protection. Probationers have expressed concern that this condition, as written, has not served its intent of preventing them from being removed as an approved provider for third-party payors and inhibits their ability to practice. As a result, this condition was restated in hope of preventing a probationer from being removed from any list of approved providers. While the Board recognizes it lacks authority to impose this condition on third-party payors, this is an attempt to aid the probationer from being removed.

11) Probation Monitoring Costs (#23) -
Adds a requirement to this condition that the probationer's license will not be renewed if the probationer has failed to pay these costs. This is necessary to ensure that the probationer is incentivized to pay ordered amounts, which preserves the Board fiscally. This is also consistent with the requirements of BPC 2661.5(e)(1), which prohibits renewal or reinstatement of a license for any person who has failed to pay ordered cost recovery.

- The Board seeks to amend the section titled "**PROBATION CONDITIONS SPECIFIC TO VIOLATION**" as follows:

1) Restriction of Practice – Presence of Supervising Physical Therapist and Practice Monitoring Required (Terms A and B)

The amendments to these terms are as follows:

A – While the majority of changes to this condition are non-substantive and are revised for clarity, the Board wanted to emphasize the intent that this condition shall be used when the probationer has no vested interest in a practice.

B – While the majority of changes to this condition are non-substantive and are for clarity, the Board wanted to emphasize the intent that this condition shall be used when the probationer has a vested interest.

Since it is not the Board’s intent to inhibit employment opportunities, the Board finds that using both conditions A and B ensures the flexibility of employment to the petitioner. This prevents the probationer from having a lapse in practice or having to Petition to Modify Probation (BPC sec 2661.7) which is a lengthy and costly process for the Probationer.

In Term A, 2) “Limited Presence/Documentation Review” the Board found it necessary to define the “observer” as the supervising physical therapist to eliminate confusion and emphasize the Board’s intent. Additionally, the words “at least once per shift” were mentioned twice within the same paragraph and were therefore stricken.

In Term A, 3 “No Presence/Documentation Review as Determined” for emphasis, added that the Respondent shall not practice until receiving written approval by the Board. This allows the Board to verify the potential supervisor holds a current and valid, unrestricted license.

To conform with the timeframe specified in condition “B”, the Board changed “in a timely manner” to require the supervisor submit their report to the Board within fourteen (14) days.

The Board added the requirement for the supervisor to keep information used to write their report to afford the practice monitor access in cases of discrepancies.

The one year timeframe was eliminated to afford the Board flexibility to set a timeframe for modification of probation on a case by case basis. This would otherwise require the probationer to Petition to Modify Probation (BPC sec 2661.7), which is a lengthy and costly process for the probationer. The Board struck the option to remove the condition entirely since this would be part of the consideration to modify the condition of the term.

In Terms A & B, the term “familial” is being added as a relationship descriptor in lieu of a “family member”, in regards to the Respondent’s supervisor. Familial is a broader term, since it encompasses a person who is characteristic of a family member to ensure the supervisor remains objective and is consistent with the language in the Uniform Standards adopted pursuant to SB 1441.

- 2) Notification of Probation Status to Assistive Personnel (new J) -
Adds this new condition so that a probationer will be required to notify present and future assistive personnel, under their supervision, and report to the Board that this condition has been met. This new condition will be in addition to the already-standard conditions that require notification of patients and employers. This change

further this policy to ensure supervised staff are aware of the licensee's probationary status and conditions. The Board determined that 10 days is a reasonable amount of time for the probationer to collect this information and report it back to the Board and is advantageous for the probationer to submit confirmation of their assistive personnel's receipt of acknowledgement as soon as possible. It further adds that it is Respondent's responsibility to ensure that the supervisor submits reports within fourteen days of signing the report, instead of "timely."

This clears up the vagueness of the word "timely." Fourteen days was chosen as a reasonable amount of time for mailing after a supervisor has reviewed and approved (signed) the report. Finally, this allows a change to an ALJ-determined amount of time from a standard one1-year time period for the possibility of modification. Such a change provides discretion based upon the particular circumstances presented in an accusation.

3) Restriction of Practice – No Supervision of Physical Therapy Assistants (Current K, revised as L) -

This proposal amends this condition to provide, on a case by case basis, at the Board's option, for this requirement to apply for the full term of probation or for a specific time period within that probation. This benefits probationers who may not require supervision throughout the entire period of probation. The optional language will also order the probationer to obtain approval from the Board before supervising any assistive personnel. It also requires every potential supervised physical therapist assistant to review the Statement of Issues, Accusation, and Decision and Order relating to probation. This ensures full disclosure to those who will be supervised, to ensure greater consumer protection.

4) Restriction of Practice – No Supervision of Physical Therapy Aides (Current L, revised as M) -

This will make similar changes to item number 2, above, for similar reasons.

5) Education Course (current O; revised as P) -

Changes the referenced BPC requirement from 2676 to 2649 due to the statutory renumbering from SB 198.

6) Relinquish Wallet License and Wall Certificate (new U) -

This section requiring the relinquishment of the license was added to deter the use of a license that has been revoked or surrendered and must occur within 10 business days of the Decision and Order. Two complete work weeks was deemed a reasonable time for return of the wallet license and wall certificate to the Board.

- The Board seeks to amend the section entitled "**CONDITIONS APPLYING THE UNIFORM STANDARDS SPECIFIC TO ALCOHOL AND CONTROLLED SUBSTANCES**" (SB 1441), as follows:

- 1) Cease Practice (new V) -
Added for clarity as its own condition. The adopted Uniform Standards require that the licensee cease practice, during their Clinical Diagnostic Evaluation, until it is determined that the licensee may safely return to practice.
- 2) Substance Abuse Rehabilitation Program (current U, new W) -
This condition has been relocated for better readability and consistency. The standard conditions are unchanged from current regulatory text.
- 3) Determination on Return to Practice (Y) -
It was determined that this condition was inconsistent with the Uniform Standards (which are currently incorporated by reference), which were developed by the Department of Consumer Affairs in response to a legislative mandate. Therefore, this condition is being amended to mirror the criteria defining when and how a Respondent can return to practice. Nonsubstantive changes include “Licensee” being changed to “Respondent” for specific consistency throughout the Guidelines, and changed “himself or herself” to not be gender specific.
- 4) Biological Testing (current X, revised as BB) -
Changes to this section are necessary to conform with the new Uniform Standards.
- 5) Facilitated Group Support Meetings (current Z, revised as DD) -
This proposal adds that this requirement may be waived or modified by the Board’s Probation Monitor if specific criteria are met. This allows for more customized rehabilitation programs, depending on the circumstances of the Respondent, which ultimately may protect the public by promoting both rehabilitation and safety.

- The Board is adding a new section to the Disciplinary Guidelines titled “**MODEL ORDERS FOR LICENSEE DISCIPLINE.**”

This section is common language historically used when writing a Decision and Order, but is being added to this incorporated document to ensure consistent standardized language for an ALJ to use in the Board’s orders granting a probationary license, placing a licensee on probation, and reinstating a license. As suggested (model) language for an ALJ, the language does not specifically put any requirements on licensees, but is being provided in an effort to show transparency in due process of the state. This addition also alerts licensees who are subject to discipline and their counsel of what to expect prior to accepting the terms and conditions of probation.

- The Board seeks to amend the Glossary of Terms.

This amendment of the Glossary of Terms is necessitated by the changes in the Guidelines described above. Changes are necessary to align terms, abbreviations, citations, consistency of capitalization and to address the physical therapist assistant is licensed to “assist” in the practice and does not practice independently of the physical therapist.

- The Board is amending the Alphabetical Violation Index.

This nonsubstantive amendment of the Alphabetical Violation Index is necessitated by the changes in the Guidelines described above.

- The Board is making Technical, Non-Substantive, amendments for consistency and clarity.

These amendments are non-substantive.

- The Board is making non-substantive changes throughout the Guidelines. These non-substantive changes include, but are not limited to, all of the following:
 - 1) Changing the symbol “&” to the word “and”;
 - 2) Capitalizing the letter “G” in the word “Guidelines;”
 - 3) Adding the words “of California” to the title of the Board, to read “Physical Therapy Board of California”;
 - 4) Changing how the Guidelines refer to California statutory law by replacing “B&P Code” or “Code” with “BPC,” “PC” with Penal Code, and added “16” (reference to Title 16) preceding “CCR,” in the text where referenced;
 - 5) Deleting the word “disciplinary” preceding the word “Guidelines”;
 - 6) Brief descriptions of BPC sections when used as subject headings;
 - 7) Various and numerous other technical, non-substantive, changes to correct errors in grammar, typographical errors, and other nominal issues.

Currently, 16 CCR 1399.15, subsection (c)(2), incorporates by reference Uniform Standards, April 2011. As discussed in the Background section, the DCA SACC updated the Uniform Standards in March 2019. Changes to Uniform Standards are solely limited to Uniform Standard #4.

CHANGE #1 is the addition to page 9 of the following:

“VI. LICENSED SUPERVISION DURING PRACTICE

A board may reduce testing frequency to a minimum of 24 times per year for any person who is a practicing licensee if the licensee receives a minimum of 50% supervision per day by a supervisor licensed by the board.”

According to DCA SACC, this was adopted by the committee on 10/30/2018, as an edit for technical clarity.

CHANGE #2 is to page 10 of the April 2011 version.

The 2011 version states:

“Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.”

This has been altered as follows:

“Prior to vacation or absence, any alternative to the licensee’s drug testing location(s) requirements (including frequency) must be approved by the board.”

So that the final language in the March 2019 (page 10) version states:

“Prior to vacation or absence, any alternative to the licensee’s drug testing requirements (including frequency) must be approved by the board.”

According to DCA SACC, this was adopted by the committee on 6/27/2018, as an edit for technical clarity.

The language of BPC 315 is clear that the standards developed by DCA SACC are to be adopted: “...uniform standards that will be used by healing arts boards.” (BPC 315(a)). Adoption of the March 2019 Uniform Standards is necessary because this Board is required to adopt the Uniform Standards pursuant to BPC 315 and has no discretion in the contents or justification.

In 2014, the Board amended 16 CCR 1399.15 to add the original Uniform Standards¹, relying in part on the DCA Legal Affairs memorandum: *Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB 1441)*, which itself referenced a Legislative Counsel opinion dated October 27, 2011, and an informal opinion rendered by the Office of the Attorney General dated February 29, 2012. The Board continues to rely upon these documents as Underlying Data for this rulemaking.

The DCA directed healing arts boards to adopt the Uniform Standards in regulation to ensure that public safety remains the paramount mission of these boards, and to implement consistent practices for all healing arts boards when dealing with substance-abusing licensees. Therefore, this regulatory proposal updates the Board’s regulatory reference to incorporate the March 2019 version of the Uniform Standards.

Underlying Data/Technical, Theoretical, and/or Empirical Study Reports, or Documents

- Legislative Counsel Bureau Opinion: *Healing Arts Boards: Adoption of Uniform Standards - #1124437*, dated October 27, 2011;
- Office of the Attorney General informal Opinion, dated February 29, 2012;
- DCA Legal Affairs memorandum: *Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB 1441)*, dated April 5, 2012;
- Staff report from the August 24, 2017 Board Meeting (Agenda Item 12(B)) and approved minutes therefrom;
- Staff report from the November 15, 2017 Board Meeting (Agenda Item 11(B)) and approved minutes therefrom;
- Staff report from the March 22, 2018 Board Meeting (Agenda Item 11(C)) and approved minutes therefrom;

¹ OAL File Number 2014-0617-01S, approved July 30, 2014, operative October 1, 2014.

- Staff report from the June 20, 2018 Board Meeting (Agenda Item 15(C)) and approved minutes therefrom;
- Staff report from the June 20, 2019 Board Meeting (Agenda item 8(B) and approved minutes;
- Staff report from the September 17, 2020 Board Meeting (Agenda item 11(C)) and approved minutes of the Board;
- Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (dated April 2011);
- AB 2138, (Chiu, Chapter 995, Statutes 2018); and
- SB 198, (Lieu, Chapter 389, Statutes 2014).

Business Impact

The Board made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses in other states. This initial determination is based on the fact that the regulatory changes do not impose additional requirements that impact the conduct of physical therapy in California, unless the licensee is disciplined or under probation from having violated the law.

Economic Impact Assessment

The Board made the initial determinations that this regulatory proposal will have the following impact:

- It is not likely to create or eliminate jobs within the State of California. This determination is based on the fact that these proposed amendments to the Disciplinary Guidelines will clarify terms and conditions of probation, and only impact licensees found in violation of law;
- It is not likely to create new businesses or eliminate existing businesses within the State of California. This determination is based on the fact that these proposed amendments, to the Disciplinary Guidelines will clarify terms and conditions of probation and should not affect businesses;
- It will not likely affect the expansion of businesses currently doing business within the State of California. This determination is based on the fact that these proposed amendments to the Disciplinary Guidelines will clarify terms and conditions of probation for licensees found in violation of law;
- It will benefit the health and welfare of California residents because it clarifies the terms and conditions of probation for physical therapists and physical therapist assistants, subject to discipline, and strengthens consumer protection to their potential patients;

- It will not have a significant impact on worker safety because these proposed amendments, but may be slightly beneficial as physical therapist assistants will now be made aware of their supervisor’s probation and reasons therefor.
- It will not have an impact on the state’s environment because these proposed amendments clarify terms and conditions of probation and improve consumer protection, but do not affect the environment.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Nonduplication Statement - 1 CCR 12

The proposed regulations partially duplicate or overlap a state or federal statute or regulation which is cited as “authority” and “reference” for the proposed regulations and the duplication or overlap is necessary to satisfy the “clarity” standard of Government Code section 11349.1(a)(3).

Consideration of Alternatives

The Board has made the initial determination that no reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or be as effective or less burdensome, to the affected private persons, and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The public is invited to submit such alternatives during the public comment period.

Set forth below are the alternatives, which were considered, and the reason[s] that each alternative was rejected:

1. Do not seek a change. This alternative was rejected because it would result in the Guidelines continuing to be outdated and containing language that has been deemed confusing and/or inconsistent with public protection; or
2. Adopt the proposed regulatory amendments. This alternative was determined to be the most appropriate because it provides the public with Guidelines that reflect changes in educational and probationary environments, since the last update, and which is amended for clarity and consistency and improves public protection.

Material
Relied
Upon

Underlying Data/Technical, Theoretical, and/or Empirical Study Reports, or Documents

- Legislative Counsel Bureau Opinion: *Healing Arts Boards: Adoption of Uniform Standards - #1124437*, dated October 27, 2011;
- Office of the Attorney General informal Opinion, dated February 29, 2012;
- DCA Legal Affairs memorandum: *Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB 1441)*, dated April 5, 2012;
- Staff report from the August 24, 2017 Board Meeting (Agenda Item 12(B)) and approved minutes therefrom;
- Staff report from the November 15, 2017 Board Meeting (Agenda Item 11(B)) and approved minutes therefrom;
- Staff report from the March 22, 2018 Board Meeting (Agenda Item 11(C)) and approved minutes therefrom;
- Staff report from the June 20, 2018 Board Meeting (Agenda Item 15(C)) and approved minutes therefrom;
- Staff report from the June 20, 2019 Board Meeting (Agenda item 8(B)) and approved minutes;
- Staff report from the September 17, 2020 Board Meeting (Agenda item 11(C)) and approved minutes of the Board;
- Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (dated April 2011);
- AB 2138, (Chiu, Chapter 995, Statutes 2018); and
- SB 198, (Lieu, Chapter 389, Statutes 2014).

Legislative Counsel
Bureau Opinion:
*Healing Arts Boards:
Adoption of Uniform
Standards -
#1124437, dated
October 27, 2011*



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October 27, 2011

Honorable Curren D. Price Jr.
Room 2053, State Capitol

HEALING ARTS BOARDS: ADOPTION OF UNIFORM STANDARDS - #1124437

Dear Senator Price:

You have asked two questions with regard to the adoption of uniform standards by the Substance Abuse Coordination Committee pursuant to Section 315 of the Business and Professions Code. You have asked whether the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.). You have also asked, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, whether the healing arts boards are required to implement them.

By way of background, Section 315 of the Business and Professions Code¹ provides as follows:

"315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

¹ All further section references are to the Business and Professions Code, unless otherwise referenced.

"(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

"(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

"(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

"(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

"(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

"(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

"(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

"(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

"(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

"(8) Procedures to be followed when a licensee tests positive for a banned substance.

"(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

"(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a deferred prosecution stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

"(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

"(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

"(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

"(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

"(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

"(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term." (Emphasis added.)

Thus, the Legislature has established in the Department of Consumer Affairs (hereafter department) the Substance Abuse Coordination Committee (subd. (2), Sec. 315, hereafter committee). The committee is comprised of the executive officers of each healing arts board within the department,² the State Board of Chiropractic Examiners, and the

² The department's healing arts boards are those boards established under Division 2 (commencing with Section 500) to license and regulate practitioners of the healing arts. Those boards include, among others, the Dental Board of California, the Medical Board of California, the Veterinary Medical Board, and the Board of Registered Nursing.

Osteopathic Medical Board of California (hereafter, collectively, healing arts boards), and a designee of the State Department of Alcohol and Drug Programs (Ibid.). The Director of Consumer Affairs chairs the committee and is authorized to invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee (Ibid.).

The committee is required to formulate uniform and specific standards in each of 16 areas provided by the Legislature, but otherwise has discretion to adopt the uniform standards each healing arts board shall use in dealing with substance-abusing licensees (subd. (c), Sec. 315). The committee adopted its initial set of uniform standards in April 2010, and revised those initial standards as recently as April 2011.¹ Although the committee has adopted the uniform standards pursuant to its own procedures, it has yet to adopt those standards pursuant to the rulemaking procedures of the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.; hereafter APA).

You have asked whether the committee is required to adopt the uniform standards pursuant to the rulemaking procedures of the APA.

The APA establishes basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations by state agencies (subd. (a), Sec. 11346, Gov. C.). The APA is applicable to the exercise of any quasi-legislative power conferred by any statute (Ibid.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 517; hereafter *California Advocates*). The APA may not be superseded or modified by any subsequent legislation except to the extent that the legislation does so expressly (subd. (a), Sec. 11346, Gov. C.).

The term "regulation" is defined for purposes of the APA to mean "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure" (Sec. 11342.600, Gov. C.; emphasis added). The APA provides that a state agency shall not issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation under the APA, unless properly adopted under the procedures set forth in the APA, and the Office of Administrative Law is empowered to determine whether any such guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule is a regulation under the APA (Sec. 11340.5, Gov. C.).

In *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571 (hereafter *Tidewater*), the California Supreme Court found as follows:

¹ See http://www.dea.ca.gov/about_dea/sacc/index.shtml (as of September 20, 2011).

"A regulation subject to the APA thus has two principal identifying characteristics. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497 [272 Cal.Rptr. 886] [describing two-part test of the Office of Administrative Law].) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. (*Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630 [167 Cal.Rptr. 552].) Second, the rule must implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure." (Gov. Code, § 11342, subd. (g).)"

If a policy or procedure falls within the definition of a "regulation" within the meaning of the APA, the adopting agency must comply with the procedures for formalizing the regulation, which include public notice and approval by the Office of Administrative Law (*County of Butte v. Emergency Medical Services Authority* (2010) 187 Cal.App.4th 1175, 1200). The Office of Administrative Law is required to review all regulations adopted pursuant to the APA and to make its determinations according to specified standards that include, among other things, assessing the necessity for the regulation and the regulation's consistency with the agency's statutory obligation to implement a statute (subd. (a), Sec. 11349.1 Gov. C.).

Applying these principles to the question presented, the uniform standards are subject to the rulemaking procedures of the APA if the following criteria are met: (1) Section 315 does not expressly preclude application of the APA, (2) the committee is a state agency under the APA, (3) the uniform standards are regulations subject to the APA, and (4) no exemption applies under the APA.

With respect to the first criterion, Section 315 is silent on the application of the APA. Thus, Section 315 does not expressly preclude application of the APA, and the APA will apply to any regulation adopted under Section 315.

We turn next to the second criterion, and whether the committee is an "agency" for purposes of the APA. The word "agency" is defined, for purposes of the APA, by several separate provisions of law. For purposes of the rulemaking procedures of the APA, "agency" is defined to mean a state agency (Sec. 11342.520, Gov. C.). That reference to state agency is defined elsewhere in the Government Code to include every state office, officer, department, division, bureau, board, and commission (subd. (a), Sec. 11000, Gov. C.). The APA does not apply to an agency in the judicial or legislative branch of the state government (subd. (a), Sec. 11340.9, Gov. C.).

Along those lines, the APA is applicable to the exercise of any quasi-legislative power conferred by any statute (subd. (a), Sec. 11346, Gov. C.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates*, *supra*, at p. 517). Thus, for purposes of our analysis, we think that an "agency" means any state office, officer, department, division, bureau, board, or commission that exercises quasi-legislative powers.

Here, the committee is a state office comprised of executive officers of the healing arts boards and the Director of Consumer Affairs. Although the Legislature has set forth 16 areas in which the committee is required to adopt standards, the committee itself is required to exercise quasi-legislative powers and adopt uniform standards within those areas. Those standards shall have the force and effect of law, since the healing arts boards, as discussed more extensively below, are required to use the standards in dealing with substance-abusing licensees and the standards are required to govern matters such as when a licensee is temporarily removed from practice or subject to drug testing or work monitoring (paras. (2), (4), and (7), subd. (c), Sec. 315). Accordingly, we think the committee is an agency to which the APA applies.

As to the third criterion, two elements must be met for the uniform standards at issue to be a regulation: they must apply generally and they must implement, interpret, or make specific a law enforced or administered by the agency or that governs its procedures (*Underwater, supra*, at p. 571; Sec. 11342.600, Gov. C.). Section 315 requires the committee to formulate uniform and specific standards in specified areas that each healing arts board within the department shall use when dealing with substance-abusing licensees, whether or not the board chooses to have a formal diversion program. The uniform standards will not be limited in application to particular instances or individuals but, instead, will apply generally to those licensees. Further, under this statutory scheme, the uniform standards will implement Section 315 and will be enforced and administered by, and will govern the procedures of, each healing arts board that is a member of the committee. Thus, the uniform standards are, in our view, a regulation under the APA.

Lastly, we turn to the fourth criterion, and whether the regulation is exempt from the APA. Certain policies and procedures are expressly exempted by statute from the requirement that they be adopted as regulations pursuant to the APA. In that regard, Section 11340.9 of the Government Code provides as follows:

"11340.9. This chapter does not apply to any of the following:

"(a) An agency in the judicial or legislative branch of the state government.

"(b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.

"(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.

"(d) A regulation that relates only to the internal management of the state agency.

"(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial

arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

- "(1) Enable a law violator to avoid detection.
- "(2) Facilitate disregard of requirements imposed by law.
- "(3) Give clearly improper advantage to a person who is in an adverse position to the state.

"(f) A regulation that embodies the only legally tenable interpretation of a provision of law.

"(g) A regulation that establishes or fixes rates, prices, or tariffs.

"(h) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.

"(i) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state."

None of the exemptions contained in the APA can be reasonably construed to apply to the committee or the uniform standards to be used by the healing arts boards. In addition, we are aware of no other applicable exemption.

Thus, because all four of the criteria are met, it is our opinion that the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.).

Having reached this conclusion, we next turn to whether the healing arts boards are required to use the uniform standards if those standards are properly adopted. In addressing that question, we apply certain established rules of statutory construction. To ascertain the meaning of a statute, we begin with the language in which the statute is framed (*Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438; *Visalia School Dist. v. Workers' Comp. Appeals Bd.* (1995) 40 Cal.App.4th 1211, 1220). Significance should be given to every word, and construction making some words surplusage is to be avoided (*Lambert Steel Co. v. Heller Financial, Inc.* (1993) 16 Cal.App.4th 1034, 1040). In addition, effect should be given to statutes according to the usual, ordinary import of the language employed in framing them (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388).

As set forth above, subdivision (c) of Section 315 provides that "the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program" (emphasis added). Section 19 provides that "shall" is mandatory and "may" is permissive. The word "may" is ordinarily construed as permissive, whereas the word "shall" is ordinarily construed as mandatory (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443).

Here, in Section 315, the Legislature uses the term "shall" rather than "may" in providing that each healing arts board "shall use" the specific and uniform standards adopted by the committee when dealing with substance-abusing licensees. The Legislature uses the term "shall use" as compared to "shall consider," "may consider," or "may use." The Legislature's use of the term "shall" indicates that the healing arts boards are required to use the standards adopted by the committee rather than being provided the discretion to do so. Moreover, as employed in this context, the word "use" implies that the healing arts boards must implement and apply those standards rather than merely considering them. Finally, the use of the term "uniform" suggests that the Legislature intended each board to apply the same standards. If the healing arts boards were not required to use the standards as adopted by the committee, the standards employed by these boards would vary rather than being "uniform."

Norwithstanding the plain meaning of Section 315, one could argue that the enactment of Section 315.4 indicates that the Legislature intended that implementation of the uniform standards by the boards be discretionary. Section 315.4, which was added by Senate Bill No. 1172 of the 2009-10 Regular Session (Ch. 517, Stats. 2010; hereafter S.B. 1172), provides that a healing arts board "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." Section 315.4 could be read to imply that a healing arts board is not required to implement those uniform standards because the board was given discretion to adopt the regulations that would allow that board to implement the standards, if necessary.

It is a maxim of statutory construction that a statute is to be construed so as to harmonize its various parts within the legislative purpose of the statute as a whole (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788). As discussed above, we believe that the plain meaning of Section 315 requires the healing arts boards to implement the uniform standards adopted by the committee. Thus, whether Section 315.4 indicates, to the contrary, that the Legislature intended the boards to have discretion in that regard depends upon whether there is a rational basis for harmonizing the two statutes.

In harmonizing Sections 315 and 315.4, we note that S.B. 1172 did not make any changes to Section 315, such as changing the term "shall" to "may" in subdivision (c) of Section 315 or deleting any subdivisions of Section 315. S.B. 1172 did not diminish the scope of the authority provided to the committee to adopt the uniform standards. In fact, the analysis of the Senate Committee on Business, Professions and Economic Development for S.B. 1172, dated April 19, 2010 (hereafter committee analysis), describes the purpose of S.B. 1172 and the enactment of Section 315.4, as follows:

"The Author points out that pursuant to SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), the DCA was required to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, regardless of whether a board has a diversion program. Although most of the adopted guidelines do not need additional statutes for

implementation, there are a couple of changes that must be statutorily adopted to fully implement these standards. This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation" (Committee analysis, at p. 4.)

The committee analysis further provides that the purpose of S.B. 1172 was to grant specific authority to implement those standards and "provide for the full implementation of the Uniform Standards" (committee analysis, at p. 11). The committee analysis at no time implies that the Legislature intended the Section 315 uniform standards to be revised or repealed by S.B. 1172 or that, in enacting Section 315.4, the Legislature intended that the implementation of the uniform standards be subject to the discretion of each healing arts board.

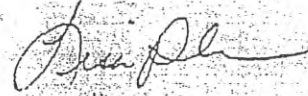
Thus, in our view, Section 315.4 may be reasonably construed in a manner that harmonizes it with Section 315. Specifically, we think that the intent of the Legislature in enacting Section 315.4 was not to make the uniform standards discretionary but to "provide for the full implementation of the Uniform Standards" by providing the authority to adopt regulations where the Legislature believed that further statutory authority was needed. Accordingly, we think implementation by the various healing arts boards of the uniform standards adopted under Section 315 is mandatory.⁴

⁴ Although Section 108 and Division 2 (commencing with Section 500) authorize the healing arts boards to set standards and adopt regulations (see, for example, Secs. 1224, 1614, 2018, 2531.95, 2615, 2715, 2854, 2930, 3025, 3510, and 3546), it is an axiom of statutory construction that a particular or specific provision takes precedence over a conflicting general provision (Sec. 1859; *C.C.P.: Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 420, app. dism. *Kubo v. Agricultural Relations Bd.* (1976) 429 U.S. 802; see also Sec. 3534, Civ. C.). Thus, in our view, the specific requirement under Section 315 that the uniform standards be adopted supersedes any general provision authorizing the boards to set standards and adopt regulations.

Thus, it is our opinion that, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, the healing arts boards are required to implement them.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel



By
Lisa M. Plummer
Deputy Legislative Counsel

LMP:syl

Office of the Attorney
General informal
Opinion,
dated
February 29, 2012

M e m o r a n d u m

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Office of the Attorney General – Sacramento

Subject : Uniform Standards Related to Substance-Abusing Licensees (Bus. & Prof. Code,
§§ 315 - 315.4)

Executive Summary

Issues

You asked us to review Legislative Counsel's letter of October 27, 2011, which rendered certain opinions regarding the Substance Abuse Coordination Committee (SACC), which was created by Business and Professions Code section 315 to formulate uniform standards for use by the healing arts boards to deal with substance-abusing licensees. Legislative Counsel opined that:

(1) SACC was required to formally promulgate the uniform standards as regulations pursuant to the Administrative Procedures Act (APA), and

(2) the healing arts boards are required to use such standards under Business and Professions Code sections 315.

Summary of Responses

With respect to question (1), we see things differently from Legislative Counsel, in two respects.

First, we believe that SACC's adoption of uniform standards does not need to undergo the formal rule-making process under the APA. While other laws could potentially require the adoption of regulations when the standards are implemented by the boards (such as statutes governing particular boards or the APA's provisions applicable to disciplinary proceedings), we disagree that section 315 itself triggers the need to issue the uniform standards as regulations.

Second, even assuming the uniform standards must be adopted as regulations, we disagree with Legislative Counsel's apparent assumption that SACC would issue the regulations under section 315. The legislative histories of the relevant laws and statutory authorities of the

individual boards indicate that the boards would issue the regulations to implement the uniform standards.

As to question (2), we agree with Legislative Counsel that the healing arts boards must use the uniform standards under sections 315. A board cannot simply disregard a specific standard because it does not like the standard or because it believes that the standard is too cumbersome. However, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. Thus, boards still retain authority to determine if they will undertake certain types of actions if permitted under a specific uniform standard.

Statutory Background

In 2008, SACC was legislatively established within the Department of Consumer Affairs to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a); Stats. 2008, ch. 548 (SB 1441).) By January 1, 2010, SACC was required to "formulate uniform and specific standards" in 16 identified areas "that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program." (*Id.* at § 315, subd. (c).) These 16 standards include requirements for: clinical diagnostic evaluation of licensees; the temporary removal of the licensee from practice for clinical diagnostic evaluation and any treatment, and criteria before being permitted to return to practice on a full-time or part-time basis; aspects of drug testing; whether inpatient, outpatient, or other type of treatment is necessary; worksite monitoring requirements and standards; consequences for major and minor violations; and criteria for a licensee to return to practice and petition for reinstatement of a full and unrestricted license. (*Ibid.*) SACC meetings to create these standards are subject to Bagley-Keene Act open meeting requirements. (*Id.* at subd. (b).)

On March 3, 2009, SACC conducted its first public hearing, which included a discussion of an overview of the diversion programs, the importance of addressing substance abuse issues for health care professionals, and the impact of allowing health care professionals who are impaired to continue to practice. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) During this meeting, SACC members agreed to draft uniform guidelines for each of the standards, and during subsequent meetings, roundtable discussions were held on the draft uniform standards, including public comments. (*Ibid.*) In December 2009, the Department of Consumer Affairs adopted the uniform guidelines for each of the standards required by SB 1441. (*Ibid.*) These standards have subsequently been amended by SACC, and the current standards were issued in April of 2011.

According to the author of SB 1441 (Ridley-Thomas), the intent of the legislation was to protect the public by ensuring that, at a minimum, a set of best practices or standards were adopted by health-care-related boards to deal with practitioners with alcohol or drug problems. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) The legislation was also meant to ensure uniformity among the

standards established throughout the healing arts licensing boards under the Department of Consumer Affairs. (*Ibid.*) Specifically, the author explains:

SB 1441 is not attempting to dictate to [the health-related boards] how to run their diversion programs, but instead sets parameters for these boards. The following is true to all of these boards' diversion programs: licensees suffer from alcohol or drug abuse problems, there is a potential threat to allowing licensees with substance abuse problems to continue to practice, actual harm is possible and, sadly, has happened. The failures of the Medical Board of California's (MBC) diversion program prove that there must be consistency when dealing with drug or alcohol issues of licensees.

(Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.)

In the view of its author, "[t]his bill allows the boards to continue a measure of self-governance; the standards for dealing with substance-abusing licensees determined by the commission set a floor, and boards are permitted to establish regulations above these levels." (*Ibid.*)

In 2010, additional legislation was enacted to further implement section 315. Specifically, it provided that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517 (SB 1172).) An order to cease practice does not require a formal hearing and does not constitute a disciplinary action. (*Id.* § 315.4 subds. (b), (c).)

According to the author of SB 1172 (Negrete McLoud), this subsequent statute was necessary "because current law does not give boards the authority to order a cease practice." (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) The author explains:

Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation. [¶] The ability of a board to order a licensee to cease practice under these circumstances provides a delicate balance to the inherent confidentiality of diversion programs. The protection of the public remains the top priority of boards when dealing with substance abusing licensees.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended June 22, 2010.)

Legal Analysis

1a. Section 315 should be construed as not requiring that the uniform standards be adopted as regulations.

Legislative Counsel opined that SACC must adopt the uniform standards as regulations under section 315, because (1) the standards meet the definition of regulations, (2) none of the express exemptions under Government Code section 11340.9 remove them from the APA rule-making process, and (3) section 315 contains no express language precluding application of the rulemaking provisions of the APA. (October 27, 2011 Letter, p. 5.) We have a different view on the threshold issue of whether the standards qualify as a regulation under section 315.

Under the APA, a regulation is defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code, § 11342.600.) "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless [it has been adopted in compliance with the APA]." (*Id.* § 11340.5, subd. (a).) This requirement cannot be superseded or modified by subsequent legislation, unless the statute does so expressly. (*Id.* § 11346, subd. (a).)

An agency standard subject to the APA has two identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. Second, the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure." (*Morning Star Co. v. State Bd. of Equalization* (2006) 38

Cal.4th 324, 333, quoting *Tidewater Marine Western, Inc. et al. v. Bradshaw* (1996) 14 Cal.4th 557, 571.)

Whether a particular standard or rule is a regulation requiring APA compliance depends on the facts of each case, considering the rule in question, and the applicable statutory scheme. Generally speaking, courts tend to readily find the need for such compliance. We understand that certain healing arts boards have already adopted regulations incorporating the uniform standards. (See, e.g., Cal. Code Regs., tit. 16, § 4147 [Board of Occupational Therapy].) This approach is understandable in light of the usually broad requirement that agency rules be adopted as regulations and, as noted below, may be required by other laws when they are implemented by the boards. Here, however, the wording and intent of section 315 indicate the Legislature did not intend that the initial act of formulating and adopting the uniform standards is within the purview of the formal APA rule-making process.

“The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*Bodell Const. Co. v. Trustees of California State University* (1998) 62 Cal.App.4th 1508, 1515.) In determining that intent, courts “first examine the words of the statute itself. Under the so-called ‘plain meaning’ rule, courts seek to give the words employed by the Legislature their usual and ordinary meaning. If the language of the statute is clear and unambiguous, there is no need for construction. However, the ‘plain meaning’ rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose. If the terms of the statute provide no definitive answer, then courts may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history.” (*Ibid.* [citations omitted].) Courts “must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.” (*Ibid.* [citation omitted].) “The legislative purpose will not be sacrificed to a literal construction of any part of the statute.” (*Ibid.*)

In *Paleski v. State Department of Health Services* (2006) 144 Cal.App.4th 713, the Court of Appeal applied these rules of statutory construction and found that the challenged agency criteria were not required to be adopted as regulations under the APA. (*Id.* at pp. 728-729.) In *Paleski*, plaintiff challenged an agency’s criteria for the prescription of certain drugs because the department had not promulgated them in compliance with the APA. (*Ibid.*) The statute, however, expressly authorized the criteria to be effectuated by publishing them in a manual. (*Ibid.*) According to the court, the “necessary effect” of this language was that the Legislature did not intend for the broader notice procedure of the APA to apply when the agency issued the criteria. (*Ibid.*)

Similar reasoning should apply here. Under the plain meaning of section 315, SACC was legislatively established to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a).) The intent of the legislation was to protect the public and to ensure that minimum standards are met and to ensure uniformity among the standards established throughout the healing arts

licensing boards under the Department of Consumer affairs. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) In formulating these uniform standards, SACC was subject to the Bagley-Keene Act, which requires noticed public meetings. Many roundtable discussions were held on the draft uniform standards, including public vetting and public comments. In that way, the affected community learned about the standards and had the opportunity to comment. This is a prime requirement and purpose of the APA rule-making process (see Gov. Code, § 11343 *et seq.*), but it has already been fulfilled by the procedures set forth in section 315. To now require SACC to repeat that process by promulgating the standards as regulations would make little sense and be duplicative.

Nor does the process for the formulation of the standards set forth in section 315 comport with the other purposes and procedures of the APA. During the APA rule-making process, an agency must provide various reasons, justifications, analyses, and supporting evidence for the proposed regulation. (Gov. Code, § 11346.2.) Those provisions and other provisions of the APA are intended to address the proliferation, content, and effect of regulations proposed by administrative agencies. (*Id.* §§ 11340, 11340.1.) Here, the agency is not proposing to adopt the uniform standards. The Legislature has required that the standards adopted by SACC, be uniform, and be used by the boards. Given this statutory mandate that they be implemented, subjecting the uniform standards to substantive review under the APA again makes little sense.¹

1b. The SACC would not be the rule-making entity, even if the uniform standards would have to be adopted as regulations.

Even assuming that APA compliance was required under section 315, it is doubtful that SACC would carry the responsibility to adopt regulations. The second component of a regulation requires that the rule must “implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency’s] procedure.” (*Morning Star Co.*, *supra*, 38 Cal.4th at p. 333.) Here, SACC was mandated to create the uniform standards to be used by separate boards; the SACC’s creation of the uniform standards does not implement,

¹ Even though the standards do not have to be promulgated as regulations by SACC under section 315, this does not mean that certain regulations would not arguably be required on the part of some or all of the boards under other statutory schemes, such as the laws applicable to a particular board or the APA’s provisions on quasi-adjudicatory proceedings. This type of analysis would require a fact specific, case-by-case study of each board’s practices and its regulatory scheme and may include consideration of: (1) whether a board’s statutory authority requires the adoption of regulations related to actions against substance-abusing licensees, (2) whether current regulations conflict with the standards, and (3) whether in an administrative adjudicative setting, the standards are considered “penalties” and thus must be adopted as regulations under section 11425.50, subdivision (e), of the Government Code.

interpret, or make any law more specific. (Bus. & Prof. Code, § 315, subds. (a), (c).) The only express statutory role of the SACC is to determine the uniform standards in the first place.²

The boards are then required to use and apply the standards and have much clearer authority to adopt regulations. “Each of the boards [within the Department of Consumer Affairs] exists as a separate unit, and has the function of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and hold hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute to each respective board.” (Bus. & Prof. Code, § 108.)

The legislative history for section 315 also supports this conclusion. According to its author, section 315 was adopted to protect the public by ensuring that, at a minimum, a set of best practices or standards *were adopted by health care related boards to deal with practitioners with alcohol or drug problems*. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008, emphasis added.)³ Practically speaking, it would be difficult for the SACC (or the Department of Consumer Affairs) to draft regulations applicable to all boards, given that they are unique and deal with different subject areas, unless such regulations were adopted wholesale, on a one-size-fits-all basis. As explained below, while the healing arts boards must use the standards, they only have to use the ones that apply to their procedures.

Thus, while section 315 does not require regulations to initially adopt the standards, the boards (and not SACC) would more reasonably be tasked with this responsibility.

2. The healing arts boards must use the uniform standards to the extent that they apply.

The original language of section 315 is clear that the standards must be used. (Bus. & Prof. Code, § 315, subd. (a) [“uniform standards that will be used by healing arts boards”], subd. (b) [“uniform standards . . . that each healing arts board shall use in dealing with substance-abusing licenses”].) Legislative Counsel was asked to opine on whether subsequent legislation (Bus. & Prof. Code, § 315.4) somehow made these uniform standards discretionary. We agree with

² The SACC is a committee formed by various executive officers of healing arts boards and other public officials formed within the Department of Consumer Affairs. (Bus. & Prof. Code, § 315, subds. (a).)

³ As discussed shortly, the legislative history for follow-up legislation similarly explains that its purpose was to provide statutory authority for some healing arts boards to issue regulations to implement certain of the uniform standards. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.)

Legislative Counsel's conclusion that section 315.4 did not make the uniform standards optional. (Oct. 27, 2011, Letter, p. 9.)

Section 315.4 was enacted two years after section 315, and provides that that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517, (SB 1172).) If a board adopts such regulations, there is nothing to indicate that use of uniform standards created under section 315 is optional. Such an interpretation would be contrary to the legislative intent. Section 314.5 was enacted for the limited purpose to give boards the authority to order a licensee to cease practice, as this was not provided for in section 315. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) By no means was the intent to transform the mandatory uniform standards of section 315 into optional suggestions. As the author explains:

Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended June 22, 2010.)

In addition, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. (See e.g. Uniform Standard # 1 ["If a healing arts board orders a licensee . . . to undergo a clinical diagnosis evaluation, the following applies: . . ."].) The standards must be applied, however, if a board undertakes a particular practice or orders an action covered by the standards. A determination regarding a board's specific application (or not) of certain uniform standards would have to be based on a fact specific, case-by-case review of each board and its regulatory scheme. However, once a board implements a procedure covered by the uniform standards, it cannot disregard the applicable uniform standard because it disagrees with the standard's substance.

Conclusion

For the reasons stated above, in our view, section 315 can be read to preclude the necessity to adopt regulations when the uniform standards are issued initially. And even if regulations were required under section 315, SACC would not be tasked with this responsibility. We also

Doreathea Johnson
February 29, 2012
Page 9

believe that the healing arts boards must use the uniform standards where an agency undertakes an action covered by the standards.

Please feel free to contact me if you have any questions or would like to discuss the above.

:KAL

cc: Peter K. Southworth, Supervising Deputy Attorney General

DCA Legal Affairs
memorandum:
*Opinion Regarding
Uniform Standards
for Substance-
Abusing Licensees
(SB 1441),
dated April 5, 2012*



Chen

MEMORANDUM

DATE April 5, 2012

TO ALL HEALING ARTS BOARDS

FROM 
DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

SUBJECT Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB 1441)

This memo addresses a number of questions that have been raised concerning the discretion of healing arts boards, with respect to the Uniform Standards for Substance-Abusing Healing Arts Licensees ("Uniform Standards") that were formulated by the Substance Abuse Coordination Committee and mandated by Business and Professions Code section 315. Previously, there have been discussions and advice rendered, opining that the boards retain the discretion to modify the Uniform Standards. This opinion, largely influenced by the fact that the rulemaking process necessarily involves the exercise of a board's discretion, has been followed by a number of boards as they completed the regulatory process.

Two opinions, one issued by the Legislative Counsel Bureau ("Legislative Counsel") dated October 27, 2011, and an informal legal opinion, rendered by the Government Law Section of the Office of the Attorney General ("Attorney General"), dated February 29, 2012, have been issued and address the discretion of the boards, in adopting the Uniform Standards. This memo is to advise the healing arts boards of this office's opinion regarding the questions raised, after a review of these two opinions. A copy of each opinion is attached for your convenience.

Questions Presented

1. **Do the healing arts boards retain the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards?**

Both Legislative Counsel and the Attorney General concluded that the healing arts boards do not have the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards. We concur with that conclusion.

2. **Do the healing arts boards have the discretion to determine which of the Uniform Standards apply in a particular case?**

Legislative Counsel opined that, unless the Uniform Standards specifically so provide, all of the Uniform Standards must be applied to cases involving substance-abusing licensees, as it was their belief that the Legislative intent was to "provide for the full implementation of the Uniform Standards." The Attorney General agreed with Legislative Counsel. Following our review and analysis of Business and Professions Code Section 315, we concur with both the Office of the Attorney General and the Legislative Counsel.

3. **Is the Substance Abuse Coordination Committee (SACC) the entity with rulemaking authority over the uniform standards to be used by the healing arts boards?**

The Legislative Counsel concluded that the SACC had the authority to promulgate regulations mandating that the boards implement the Uniform Standards. However, the Office of the Attorney General disagreed and concluded that the SACC was not vested with the authority to adopt regulations implementing the uniform standards. We agree with the Office of the Attorney General. It is our opinion that the authority to promulgate the regulations necessary to implement the Uniform Standards, lies with the individual boards that implement, interpret or make specific, the laws administered by those boards. As the SACC is limited to the creation or formulation of the uniform standards, but is not authorized to implement the laws of the healing arts boards, it does not have authority to adopt regulations to implement those standards. Consequently, we agree with the Attorney General's opinion that the SACC is not the rule-making entity with respect to the Uniform Standards, and therefore has no authority to adopt the Uniform Standards as regulations.

It is our recommendation that healing arts boards move forward as soon as possible to implement the mandate of Business and Professions Code section 315, as it relates to

the Uniform Standards. Some of the standards are appropriate for inclusion in an agency's disciplinary guidelines, which necessarily will involve the regulatory process. Others are administrative in nature and not appropriate for inclusion in the disciplinary guidelines. For example, Uniform Standard No. 16 which sets forth reporting requirements would not be appropriate for inclusion in disciplinary guidelines.

Please work with your assigned legal counsel to determine how best to implement the Uniform Standards. This should include a discussion as to whether : (1) the Uniform Standards should be placed in a regulation separate from the disciplinary guidelines; (2) the implementing regulation should include a definition of (or criteria by which to determine) what constitutes a "substance-abusing licensee."

It is hopeful that the foregoing information addresses your concerns with respect to the implementation of the mandatory uniform standards.

Attachments

cc: Denise Brown, DCA Director
Awet Kidane, DCA Chief Deputy Director
DCA Legal Affairs Attorneys

Staff report from the
August 24, 2017
Board Meeting
(Agenda Item 12(B))
and approved
minutes therefrom



Physical Therapy Board of California

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

Physical Therapy Board of California

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Briefing Paper

Date: August 11, 2017

Prepared for: PTBC Members

Prepared by: Elsa Ybarra

Subject: 1399.15, Guidelines for Issuing Citations and Imposing Discipline (Guidelines)

Purpose: To propose revisions to the language of the Guidelines for Issuing Citations and Imposing Discipline included by reference in section 1399.15 of Article 8, Division 13.2, Title 16 of the California Code of Regulations.

Attachments: 12(B-1) Section 1399.15 of the California Code of Regulations
12(B-2) Guidelines for Issuing Citations and Imposing Discipline [with proposed revisions]
12(B-3) Excel spreadsheet of Business and Professions Codes (BPC) and other related codes identifying those sections proposed to be revised

Background:

Business and Professions Code (BPC) Section 2615 authorizes the Physical Therapy Board of California (Board) to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Physical Therapy Practice Act.

BPC Section 315, established the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (Department) and required the SACC to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees.

BPC Section 315.2, specifies that a healing arts board within the Department is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion (rehabilitation) program.

BPC Section 315.4, authorizes healing arts boards within the Department to order a licensee on probation or in a diversion (rehabilitation) program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under section Uniform Standards for Substance-Abusing Licensees.

Government Code Section 11400.20 authorizes an agency to adopt regulations to govern an adjudicative proceeding.

Government Code Section 11425.50(e) specifies that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule unless it has been adopted as a regulation.

California Code of Regulations, section 1399.15 of Article 8, Division 13.2 of Title 16, specifies the Board shall consider the disciplinary guidelines entitled "Guidelines for Issuing Citations and Imposing Discipline" Revised December 2013, 5th Edition, when reaching a decision on a disciplinary action under the Administrative Procedures Act.

The Board initially adopted into regulation the "Model Guidelines for Imposing Discipline" in July, 1997. Since then, the Board has revised the title and the content of the Guidelines on four separate occasions to address:

- areas needing enhancement as suggested by a Deputy Attorney General or an Administrative Law Judge or simply through experience when enforcing a Stipulated or Administrative Decision
- statutory and regulatory changes such as the addition of the Uniform Standards of Substance Abusing Licensees
- to make changes without regulatory effect, i.e. typographical or grammatical errors.

Staff is simply proposing to do more of the same and has prepared a spreadsheet for ease of identifying the areas of concern to streamline the review of the proposed changes.

Action Requested:

If the Board does not motion to initiate the rulemaking process due to additional revisions needed, the President may direct the Executive Officer and staff make the revisions to the Guidelines and bring it back for review at its next Board meeting in November.

Should the Board move to initiate the rulemaking process, consider the following motion:

"I move that we approve the proposed regulatory changes, as modified, direct the Executive Officer to take all steps necessary to initiate the formal rulemaking process, and authorize the Executive Officer to make any non-substantive changes to the rulemaking package, and, if no adverse comments are received during the 45-day comment period and no hearing is requested, adopt the proposed regulatory changes, as modified."

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 13.2. Physical Therapy Board of California

PROPOSED LANGUAGE

Proposed amendments to the regulatory language are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

Amend Section 1399.15 of Article 8 of Division 13.2 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.15. Guidelines for Issuing Citations and Imposing Discipline.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the “Guidelines for Issuing Citations and Imposing Discipline”, (Revised **INSERT DATE** ~~December 2013~~, 56th Edition; hereafter, “Guidelines”) which are hereby incorporated by reference. Subject to paragraph (c), deviation from these ~~g~~Guidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts warrant such a deviation -for example: The presence of mitigating or aggravating factors; the age of the case; or ~~or~~ evidentiary problems.

(b) Notwithstanding the Guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license. As used in this section, the term “sex offense” shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an offense.

(2) Any offense defined in Section 261.5, 313.1, ~~647b, or 647~~, subdivisions (a) or (d), or 647b of the Penal Code or a finding that a person committed such an offense.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would be punishable as one or more of the offenses specified in this section.

(c) If the conduct found to be a violation involves drugs, alcohol, or both, and the individual is permitted to practice under conditions of probation, a clinical diagnostic evaluation shall be ordered as a condition of probation in every case, without deviation.

(1) Each of the “Conditions Applying the Uniform Standards,” as set forth in the Guidelines, shall be included in any order subject to this subsection, but may be imposed contingent upon the outcome of the clinical diagnostic evaluation.

(2) The Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (Revised April 2011; hereafter, "Uniform Standards"), which are hereby incorporated by reference, shall be used in applying the probationary conditions imposed pursuant to this subsection.

(d) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

Note: Authority cited: Section 2615, Business and Professions Code; and 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2660, 2660.1, 2660.2, 2661 and 2661.5, Business and Professions Code; and Section 11425.50(e), Government Code.

Medical Board Codes

B&P	DESCRIPTION	DELETED	KEEP	Reason for not Deleting
2234(b)	Gross Negligence	X		
2234 (c)	Repeated Negligent Acts	X		
2234 (d)	Incompetence		X	Not included in 2660
2235	Procuring License by Fraud	X		
2236	Criminal Conviction	X		
2237	Conviction Related to Drugs		X	Descriptive of Charges
2238	Violation of Drug Statues		X	Violation of federal laws or federal regulations
2239	Self Abuse of Drugs or Alcohol		X	Dangerous use to self or others - (This is not in PT Practice Act.
2261	Making False Document	X		
2262	Alteration of Medical Record	X		
2263	Violation of Professional Confidence	X		
2264	Aiding & Abetting Unlicensed Practice	X		
2271	False or Misleading Advertising	X		
2273	Employment of Runners, Capers & Steerers	X		
2274	Unauthorized Use of Medical Designation		X	Not included in PTBC Act
2286	Violation of Professional Corporation	X		
2288	Impersonation of Applicant in Exam	X		
2289	Impersonation-Practice of Medicine		X	Not included in PTBC Act

PTBC Code or Other Simlar Codes

Covered in 2660 (h)
2660 (h) Includes 'repeated acts of negligence
Included in General Prov. 498, 499, 581, 583 2660 (c)
2660 & 2661
Covered in 2660 (s)
Covered in 2660 (s)
Covered in 2660 (u)
Covered in 2660 (j)
Covered in 2660 (b)
Covered in 2660 (t)
Covered in 2691
Covered in General Prov. 584



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Board Members

President

Katarina Eleby

Vice-President

Alicia Rabena-Amen, PT, MPT

Members

Debra Alviso, PT, DPT

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Tonia McMillian

T J Watkins

Physical Therapy Board of California Adopted Meeting Minutes

August 23, 2017 9:00 a.m.

August 24, 2017 9:00 a.m.

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

Board Staff

Jason Kaiser, Executive Officer

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.

1. **Call to Order**

The Physical Therapy Board of California (Board) meeting was called to order by President Eleby at 9:00 a.m. on August 23, 2017. The Board recessed at 5:52 p.m. and reconvened at 9:04 a.m. on August 24, 2017.

2. **Roll Call and Establishment of Quorum**

All members were present for day one of the meeting except for Jesus Dominguez, PT, PhD, and a quorum was established. Also present at the meeting were: Tara Welch and Salwa Bojack, Legal Counsels; Jason Kaiser, Executive Officer; and Brooke Arneson and Elsa Ybarra, Board staff.

3. **Review and Approval of May 24 & 25, 2017 Meeting Minutes – Brooke Arneson**

The Board reviewed the minutes and made grammatical and editorial changes and voted on day 2 of the meeting. The minutes will be edited accordingly for the President's signature.

MOTION: To approve the minutes as amended.

M/S: Drummer/Alviso

VOTE:
Alviso – Aye
Dominguez – Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen – Aye
Watkins – Aye

7-0 Motion carried

4. President's Report – Katarina Eleby

(A) 2017 Adopted Meeting Calendar

Mr. Kaiser advised the Board the November 2017 meeting will be at Ohlone College in Newark and he anticipates first and second year students will be in attendance.

(B) 2018 Proposed Meeting Calendar

Mr. Kaiser introduced a handout proposing a shift in the 2018 meeting calendar dates. He suggested the modification would eliminate conflicting meeting space and webcast coverage with other DCA Boards and Bureaus, allow for more accurate reporting of data and legislation, and align with academic calendars affording larger student attendance. Ms. Rabena-Amen indicated it would not work well with her personal calendar and Ms. Eleby commented she appreciated how it interacted with the calendars of stakeholders. Ms. Rabena-Amen requested the meetings be held on Thursday/Friday versus Wednesday/Thursday. Dr. Alviso responded Friday commute from the Bay Area and Southern California were difficult and proposed those meetings remain on a Wednesday/Thursday schedule and the Sacramento meetings move to a Thursday/Friday schedule. Dr. Drummer requested the vote and further discussion be postponed until Dr. Dominguez is in attendance.

The Board discussed the meeting dates on day two of the meeting and agreed upon March 22 and 23, 2018, June 20 and 21, 2018, September 13 and 14, 2018 and December 5 and 6, 2018. They also would appreciate at the November 2017 meeting, a presentation by SOLID, on SOLID's facilitation of strategic planning process, and setting the strategic planning session in February 2018, or if that's not possible, the presentation by SOLID in March 2018, and the strategic planning meeting in April 2018.

MOTION: To adopt the 2018 proposed meeting calendar as amended.

M/S: Rabena-Amen/Watkins

VOTE: Alviso – Aye
Dominguez – Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen – Aye
Watkins – Aye

7-0 Motion carried

5. Executive Officer's Report – Jason Kaiser

Mr. Kaiser discussed two additional items to the Administrative Services section of the Executive Officer Report. The first being that Karin Thompsen, an analyst in the enforcement program, has returned from retirement to volunteer her assistance with scanning enforcement files. He expressed appreciation for her commitment and return to the PTBC family. Secondly, he directed the Board's attention to the trifold handout titled "About Us." He stated he had received feedback and edits from members not reflected in the handout, but that they would be incorporated in the final publication.

Discussion ensued on developing multiple handouts tailoring each to a different demographic. Dr. Drummer expressed concern over licensees confusing APTA with PTBC and felt there was a need to address the differences. Ms. Rabena-Amen proposed the appointment of an Outreach Committee and Ms. Eleby selected Mr. Watkins and Dr. Drummer to serve as members of the Committee.

Ms. Welch was asked to introduce Salwa Bojack as the Board's newest counsel. Ms. Bojack presented her background to the Board and expressed she looked forward to being counsel to the Board. Dr. Drummer questioned the degree of turnover of counsel, stating in three years the Board has had four different counsels assigned. Ms. Welch stated that, although she is unable to respond officially on behalf of the Legal Affairs Division, the turnover may be due to the efficiency of the Board making it an ideal first assignment for new Board counsel. Ms. Rabena-Amen noted that other boards are experiencing a similar turnover.

Mr. Kaiser concluded his report advising the Board he just learned the Veterinary Medical Board staff have been directed to promulgate regulation on animal rehabilitation. He further noted he did not know what the proposed language will look like.

Dr. Alviso questioned the outcome of the DCA internal audit and if the Board members would see the formal report. Mr. Kaiser responded he would be meeting with the DCA auditors next week for an exit interview and he would ask if a formal report would be issued.

6. Presentation of FSBPT Physical Therapy Licensure Compact – Leslie Adrian and Jim Heider – Discussion and Possible Board Action

Mr. Heider introduced himself as the Executive Director of Oregon's Physical Therapist Licensing Board, as a Director on the FSBPT's Board of Directors, and the liaison between seven states, including California and the FSBPT. Ms. Adrian is a physical therapist and is the FSBPT's Director of Professional Standards. Ms. Adrian presented on the FSBPT Physical Therapy Licensure Compact (Compact) after her presentation of the Supervised Clinical Practice Performance Evaluation Tool. She explained the purpose of the Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy service and that it is applicable to both physical therapists and physical therapist assistants. During discussion amongst the members, Ms. Adrian and Mr. Heider explained a licensee would lose Compact privilege for two years if administrative action was taken by one of the Compact states. The Board discussed that a California licensee could be in a Compact state where a violation occurs, but no action is taken because it is not considered a substantially related violation in that Compact state. This scenario could prove to be problematic since such a violation could be an actionable offense in California, but California may never become aware of the offense. This would conflict with California's mandate of consumer protection. The Board also discussed that not all states complete a background check of applicants to the same extent as California.

7. Presentation of FSBPT Supervised Clinical Practice Performance Evaluation Tool – Leslie Adrian – Discussion and Possible Board Action

Ms. Adrian began her presentation explaining that the Supervised Clinical Practice Performance Evaluation Tool (PET) was necessary for public protection, to ensure clinical competence, to evaluate cultural competency, and to verify English proficiency. She further described the benefits of the tool and why the tool is defensible. Ms. Adrian answered questions for the Board and staff regarding the PET. She concluded that FSBPT had not yet developed a PET for physical therapist assistants.

8. Closed Session

- (A) Pursuant to Government Code section 11126(c)(3), Deliberation on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceedings
- (B) Pursuant to Government Code section 11126(a)(1), Evaluation of Executive Officer

9. Reconvene Open Session

The Board reconvened at 1:35 p.m. into open session.

10. Discussion and Possible Board Action – Sunset Review Report – Jason Kaiser

Mr. Kaiser reported that the Board’s Sunset Bill (Bill), AB 1706 is in suspense with the Senate Appropriations Committee and asked the Board to submit a letter of support. He further advised that the Bill includes repeal of Business and Professions Code (BPC) section 2648.7 authorizing retired license status exemption. The repeal allows the Board to rely on BPC section 464 for retired license status exemption. The Bill grants the Board discretion when granting exemptions from BPC section 2653(b) and specifically exempts licensees graduating from the English-speaking countries of Australia, Canada (except Quebec), Ireland, New Zealand, and the United Kingdom. Also, the Bill repeals BPC section 2688.5, which currently requires the Board to submit a report to the legislature when the Board increases its fees. However, the Bill does not include extending the fee caps, which are currently at their ceiling. Both sides of the legislature understand these concerns and indicated that they may be considered in the future.

MOTION: To submit a letter in support of AB 1706.

M/S: Rabena-Amen/Watkins

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

11. 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 208 (Eggman) Deferred Entry of Judgment Pretrial Diversion
- ii. Discussion and Possible Board Action Regarding AB 387 (Thurmond) Minimum Wage: Health Professionals: Interns
- iii. Discussion and Possible Board Action Regarding AB 508 (Santiago) Health Care Practitioners: Student Loans

Ms. Arneson reported on the bills which have had a status update since publication of the agenda materials. AB 208 was moved to the Senate Appropriations Committee suspense file on August 21, 2017; AB 508 was read a third time, passed and ordered to the Assembly on August 21, 2017. Mr. Kaiser gave an update on AB 1706 in the Executive Officer’s report.

12. Rulemaking Report – Brooke Arneson

(A) Discussion and Possible Board Action Regarding the 2017 Rulemaking Update

i. Examination Passing Standard/Setting Examination Score

Ms. Arneson explained the Board approved the proposed language at the last meeting and stated it was moving through the new DCA rulemaking review process.

(B) Discussion of Issues and Possible Board action regarding Guidelines for Issuing Citations and Imposing Discipline, 6th Edition

Ms. Arneson deferred to Ms. Ybarra to present the proposed language on Guidelines for Issuing Citations and Imposing Discipline, 6th Edition (Guidelines). Ms. Ybarra led the Board through the proposed amendments to the Guidelines while they made grammatical and editorial changes. The Guidelines will be edited to reflect these changes for the Board’s review at the November 2017 board meeting.

13. Recess – 5:52 p.m.

Thursday, August 24th

14. Call to Order

The Physical Therapy Board of California (Board) meeting was called to order by President Eleby at 9:04 a.m. on August 24, 2017.

15. Roll Call and Establishment of Quorum

All members were present, and a quorum was established. Also present at the meeting were: Tara Welch and Salwa Bojack, Legal Counsels; Jason Kaiser, Executive Officer; and Brooke Arneson, Sarah Conley, Monny Martin, Carl Nelson, Eura Trent, Veronica Gutierrez, and Elsa Ybarra, Board staff.

After roll call and a quorum was established, the Board revisited agenda item 4(B) and 12(B) – refer to those agenda items for the discussion and motion.

16. 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

17. Closed Session

- (A) Pursuant to Government Code section 11126(c)(3), Deliberation on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceeding
- (B) Pursuant to Government Code section 11126(a)(1), Evaluation of Executive Officer

18. Consumer and Professional Associations and Intergovernmental Relation Reports

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

There was no representative from the FSBPT present.

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

There was no representative from DCA; however, Christine Lally, Deputy Director of Board Relations extended her apologies for not being present and requested Mr. Kaiser present on her behalf. Her report contained the following: the Governor appointed Debra Hoffman as Undersecretary of Business, Consumer Services, and

Housing Agency; Doreathea Johnson, Deputy Director of the Legal Affairs Division retired and Governor Brown appointed Ryan Marcroft to succeed her; Grace Arupo Rodriguez was appointed Assistant Deputy Director of the Legal Affairs Division; Tonya Corcoran was appointed Chief Deputy Registrar of the Contractor's State Licensing Board; DCA Director Dean Grafilo convened his first director's meeting with the Executive Officers; and DCA released its 2017-2018 Strategic Plan, which was developed with the assistance of DCA's SOLID Training and Planning Solutions.

(C) California Physical Therapy Association (CPTA)

There was no representative from CPTA present.

19. Board Member Training – Jason Kaiser

(A) Council on Licensure, Enforcement and Regulation (CLEAR) – Introduction to Regulatory Governance

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

20. Administrative Services Report

(A) Budget – *Carl Nelson*

Mr. Nelson informed the Board the Architectural Revolving Fund request had been approved by the Department of Finance and \$200,000 had been encumbered out of the Board's 2016-17 budget. He also described how a small change in business practice can make a big difference. Mr. Nelson also observed a significant decline in postage expenditures and discovered, after speaking with the Board's managers, that staff had been communicating with applicants, licensees, and consumers through email as opposed to regular mail. This resulted in an expenditure of only \$10,000 as opposed to the \$28,000 expenditure for postage in fiscal year 2015/16.

(B) Outreach – *Liz Constancio*

Mr. Kaiser reported on behalf of Ms. Constancio and referred to the report distributed to the Board at the meeting. Mr. Kaiser added Board staff will be attending the CPTA Annual Conference in September. Ms. Eleby questioned the decline in hits to the Board's homepage on its website. Mr. Kaiser credited the decline to users leaving the homepage to access BreEZe.

21. Application Report – Sarah Conley

Ms. Eura Trent presented the application services report on behalf of Ms. Conley. She referred the members to the report included in the agenda materials and highlighted

some of the data. Ms. Trent also answered questions from Board members. Ms. Trent described the application process for applicants who have already taken the national exam and hold a license in another jurisdiction. She also described how that process differs from the application process for applicants who have recently graduated, have not taken the national exam, and do not hold a license in another jurisdiction.

22. Licensing Services Report – Sarah Conley

Ms. Trent also provided the report on licensing data. Mr. Kaiser credited BreEZe for the decline in miscellaneous transactions, such as an address changes, as a point of efficiency.

(A) Continuing Competency Report

Ms. Veronica Gutierrez explained that the Board is auditing 10% of the eligible renewing population, which are selected manually and at random. She further reported there are 13,816 approved courses and 137 approval agencies. She also indicated there is a 93% compliance rate for physical therapists and 95% compliance rate for physical therapist assistants.

23. Consumer Protection Services Report – Elsa Ybarra

Ms. Ybarra presented detailed data regarding the efficiency of the enforcement program, including year-end statistics in comparison to the last fiscal year. The year-to-year comparison reflected a slight increase of 9% in the number of cases initiated. The comparison also reflected an increase of 7% in the number of conviction/arrest cases initiated. The comparison also reflected a 27% decrease in the average number of days to complete investigations and a 30% decrease in the average number of days to complete cases transmitted to the Attorney General's (AG) Office. Ms. Ybarra added that, since the AG's Office implemented new processes to improve processing times, it would be advantageous for Gloria Castro, Senior Assistant Attorney General, to present the changes to the Board.

24. Probation Monitoring Report – Monny Martin

Mr. Martin reported there are 88 licensees on probation, 80 are within the state, and 8 are tolling. There were also 4 licensees that completed probation in the quarter, and 3 licensees were either had their license revoked or surrendered their license in the quarter. Of the 80 licensees that are not currently tolling, 20 are currently enrolled and participating in the Board's Drug and Alcohol Recovery Monitoring Program, equaling 25% of all licensees on probation

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).]

There was no public comment.

26. Agenda Items for Future Meeting –

November 15 & 16, 2017
Ohlone College, Newark

Dr. Drummer noted that the Board spent an inordinate amount of time during the meeting, and during past meetings, making typographical and grammatical changes to documents presented to the Board, such as the Disciplinary Guidelines and rulemaking packages, that should have been reviewed for such errors ahead of time. He respectfully requested that a more final product be presented to the Board and added that the Board's time should be focused on content. Dr. Drummer further requested, if possible, to have legal counsel review materials before they are published in the agenda materials. He further requested that when legal review is not possible, that the administrative support team find some other way to get documents in better shape before they are presented to the Board. Mr. Kaiser agreed. Ms. Welch noted that legal counsel reviewed the Disciplinary Guidelines several times prior to the cutoff date for publication and further recognized and commended the administrative support team for trying to get agenda materials reviewed as much as possible prior to the publication deadline.

Ms. Welch agreed that reserving minor and technical comments for offline would be helpful. Dr. Drummer added that avoiding technical editing during Board meetings would help expedite things, especially when reviewing many pages. Ms. Eleby agreed that the role of the Board is higher level, but complimented the Board for being thorough. Ms. Alviso noted that, no matter how well documents are reviewed beforehand, some technical editing may be necessary during Board meetings when the Board is required to read and approve the documents. Mr. Kaiser clarified that the conversion of the agenda materials from Word to PDF format accounted for many of the errors identified during the meeting, and added that the administrative support team has identified that there can be an additional layer of review after that conversion process.

Ms. Alviso also noted that review of the disciplinary guidelines involved both looking at the document and talking about policy issues, such as the addition of new probationary terms or changes to the format of probationary terms. She respectfully requested that policy issues be dealt with as concepts presented to the Board beforehand, though it might take more time. Mr. Kaiser agreed to incorporate this suggestion as a part of the process going forward. He stated that the administrative support team will continue to try to improve methodologies, such as identifying policy issues to be presented to the Board before their incorporation in the Disciplinary Guidelines, so that the Board is more familiar with such revisions when reviewing the Disciplinary Guidelines.

27. Adjournment

The meeting adjourned at 4:53 p.m.

Staff report from the
November 15, 2017
Board Meeting
(Agenda Item 11(B))
and approved
minutes therefrom

Proposed Language – November 15-16, 2017
(Includes edits made from August 24, 2017 Board Meeting)



GUIDELINES FOR ISSUING CITATIONS AND IMPOSING DISCIPLINE

Physical Therapy Board of California

Department of Consumer Affairs

**Physical Therapy Board of California
Guidelines for Issuing Citations
& and Imposing Discipline**

Edmund G. Brown Jr., Governor

Dean R. Grafilo~~Denise Brown~~, Director
Department of Consumer Affairs

Physical Therapy Board of California Members:

Katarina Eleby, M.A., President
Alicia Rabena-Amen, P.T., M.P.T., Vice President
Debra Alviso, P.T., D.P.T., O.C.S. President
Jesus Dominguez, P.T., PhD,
Daniel Drummer, P.T., D.P.T.
Tonia McMillian
Eserick "TJ" Watkins
Marty Jewell, PT, PhD, Vice President
Sara Takii, PT, DPT
James E. Turner, M.P.A.
Carol A. Wallisch, M.A., M.P.H.
~~Katarina Eleby~~

Executive Officer: Jason Kaiser

Published by the Physical Therapy Board of California, Department of Consumer Affairs, 2005 Evergreen Street, Suite 1350, Sacramento, California 95815.

~~December 2013~~ **Month Year**
56th Edition

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Statement of Purpose, Intent ~~and~~ Expectations

The purpose of physical therapists and physical therapist assistant licensure in the State of California is to protect the public's health, safety and welfare from the incompetent and unprofessional practice of physical therapy. These ~~g~~Guidelines address the challenge of providing public protection and of enabling a licensee to practice ~~his or her~~their profession. In addition to protecting the public and rehabilitating a licensee, the Physical Therapy Board of California (Board) finds imposing the discipline set forth in the ~~g~~Guidelines will further public protection by promoting uniformity, certainty, fairness, and deterrence.

The ~~Physical Therapy Board of California (Board)~~ is producing ~~these~~ **these this 5th edition of the** "Guidelines for Issuing Citations and Imposing Discipline," (Revised [date], 6th Edition; hereafter, "~~{~~Guidelines}") for the public, individuals subject to issuance of a citation and fine, as well as those involved in the disciplinary process: Administrative Law Judges, Deputy Attorneys General, Members of the Board who review proposed decisions and stipulations and make final decisions, the Board's Executive Officer and staff, and Respondents and their Counsel. When an Initial Probationary License has been issued, a Statement of Issues, or an Accusation has been filed, these actions indicate the nature of the alleged violation is severe enough to warrant disciplinary action if the allegations are proven true. An administrative citation is not discipline and is issued for less egregious violations. However, when documentation of significant mitigation has been received; discipline may not be required to protect the public.

When criminal charges are alleged and there is an immediate need to protect the public, application of Penal Code section 23 shall be sought. In addition, if the alleged conduct poses an immediate threat to public safety, an Interim Suspension Order shall be sought.

The Board has some basic expectations when an Administrative Law Judge determines the allegations are true and a cause for discipline exists. The Board recognizes a rare individual case may necessitate a departure from these ~~g~~Guidelines. Any "Proposed Decision" that departs from the ~~disciplinary~~ ~~g~~Guidelines shall identify the departures and the facts supporting the departure. However, in such a rare case, the mitigating circumstances must be detailed in the Findings of Fact, which is in every Proposed Decision.

These basic expectations include:

- 1) If at the time of hearing, the Administrative Law Judge finds Respondent, for any reason, not capable of safe practice, the Board expects the outright revocation of the license. This is particularly true in cases of patient sexual abuse. In less egregious cases, a stayed revocation with suspension and probation, pursuant to the ~~g~~Guidelines contained in this manual, would be expected.
- 2) The Board expects revocation to normally be the appropriate order in cases where Respondent does not file a Notice of Defense or appear at a hearing.
- 3) When probation is granted, the inclusion of a stayed revocation order is essential to ensure compliance with terms of probation.

4) When the revocation of a license is stayed, a suspension of the license shall be considered when further education, medical or psychological evaluation or treatment is deemed necessary to ensure safe practice. A suspension, when imposed, should not be for less than indicated in the Guidelines.

5) The Board expects the decision to include an order for cost recovery.

The Board expects a similar result and explanation for any Stipulated Settlement negotiated prior to hearing. Any ~~“Proposed Stipulated Settlement”~~ that departs from the disciplinary Guidelines shall be accompanied by a memorandum identifying the departures and the facts supporting the departure, as well as any mitigating or aggravating circumstances. ~~However, in such a rare case, the mitigating circumstances must be detailed in the Findings of Fact.~~

Probation conditions are divided into three categories: (1) Standard Conditions which the Board expects in all probation cases; (2) Specific Conditions that depend on the nature and circumstances of the particular case; and (3) Conditions Applying the Uniform Standards Specific to Alcohol and/or Controlled Substances.

LEGAL AUTHORITY

The legal authority for these guidelines is contained in Section 315, 315.2, 315.4, 2615, 2660, 2660.1, 2661 and 2661.5 of the Business and Professions Code; and Title 16, CCR §1399.15.

The legal authority for these Guidelines is contained in Business and Professions Code sections 315, 315.2, 315.4, 2615, 2660, 2660.1, **2660.2**, 2661 and 2661.5; **Government Code sections 11400.20, 11425.50(e)**; and California Code of Regulations, Title 16, section 1399.15

California Code of Regulations
Title 16, Professional and Vocational Regulations
Division 13.2, Physical Therapy Board of California
Article 8, Enforcement Actions, Discipline and Reinstatement of License
Disciplinary Guidelines

§ 1399.15. Guidelines for Issuing Citations and Imposing Discipline.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et. seq.), the Board shall consider the "Guidelines for Issuing Citations and Imposing Discipline", (Revised ~~December 2013~~, 5th 6th Edition; hereafter, "Guidelines") which are hereby incorporated by reference. Subject to paragraph (c), deviation from these gGuidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts warrant such a deviation – for example: The presence of mitigating or aggravating factors; the age of the case; or evidentiary problems.

Commented [YE3]: Will replace with new date.

(b) Notwithstanding the Guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

As used in this section, the term "sex offense" shall mean any of the following:

- (1) Any offense for which registration is required by Section 290 of the Penal code or a finding that a person committed such an offense.
- (2) Any offense defined in Section 261.5, 313.1, ~~647b~~, or 647, subdivisions (a) or (d), or 647b of the Penal code or a finding that a person committed such an offense.
- (3) Any attempt to commit any of the offenses specified in this section.
- (4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would be punishable as one or more of the offenses specified in this section.

(c) If the conduct found to be a violation involves drugs, alcohol, or both, and the

individual is permitted to practice under conditions of probation, a clinical diagnostic evaluation shall be ordered as a condition of probation in every case, without deviation.

(1) Each of the "Conditions Applying the Uniform Standards," as set forth in the Guidelines, shall be included in any order subject to this subsection, but may be imposed contingent upon the outcome of the clinical diagnostic evaluation.

(2) The Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (Revised April 2011; hereafter, "Uniform Standards"), which are hereby incorporated by reference, shall be used in applying the probationary conditions imposed pursuant to this subsection.

(d) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection.

AUTHORITY TO EXAMINE DUE TO MENTAL ILLNESS AND/OR PHYSICAL IMPAIRMENT

Business and Professions Code, Section 820. Examination of licentiate for mental illness or physical illness affecting competency

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness, affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

Business and Professions Code, Section 821. Effect of licentiate's failure to comply with order for examination

The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

Business and Professions Code, Section 822. Action by licensing agency

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill, affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.
- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

Business and Professions Code, Section 823. Reinstatement of licentiate

Notwithstanding any other provisions of law, reinstatement of a licentiate against whom action has been taken pursuant to Section 822 shall be governed by the procedures in this article. In reinstating a certificate or license which has been revoked or suspended under Section 822, the licensing agency may impose terms and conditions to be complied with by the licentiate after the certificate or license has been reinstated. The authority of the licensing agency to impose terms and conditions includes, but is not limited to, the following:

- (a) Requiring the licentiate to obtain additional professional training and to pass an examination upon the completion of the training.

(b) Requiring the licentiate to pass an oral, written, practical, or clinical examination, or any combination thereof to determine his or her present fitness to engage in the practice of his or her profession.

(c) Requiring the licentiate to submit to a complete diagnostic examination by one or more physicians and surgeons or psychologists appointed by the licensing agency. If the licensing agency requires the licentiate to submit to such an examination, the licensing agency shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons or psychologists of the licentiate's choice.

(d) Requiring the licentiate to undergo continuing treatment.

(e) Restricting or limiting the extent, scope or type of practice of the licentiate.

Business and Professions Code, ~~Section 820~~, Section 824. Options open to licensing agency when proceeding against licentiate

The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

DEFINITION OF SUBSTANCE ABUSE REHABILITATION PROGRAMS

The Board does not consider licensees who have been ordered to participate in the Board's diversion program to be "in diversion." Rather, the Board considers these individuals to be in a substance abuse rehabilitation program; (hereafter, referred to as the "rehabilitation program"). As a result, the Board will not use the term "diversion" in these disciplinary Guidelines to describe licensees on probation or terms and conditions of probation related to the rehabilitation program. Instead the phrase "rehabilitation program" will be used.

There are two pathways into the Board's rehabilitation program:

(1) Participants with drug and/or alcohol addiction issues who have self-referred to the rehabilitation program and are not under a disciplinary order; and; (2) Participants who have been ordered into the Board's rehabilitation program ~~as a result of~~ resulting from violations of the Physical Therapy Practice Act related to drugs and/or alcohol addiction.

Self-Referrals

When a licensee enrolls in the Board's rehabilitation program as a self-referral, the participation is confidential. However, if the rehabilitation program determines a self-referred participant ~~is determined to be~~ too great a risk to the public health, safety, and welfare to continue the practice of physical therapy, the rehabilitation program shall report the facts shall be reported by the rehabilitation program to the Executive Officer of the Board and shall provide all documents and information pertaining to and supporting that conclusion ~~shall be provided to the Executive Officer of the Board.~~ The Board may refer the matter may be referred for investigation and disciplinary action ~~by the Board.~~ Each physical therapist or physical therapist assistant who requests participation in a rehabilitation program shall agree to cooperate with the rehabilitation program designed for him or her. Any failure to comply with the rehabilitation program may result in termination of participation in the rehabilitation program.

Probationary Participants

Probationary participants ~~are required to~~ shall comply with terms of probation or risk losing their license. Pursuant to ~~section 315 of the~~ Business and Professions Code section 315, the Board uses the Substance Abuse Coordination Committee's *Uniform Standards Regarding Substance Abusing Healing Arts Licensees* (April 4, 2011) (hereafter, "Uniform Standards"). A clinical diagnostic evaluation will be ordered as a term of probation and other Conditions Applying the Uniform Standards will also be included.

While self-referred licensees are not subject to terms and conditions in these Guidelines, they are subject to nearly identical contractual terms of participation and the violation of those terms could lead to termination of participation in the rehabilitation program.

SUBSTANCE ABUSE REHABILITATION PROGRAM

OVERVIEW OF PARTICIPANT REQUIREMENTS & AND COSTS (For either self-referrals or probation participants)

Licensees enrolled in the rehabilitation program are required to pay the entire cost of the rehabilitation program pursuant to Business and Professions Code ~~§~~section 2668. The rehabilitation program costs include the monthly administrative fee, monthly health support fees, and random drug and alcohol testing fees. ***All rehabilitation program fees are subject to change.***

Substance Abuse Rehabilitation Program Timeframe: Participation in the rehabilitation program shall run until completion of the substance abuse rehabilitation program. ~~is for a period of approximately 3-5 years.~~

Monthly Administrative Fee: The participant pays the monthly administrative fee directly to the rehabilitation program. ~~The monthly administrative fee \$288.~~ As of the publication date of the Guidelines, 6th Edition, the monthly administrative fee is \$358.00; however, the monthly fee may increase 3- to 5 % annually each July. Costs are dependent on the contracted costs.

Random Biological Testing (RBT) &and Fee: Currently As of the publication date of the Guidelines, 6th Edition, the average cost of each RBT is approximately \$60.00, plus the collection fee at the testing site, which can cost up to \$125.00 and possibly more if the applicant is required to test on a weekend. Additionally, In addition, there are charges for the medical review officer (hereafter "MRO") who reviews any positive drug test results, at the Board's request. Medical reviews are usually a direct result of problematic (i.e. positive) RBT results.

Professional Support Group Meetings: Support group meetings are a treatment modality of the rehabilitation program. These groups are attended exclusively by licensed professionals who are in their own recovery and involved in a rehabilitation program. The support group facilitators are licensed professionals who have extensive clinical experience in working with licensed professionals in recovery and in rehabilitation programs. Each participant is required to attend support group meetings two times per week during their first 18 months in the rehabilitation program. The frequency of support group meeting attendance can be reduced to one time per week after 18 months of successful participation in the rehabilitation program. This reduction is also based upon the on-going clinical evaluation of each participant.

Professional Support Group Meeting Fees: The participant pays the monthly support group meeting fees directly to the support group facilitator. Support groups all charge different fees and negotiate directly with the participant. Average As of the publication date of the Guidelines, 6th Edition, average costs range from \$200.00 to ~~-\$500.00~~ monthly. Participants may be required to attend support groups once time or twiceo times weekly.

12-Step Meetings: All participants are required to attend community-based 12-step meetings. The frequency requirement for attending 12-step meetings range from daily

attendance to three times per week. The frequency requirement is established and modified by the Clinical Case Manager based upon the on-going clinical evaluation of each participant. Generally, there is not a cost associated with attending 12-step meetings. Contributions at the 12-step meetings are voluntary.

Clinical Assessment: All participants are required to undergo an initial clinical assessment and subsequent re-assessments by contracted Assessors. There is currently no cost to the ~~Physical Therapy~~ Board participants for the initial clinical assessment and the annual re-assessments. However, if the participant is required to have more than one clinical assessment per year, the participant is required to pay the cost for the additional clinical assessment. These additional assessments are usually a direct result of reoccurring problems in the rehabilitation program.

Additional Costs to Third Parties: Participants may be required to enter formal chemical dependency treatment (i.e. inpatient or outpatient facilities) at treatment programs approved by the rehabilitation program. Referrals to specific treatment programs are based upon the assessment of a participant's clinical need. The cost of any formal chemical dependency treatment program is the sole responsibility of each participant. The participants may also be required to undergo formal treatment for a mental health diagnosis. The cost of any formal treatment for mental health treatment program is the sole responsibility of each participant.

Worksite Monitor: Each participant is required to have a worksite monitor at ~~his or her~~ their place of employment. The rehabilitation program will provide the applicant with the required consent forms at the time of enrollment. The worksite monitor is required to report to the rehabilitation program on the status of the participant.

Other Requirements: The participant must submit monthly self-evaluation reports and call into the rehabilitation program on a routine, often daily, basis. The assigned Clinical Case Manager will determine the frequency of how often the participant needs to call in. Participants are required to receive prior approval from the Clinical Case Manager before scheduling and taking any vacations. The participant's Clinical Case Manager may determine other requirements.

INITIAL PRACTICE RESTRICTIONS

Business and Professions Code section 315 requires the Board to use the Uniform Standards formulated by the Department of Consumer Affairs, Substance Abuse Coordination Committee entitled, "Uniform Standards Regarding Substance-Abusing Health Arts Licensee." Uniform Standard 2 requires that the Board order a licensee to cease practice pending the results of the clinical diagnostic evaluation and review by Board staff.

While awaiting the results of the evaluation participants are randomly drug tested at least two times per week. After reviewing the results of the clinical diagnostic evaluation, program and Board staff will determine if the participant is safe to return to practice. If the participant is determined safe to return to practice, program and Board staff will then authorize the number of hours permitted to practice. However,

no participant shall be authorized to return to practice until they have had at least 30 days of negative tests.

A complete copy of the “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees” may be found at: http://www.ptbc.ca.gov/forms/sb_1441.pdf

Commented [YE4]: This section was added since the August 24th review. Added to explain the requirement for the use of the Uniform Standards and that they will not be authorized to return to practice until they have had at least 30 days of negative tests.

DENIAL OF LICENSURE ~~& AND~~ ISSUANCE OF AN INITIAL PROBATIONARY LICENSE

Mandatory Denial of a License

In accordance with Business and Professions Code Section 2660.5 ~~of the B&P Code~~, the Board must deny licensure to any applicant who is required to be registered pursuant to Penal Code ~~Section~~ 290, unless the only basis for ~~the~~ registration is a misdemeanor conviction under Penal Code ~~Section~~ 314. There is no discretion allowed. If an applicant is a Penal Code section 290 registrant, ~~his or her~~ the application for licensure will be denied.

Commented [YE5]: Global change throughout document.

Permissive Denials of a License

The Board has the ~~right~~ authority to deny a license to any applicant for any of the following reasons:

Business and Professions Code section 480: ~~†The Physical Therapy Board~~ has the authority to deny licensure to any applicant whose misconduct or criminal history is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. Reasons for denial of a license include, but are not limited to, the following:

- Conviction of a crime substantially related to the practice of physical therapy;
- Any act involving dishonesty, fraud, or deceit with the intent to substantially benefit ~~self~~ themselves or another, or to substantially injure another;
- Any act which is grounds for suspension or revocation of a license; and
- Making a false statement on the application.

~~In addition to Section 480, the Board has the authority to deny a license for any of the following reasons:~~

Business and Professions Code section 2635: ~~e~~Every applicant for a license under this chapter shall, at the time of application, be a person over 18 years of age, not addicted to alcohol or any controlled substance, have successfully completed the education and training required by Section 2650, and not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

Business and Professions Code section 2660, subdivision (f)(1): Obtaining or possessing in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist, administering to himself or herself, or furnishing or administering to another, any controlled substances or any dangerous drug.

Business and Professions Code section 2660, subdivision (f)(2): Using any controlled substance or any dangerous drug.

Business and Professions Code section 2660, subdivision (w): Habitual intemperance.

Business and Professions Code section 2660.2, subdivision (a): The Board may refuse a license to any applicant guilty of unprofessional conduct or sexual activity referred to in Section 2660.1.

Business and Professions Code section 2660.2: The Board may refuse a license to any applicant guilty of unprofessional conduct or sexual misconduct as defined in ~~B&P Business and Professions Code, Section 2660.1 and California Code of Regulations, Title 16, California Code of Regulations, Section 1399.23.~~ The Board may, in its sole discretion, issue a public letter of reprimand or may issue a probationary license to any applicant ~~for a license~~ who is guilty of unprofessional conduct, but who has met all other requirements for licensure.

Appeal Rights

The applicant has the right to appeal the denial or the issuance of a license with terms and conditions. In either case, a Statement of Issues would be filed in accordance with Chapter 5, (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the Board shall have all the powers granted therein.

Any person whose application for a license has been denied by the Board may reapply to the Board for a license only after a period of one (1) year from the date of the denial.

CITATION

The ~~Physical Therapy Board~~ may issue a citation pursuant to Business and Professions Code Section 125.9 of the Business and Professions Code, as an alternate means to address relatively minor violations not necessarily warranting discipline.

Citations are not disciplinary actions, but are matters of public record. The citation program increases the effectiveness of the Board's consumer protection process by providing a method to effectively address less egregious violations.

Citations shall be in writing and shall describe the particular nature and facts of the violation, including a reference to the statute or regulation allegedly violated. In assessing a fine, the Board shall give due consideration to the factors enumerated in California Code of Regulations, Title 16, Section 1399.25 of Title 16 of the CCR.

Payment of a fine with or without an informal conference or administrative hearing does not constitute an admission of the violation charged, but represents a satisfactory resolution of the citation for purposes of public disclosure.

After a citation is issued, the person may:

- 1) Pay the fine/comply with any Order of Abatement and the matter will be satisfactorily resolved.
- 2) Request an informal conference. ~~At the conclusion of the informal conference which,~~ the citation may be affirmed, modified or dismissed, including any fine levied or order of abatement issued.
- 3) Request an Administrative Hearing in appeal of the citation whether or not an informal conference was held.

Failure to pay a fine, unless the citation is being appealed, may result in disciplinary action. Where a citation is not contested and a fine is not paid, the fine shall be added to the fee for renewal of the license.

PUBLIC REPROVALS &AND REPRIMANDS

Business &and Professions Code Section 495 authorizes the Board to publicly reprove a physical therapist or physical therapist assistant for an act constituting grounds for suspension or revocation of a license. The Board may consider issuing a Public Reprival as part of a disciplinary order, if any of the following circumstances may be considered when the following circumstances exist:

1. The offense is an isolated incident;
2. Sufficient time elapsed since the offense without further violations indicating a recurrence is unlikely;
3. Respondent admitted to the offense;
4. Respondent indicated remorse;
5. No prior discipline for a similar violation exists; and
6. In the case of an offense related to substance abuse, active participation in a recovery program has been documented for at least one (1) year without a relapse.

In lieu of filing or prosecuting a formal accusation against a licensee, Business &and Professions Code Section 2660.3 authorizes the Board, upon stipulation or agreement by the licensee, to issue a public letter of reprimand after it has conducted an investigation or inspection. The public letter of reprimand may include a requirement for specified training or education, and cost recovery for investigative costs. The Board may use a public letter of reprimand only for minor violations (as defined by the Board) committed by the licensee. Examples of Mminor violations, include, ~~but are not limited to, the following:~~

1. First DUI with no underlying circumstances that would be considered egregious; (e.g. no bodily injury to any third party);
2. One (1) minor adverse action in another State;
3. Failure to maintain patient records, such as an isolated incident of a Minor documentation violations.

GUIDELINES SPECIFIC TO VIOLATION

The following offenses are listed in numerical order of the statutory numbers in the Business and Professions Code (B&P Code), the California Code of Regulations (CCR), and the Health and Safety Code (H&S Code).

B&P Code section 2660, subdivision (a) authorizes the ~~Physical Therapy Board of California~~ to cite violations of the Medical Practice Act. When the Board cites violations of the Medical Practice Act ~~are cited, the Board must also cite B&P Code section 2660, subdivision (a) must also be cited.~~

Violations of the B&P Code or the CCR may result in the issuance of a Citation, Public Reprimand, Initial Probationary License, filing of a Statement of Issues, or an Accusation. Filing of criminal charges shall be sought when appropriate.

BUSINESS AND PROFESSIONS CODE

B&P CODE § 123. SUBVERTING OR ATTEMPTING TO SUBVERT A LICENSING EXAM B&P CODE 123

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval or Initial Probationary License
Maximum: Revocation or denial of license

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, **D, E, F, K, L, M, N, P**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statutes: B&P Code §§ 584, 2660(i)(j), 2660.7

B&P CODE § 136. CHANGE OF ADDRESS REPORTING REQUIREMENT B&P CODE 136

Citation:

Minimum Fine: \$100
Maximum Fine: \$1,000

Discipline:

Minimum: Public Reproval
Maximum: Public Reproval

*Refer to related regulation: **16** CCR § 1398.6*

B&P CODE § 141. DISCIPLINARY ACTION BY A FOREIGN JURISDICTION B&P CODE 141

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

If violation is an offense in California, refer to corresponding statute. If not, the Board shall consider the discipline order from the state, federal government, or country of discipline when determining disciplinary action.

Refer to related statute and/or regulation: B&P Code § 2660(o), 16 CCR § 1399.24(d)(4)

**B&P CODE § 490. CONVICTION OF A CRIME - SUBSTANTIAL RELATIONSHIP
REQUIRED B&P CODE 490**

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, E, F, M, J, N, PO, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

(Condition "PR" should be considered if the violation(s) relate(s) to psychiatric conditions. Conditions "T" thru "AA" through "FF" should only be used if the violation relates to alcohol/substance abuse)

Refer to related statutes and/or regulations: B&P Code §§ 2236, 2660(e), (f)(1), (2), (3), (w) (a)¹, 2661, 16 CCR § 1399.24(d)

**B&P CODE § 490.5. COMPLIANCE WITH CHILD SUPPORT ORDERS AND
JUDGMENTS B&P CODE 490.5**

In addition to the mandatory suspension pursuant to Family Code section 17520, requirements of B&P Code § 490.5.

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Public Reproval

¹ B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

B&P CODE § 498. OBTAINING LICENSURE BY FRAUD B&P CODE 498

Discipline:

Revocation or Denial of License

Refer to related statutes: B&P Code §§ 499, 581, 582, 583, ~~2235, 2660(c)(a)~~[†]

B&P CODE § 499. FALSE STATEMENT OF MATERIAL FACT FOR APPLICATION
~~B&P CODE 499~~

Discipline:

Revocation or Denial of License

Refer to related statutes: B&P Code §§ 498, 581, 582, 583, ~~2235, 2660(c)(a)~~[†]

B&P CODE § 580. SALE OR BARTER OF DEGREE, CERTIFICATE OR TRANSCRIPT
~~B&P CODE 580~~

Discipline:

Revocation or Denial of License

B&P CODE § 581. PURCHASE OR FRAUDULENT ALTERATION OF DIPLOMA OR
OTHER WRITINGS B&P CODE 581

Discipline:

Revocation or Denial of License

Refer to related statutes: B&P Code §§ 498, 499, 582, 583, ~~2235, 2660(c)(a)~~[†]

B&P CODE § 582. USE OF ILLEGALLY OBTAINED, ALTERED OR COUNTERFEIT
DIPLOMA, CERTIFICATE, OR TRANSCRIPT B&P CODE 582

Discipline:

Revocation or Denial of License

Refer to related statutes: B&P Code §§ 498, 499, 581, 583, ~~2235, 2660(c)(a)~~[†]

[†] B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

B&P CODE § 583. FALSE STATEMENTS IN APPLICATION DOCUMENTS OR WRITINGS ~~B&P CODE 583~~

Discipline:

Revocation or Denial of License

Refer to related statutes: B&P Code §§ 498, 499, 581, 582, ~~2235, 2660(c)(a)~~[†]

B&P CODE § 584. VIOLATION OF EXAMINATION SECURITY; IMPERSONATION ~~B&P CODE 584~~

Discipline:

Revocation or Denial of License

Refer to related statutes: B&P Code § ~~2288, 2660(a)~~, 2660.7

B&P CODE § 650. CONSIDERATION FOR REFERRALS PROHIBITED ~~B&P CODE 650~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation in Addition to Standard Conditions: NONE

Refer to related statutes: B&P Code § 2660(t)

B&P CODE § 651. ADVERTISING VIOLATIONS- DISSEMINATION OF FALSE OR MISLEADING INFORMATION CONCERNING PROFESSIONAL SERVICES OR PRODUCTS ~~B&P CODE 651~~

Citation:

Minimum Fine: \$1,000
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 3 years' probation
Maximum: Revocation

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[†] B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: E

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statutes and/or regulation: B&P Code §§ 2660(b),(q), H&S 17500, **16**
CCR §1398.10

B&P CODE § 654.2. BENEFICIAL INTEREST REFERRALS – REQUIRED DISCLOSURE STATEMENT ~~B&P 654.2~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation in Addition to Standard Conditions: NONE

Refer to related statutes: B&P Code § 2660(q)

B&P CODE § 680. HEALTH CARE PRACTITIONER'S DISCLOSURE OF NAME AND LICENSE STATUS ~~B&P CODE 680~~

Citation:

Minimum Fine: \$100
Maximum Fine \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Public Reproval

Refer to related regulation: **16** CCR §1398.11

B&P CODE § 725. EXCESSIVE PRESCRIBING OR TREATMENT ~~B&P CODE 725~~

Citation:

Minimum Fine: \$100
Maximum Fine \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, E, F, H, J, K, L, M, N, O, P,

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statutes: B&P Code § ~~2234(b)~~, 2660(a)(h)

B&P CODE § 726. SEXUAL ABUSE OR MISCONDUCT WITH PATIENT OR CLIENT
~~B&P CODE 726~~

Note: Pursuant to CCR §1399.15, any findings the licensee committed a sex offense or been convicted of a sex offense, the order shall revoke the license. The proposed decision shall not contain an order staying the revocation of the license.

Refer to related statutes and/or regulation: B&P Code §§ 2660(m)~~-(p)~~, 2660.1~~-(16)~~ CCR § 1399.15(b)

B&P CODE § 802. REPORTS OF MALPRACTICE SETTLEMENTS OR ARBITRATION AWARDS INVOLVING UNINSURED LICENSEES; PENALTIES FOR NON-COMPLIANCE
~~B&P CODE 802~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline: Refer to related statutes and/or regulation violation triggering malpractice settlement.

B&P CODE § 810. INSURANCE FRAUD - UNPROFESSIONAL CONDUCT
~~B&P CODE 810~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, E, F, **J, K, L, M, N**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statutes: B&P Code § 2261, 2262, 2660(a)⁴, (g)(j)(r)(s)

B&P CODE § 901. REQUIREMENTS FOR LICENSE EXEMPTION B&P CODE 904

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

*Refer to related statutes and regulations: B&P Code, § 2630.5 (c)(d)(e)(f)(g); **16 CCR §§ 1399.99.2, 1399.99.3, 1399.99.4***

B&P CODE §§ 2068, 2660(a)⁴. NUTRITIONAL ADVICE B&P CODE 2068, 2660(a)⁴

Citation:

Minimum Fine \$100
Maximum Fine \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Public Reproval

GROSS NEGLIGENCE B&P CODE 2234(b), 2660(a)⁴

Refer to related statutes: ~~B&P Code 725, 2660(h)~~

REPEATED NEGLIGENT ACTS B&P CODE 2234(c), 2660(a)⁴

Refer to related statute: B&P Code 2660(h)

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⁴ B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

B&P CODE §§ 2234 (d), 2660(a). INCOMPETENCE ~~B&P CODE 2234(d), 2660(a)~~¹

Refer to related statute: B&P Code § 2660(d)(h)

PROCURING LICENSE BY FRAUD ~~B&P CODE 2235, 2660(a)~~¹

Discipline:

Revocation or cancellation is the only suitable discipline in as much as the license would not have been issued but for the fraud or misrepresentation.

Refer to statute(s) for appropriate penalties: B&P Code 498, 499, 581, 582, 583, 2660(c)

CRIMINAL CONVICTION ~~B&P CODE 2236, 2660(a)~~¹

Note: If the conviction relates to the use or abuse (i.e. possession, possession for sale, trafficking, etc.) of a controlled substance for DUI or related offenses, or if the conviction was attributed to the use of a controlled substance or alcohol (i.e. disorderly conduct) the conditions applying the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" shall be imposed.

Refer to related statutes and/or regulation: B&P Code 490, 2660(e)(f), 2661, CCR 1399.24(d)

B&P CODE §§ 2237, 2660(a). CONVICTION RELATED TO DRUGS ~~B&P CODE 2237, 2660(a)~~¹

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, **JM, N, O, PQ, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Note: If the conviction relates to the use or abuse (i.e. possession, possession for sale, trafficking, etc.) of a controlled substance for DUI or related offenses, or if the conviction was attributed to the use of a controlled substance or alcohol (i.e. disorderly conduct) the conditions applying the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" shall be imposed.

NOTE: Outright revocation for conviction of illegal sales of controlled substances unless extensive mitigation appears.

B&P CODE §§ 2238, 2660(a). VIOLATION OF DRUG STATUTES B&P CODE 2238, 2660(a)[†]

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, **JM, N, OP, Q, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

The conditions applying the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" shall be imposed.

NOTE: Outright revocation for conviction of illegal sales of controlled substances unless extensive mitigation appears.

B&P CODE §§ 2239, 2660(a). SELF ABUSE OF DRUGS OR ALCOHOL B&P CODE 2239, 2660(a)[†]

Discipline:

Minimum: Revocation, stayed, suspension until the ability to practice safely is determined, participation in the rehabilitation program, 5 years' probation or until satisfactory completion of the rehabilitation program, whichever is longer.
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, J, **L, M, N, O, Q, P, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

The conditions applying the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" shall be imposed.

[†] ~~B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.~~

Refer to related statutes: B&P Code § 2660(f)(1)(2)(3), 2660(w)

MAKING FALSE DOCUMENTS B&P CODE 2261, 2660(a)¹

Refer to related statutes: B&P Code 810, 2262, 2660(a)¹, (e)

ALTERATION OF MEDICAL RECORDS B&P CODE 2262, 2660(a)¹

Refer to related statutes: B&P Code 810, 2261, 2660(a)¹, 2660(e)

VIOLATION OF PROFESSIONAL CONFIDENCE B&P CODE 2263, 2660(a)¹

Refer to related statute: B&P Code 2660(u)

AIDING AND ABETTING UNLICENSED PRACTICE B&P CODE 2264, 2660(a)¹

Refer to related statutes and/or regulation: B&P Code 2630, 2660(i), CCR 1399

FALSE OR MISLEADING ADVERTISING B&P CODE 2271, 2660(a)¹

Refer to related statutes and/or regulation: B&P Code 651, 2660(b), 17500, CCR 1398.10

EMPLOYMENT OF RUNNERS, CAPPERS AND STEERERS B&P CODE 2273, 2660(a)¹

Refer to related statute: B&P Code 2660(t)

**B&P CODE §§ 2274, 2660(a). UNAUTHORIZED USE OF MEDICAL DESIGNATION
B&P CODE 2274, 2660(a)¹**

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

¹ B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation in Addition to Standard Conditions: NONE

~~VIOLATION OF PROFESSIONAL CORPORATION ACT B&P CODE 2286, 2660(a)~~¹

Citation: _____

Minimum Fine: _____ \$100

Maximum Fine _____ \$5,000

Discipline:

Minimum: _____ Public Reprimand
Maximum: _____ Revocation

Conditions of Probation in Addition to Standard Conditions: NONE

~~Refer to related statute: B&P Code 2691~~

~~IMPERSONATION OF APPLICANT IN EXAM B&P CODE 2288, 2660(a)~~¹

Discipline: _____

Revocation or denial of license

~~Refer to related statutes: B&P Code 584, 2660.7~~

B&P CODE §§ 2289, 2660(a). IMPERSONATION- PRACTICE OF MEDICINE B&P CODE 2289, 2660(a)¹

Discipline:

Minimum: Revocation, stayed, 180 days' suspension, 7 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, E, G, J, K, L, M, N, O, P

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

(Term "F" to be used only when self-employed or owner)

~~Refer to related statute: B&P Code § 2660(i)(j)~~

B&P CODE § 2608.5. AUTHORIZATION TO INSPECT PATIENT_RECORDS B&P CODE 2608.5

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Conditions of Probation in Addition to Standard Conditions: NONE

Refer to related ~~statute and/or regulation: B&P Code 2660 (u),~~ 16 CCR § 1399.24(c)

B&P CODE § 2620.3. TOPICAL MEDICATIONS B&P CODE 2620.3

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Conditions of Probation in Addition to Standard Conditions: NONE

Refer to related regulations: 16 CCR §§ 1399.77, 1399.78, 1399.79

B&P CODE § 2620.5. CERTIFICATION TO PENETRATE TISSUE FOR THE PURPOSE OF NEUROMUSCULAR EVALUATION B&P CODE 2620.5

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 5 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: D

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statute and/or regulation: B&P Code § 2660(d), 16 CCR § 1399.61

B&P CODE § 2620.7. MAINTENANCE OF PATIENT RECORDS ~~B&P CODE 2620.7~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reprimand
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, **N, OP**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statute and/or regulation: B&P Code § 2660(g); 16 CCR § 1398.13

B&P CODE § 2622. PHYSICAL THERAPIST PATIENT CARE RESPONSIBILITY & AND USE OF ASSISTIVE PERSONNEL ~~B&P CODE 2622~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reprimand
Maximum: Revocation

Refer to related statutes and/or regulations: B&P Code §§ 2630.3, 2630.4, ~~2633~~, 16 CCR §§ 1398.44, 1399

B&P CODE § 2630. UNLICENSED PRACTICE AS A PHYSICAL THERAPIST ~~B&P CODE 2630~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 5 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, J, K, L, M, N, P

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statutes and/or regulation: B&P Code §§ 2264, 2633, 2660(a)[†] (i)(j)

B&P CODE § 2630.3. PHYSICAL THERAPIST ASSISTANT LICENSE & SUPERVISION REQUIREMENTS B&P 2630.3

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 5 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, J, K, L, O, P

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statutes and/or regulation: B&P Code §§ 2264, 2660(a)[†] (j), 2622(a)(b), 2633.5, 16 CCR § 1398.44

B&P CODE § 2630.4. PHYSICAL THERAPY AIDE SUPERVISION REQUIREMENTS B&P 2630.4

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

[†] B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 5 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, **B, K, L, M, N, OQ**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statutes and regulation: B&P Code §§ 2622(a)(c), 2660(j); 16 CCR § 1399.1398.44

B&P CODE § 2630.5. Persons Exempt from Licensure Requirements

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Refer to related statutes and regulations: B&P Code § 901; 16 CCR §§ 1399.99.2, 1399.99.3, 1399.99.4

B&P CODE § 2633. AUTHORIZED USE OF TITLE "P.T." AND "PHYSICAL THERAPIST" PERMITTED TITLES & AND OTHER DESIGNATIONS; DOCTORAL DEGREE B&P CODE 2633

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 5 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, **B, N**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statute: B&P Code § 2630

B&P CODE § 2633.5. AUTHORIZED USE OF TITLE “PHYSICAL THERAPIST ASSISTANT” & PROHIBITIONS OF USING AFFIXES B&P-2633.5

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 5 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All “Standard Probation Conditions”
- 2) “Probation Conditions Specific to Violation” for consideration are: **A, B, N**

“Probation Conditions Specific to Violation” should be considered individually since some, or all, may **not** apply.

Refer to related statute: B&P Code § 2630.3(b)

B&P CODE § 2633.7. AUTHORIZED USE OF TITLE BY “PHYSICAL THERAPIST STUDENT” OR “PHYSICAL THERAPIST ASSISTANT STUDENT” B&P-2633.7

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Issue Initial Probationary License
Maximum: Deny Application

Conditions of Probation in Addition to Standard Conditions: NONE

Refer to related regulations: **16** CCR §§ 1398.37, 1398.52

B&P CODE § 2636.5. REQUIREMENTS FOR OBTAINING LICENSURE WITHOUT A WRITTEN EXAMINATION AND APPLICANT STATUS FOR A PHYSICAL THERAPIST OR PHYSICAL THERAPIST ASSISTANT B&P-CODE-2636.5

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Issue Initial Probationary License
Maximum: Deny Application

Conditions of Probation in Addition to Standard Conditions: NONE

Refer to related regulations: 16 CCR §§ 1399.10, 1399.12

B&P CODE § 2639. PHYSICAL THERAPIST & AND PHYSICAL THERAPIST ASSISTANT GRADUATE-LICENSE APPLICANT STATUS REQUIREMENTS B&P CODE 2639

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Issue Initial Probationary License
Maximum: Deny Application

Conditions of Probation in Addition to Standard Conditions: NONE

Refer to related regulations: 16 CCR §§ 1399.10, 1399.12

B&P CODE § 2639.1. EQUIVALENT TRAINING REQUIREMENTS – PHYSICAL THERAPIST ASSISTANT B&P 2639.1

Discipline:

Minimum: Issue Initial Probationary License
Maximum: Deny Application

Conditions of Probation in Addition to Standard Conditions: NONE

B&P CODE § 2644. EXPIRATION AND RENEWAL OF LICENSE, DISCLOSURE OF MISDEMEANOR OR CRIMINAL OFFENSE & AND CONTINUING COMPETENCY REQUIREMENTS – B&P CODE 2644

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reprimand
Maximum: Revocation

Refer to related statute and regulation: B&P Code § 2649; 16 CCR § 1399.24(d)

B&P CODE § 2648.7. RETIRED STATUS B&P CODE 2648.7

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reapproval
Maximum: Revocation

Note: Effective January 1, 2019, B&P Code § 2648.7 will become inoperative. After January 1, 2019, B&P Code § 464 will be used.

B&P CODE § 2649. DEMONSTRATION OF CONTINUING COMPETENCY REQUIREMENT B&P CODE 2649

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reapproval
Maximum: Revocation

Conditions of Probation in Addition to Standard Conditions: NONE

Refer to related statute and regulations: B&P Code § 2644; 16 CCR §§ 1399.91, 1399.92, 1399.93, 1399.94, 1399.97, 1399.98, 1399.99

B&P CODE § 2653. REQUIREMENTS OF GRADUATES FROM FOREIGN SCHOOLS B&P CODE 2653

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Issue Initial Probationary License
Maximum: Deny Application

Conditions of Probation in Addition to Standard Conditions: NONE

Refer to related regulations: 16 CCR §§ 1398.26, 1398.26.5

B&P CODE § 2660(a). VIOLATION OF THE PHYSICAL THERAPY OR MEDICAL PRACTICE ACTS ~~B&P 2660(a)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

A through EE. See specific to statute violated.

Note: B&P Code § 2660(a) authorizes the Physical Therapy Board of California to cite violations of the Medical Practice Act. **Therefore,** whenever the Board cites violations of the Medical Practice Act, the Board must also cite ~~are cited~~ B&P Code § 2660(a) must also be cited.

B&P CODE § 2660(b). ADVERTISING IN VIOLATION OF B&P Code § 17500 ~~B&P CODE 2660(b)~~

Citation:

Minimum Fine: \$100
Maximum Fine \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Public Reproval

Refer to related statutes and/or regulation: B&P Code §§ 651, 2271, 17500, **16** CCR § 1398.10

B&P CODE § 2660(c). PROCURING A LICENSE BY FRAUD OR MISREPRESENTATION ~~B&P CODE 2660(c)~~

Discipline: (Prior to Licensure)

Minimum: Issue Initial Probationary License
Maximum: Deny Application

Discipline: (After Licensure)

Revocation or cancellation is the only suitable discipline in as much as the license would not have been issued but for the fraud or misrepresentation.

Refer to related statutes: B&P Code §§ 498, 499, 581, 582, 583, ~~2235, 2660(a)~~

B&P CODE § 2660(d). PRACTICING OR OFFERING TO PRACTICE BEYOND SCOPE OF PRACTICE OF PHYSICAL THERAPY ~~B&P CODE 2660(d)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension or until proficiency to practice safely is determined, 3 years' probation following return to practice.
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, E, I, J, **K**, L, M, N, O, **P**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statutes: B&P Code §§ 2234(d), 2660(h)

B&P CODE § 2660(e). CONVICTION OF A CRIME ~~B&P CODE 2660(e)~~

Note: If the conviction relates to the use or abuse (i.e. possession, possession for sale, trafficking, etc.) of a controlled substance for DUI or related offenses, or if the conviction was attributed to the use of a controlled substance or alcohol (i.e. disorderly conduct) the conditions applying the "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" shall be imposed.

Refer to related statutes and/or regulation: B&P Code §§ 490, ~~2236, 2237, 2238, 2239, 2660(a)⁺, (f), 2661~~; **16 CCR § 1399.24(c)(d)**

B&P CODE § 2660(f). UNLAWFUL POSSESSION OR USE OF, OR CONVICTION OF A CRIMINAL OFFENSE INVOLVING A CONTROLLED SUBSTANCE ~~B&P CODE 2660(f)~~

Discipline:

Minimum: Revocation, stayed, suspension until the ability to practice safely is determined, participation in the rehabilitation program, 5 years' probation or until satisfactory completion of the rehabilitation program, whichever is longer.
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, J, K, L, M, N, O, V, W, X, Y, Z, AA, **BB, CC, DD, EE**

⁺ B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

The conditions applying the “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees” shall be imposed.

Refer to related statutes: B&P Code §§ 490, 2237, 2238, 2239, 2660(a)[†]

B&P CODE § 2660(g). FAILURE TO MAINTAIN ADEQUATE & ACCURATE PATIENT RECORDS ~~B&P CODE 2660(g)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Conditions of Probation:

- 1) All “Standard Probation Conditions”
- 2) “Probation Conditions Specific to Violation” for consideration are: A, B, N, P

“Probation Conditions Specific to Violation” should be considered individually since some, or all, may **not** apply.

Refer to related statute and/or regulations: B&P Code § 2620.7, **16** CCR §§ 1398.13, 1398.44, 1399, 1399.10, 1399.12

B&P CODE § 2660(h). GROSS NEGLIGENCE OR REPEATED ACTS OF NEGLIGENCE ~~B&P CODE 2660(h)~~

Discipline:

Minimum: Revocation, stayed, 30 days’ suspension or until proficiency to practice safely is determined, 3 years’ probation following return to practice.
Maximum: Revocation

Conditions of Probation:

- 1) All “Standard Probation Conditions”
- 2) “Probation Conditions Specific to Violation” for consideration are: A, B, C, D, E, **F**, I, J, K, L, M, N, **PE**

“Probation Conditions Specific to Violation” should be considered individually since some, or all, may **not** apply.

Refer to related statutes: B&P Code § 725, 2234(b), 2660(a)[†]

[†] B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

B&P CODE § 2660(i). AIDING OR ABETTING UNLAWFUL PRACTICE ~~B&P CODE 2660 (j)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Conditions of Probation:

1) All "Standard Probation Conditions"

2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, F, J, K, L, M, N, O, P

Refer to related statutes: B&P Code 2264, 2660(a)⁺

B&P CODE § 2660(j). FRAUDULENT, DISHONEST OR CORRUPT ACT ~~B&P CODE 2660(j)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 5 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

1) All "Standard Probation Conditions"

2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, E, F, J, K, L, M, N, O, P

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statute: B&P Code § 810

B&P CODE § 2660(k). INFECTION CONTROL GUIDELINES ~~B&P CODE 2660(k)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, ~~E~~, I, **J, N**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

B&P CODE § 2660(l). VERBAL ABUSE OR SEXUAL HARASSMENT—B&P CODE 2660(l)

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, **J, N, O, P**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

B&P CODE § 2660(m). SEXUAL MISCONDUCT OR VIOLATING B&P CODE § 726 B&P CODE 2660 (m)

Note: Pursuant to CCR §1399.15, any findings the licensee committed a sex offense or been convicted of a sex offense, the order shall revoke the license. The proposed decision shall not contain an order staying the revocation of the license.

Refer to related statutes and/or regulation: B&P Code §§ 726, 2660.1; 16 CCR § 1399.15(b)

B&P CODE § 2660(n). PERMITTING PHYSICAL THERAPIST ASSISTANT AND/OR AIDE TO PERFORM, HOLD HIMSELF/HERSELF OUT AS COMPETENT TO PERFORM BEYOND LEVEL OF EDUCATION, TRAINING AND EXPERIENCE OF P.T.A. AND/OR AIDE ~~B&P CODE 2660 (n)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Refer to related statutes: B&P Code ~~§ 2264, 2660(a)~~ ⁺(i)(j)

B&P CODE § 2660(o). ADVERSE ACTION TAKEN BY ANOTHER STATE OR AGENCY OF THE FEDERAL GOVERNMENT ~~B&P CODE 2660 (o)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

If violation is an offense in California, refer to corresponding statute. If not, the Board shall consider the discipline order from the state, federal government, or country of discipline when determining disciplinary action.

Refer to related statute and regulation: B&P Code § 141; ¹⁶ CCR § 1399.24(c)(d)

B&P CODE § 2660(p). INAPPROPRIATE VIEWING OF DISROBED PATIENT IF UNNECESSARY TO PATIENT EVALUATION OR TREATMENT ~~B&P CODE 2660 (p)~~

Discipline:

Minimum: Public Reproval
Maximum: Revocation

“Probation Conditions Specific to Violation” for consideration are: A, B, C, D, G, ^{J, N, O, P}

Note: This is a variation of inappropriate treatments. Consider conditions of 726.

Refer to related statutes: B&P Code §§ 726, 2660(m), 2660.1

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B&P CODE § 2660(g). ENGAGING IN ACTS IN VIOLATION OF SECTION B&P Code §§ 650, 651, OR 654.2 B&P CODE 2660-(g)

Refer to related statute and/or regulation: B&P Code §§ 650, 651, & 654.2

B&P CODE § 2660(r). CHARGING FEES FOR SERVICES NOT PROVIDED B&P CODE 2660-(r)

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Refer to related statutes: B&P Code § ~~2261, 2262,~~ 2660(s)

B&P CODE § 2660(s). MISREPRESENTING DOCUMENTATION AND/OR FALSIFYING OF PATIENT RECORDS B&P CODE 2660-(s)

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, C, D, E, F, **J, N, P**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statutes: B&P Code § ~~2261, 2262,~~ 2660(a),(r)

B&P CODE § 2660(t). EMPLOYMENT OF RUNNERS, CAPPERS, STEERERS, OR OTHER PERSONS B&P CODE 2660-(t)

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: **F, P**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statute: ~~B&P Code § 650, 2273, 2660(a)~~[†]

B&P CODE § 2660(u). THE WILLFUL, UNAUTHORIZED VIOLATION OF PROFESSIONAL CONFIDENCE ~~B&P CODE 2660 (u)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 30 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: **OP** (course should include HIPPA requirements)

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

~~Refer to related statute: B&P Code 2263, 2660(a)~~[†]

B&P CODE § 2660(v). FAILING TO MAINTAIN PATIENT CONFIDENTIALITY ~~B&P CODE 2660 (v)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reprimand
Maximum: Revocation

[†] B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

“Probation Conditions Specific to Violation” for consideration are: **ON, P** (course should include HIPPA requirements)

B&P CODE § 2660(w). HABITUAL INTEMPERANCE ~~B&P CODE 2660 (w)~~

The conditions applying the “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees” shall be imposed.

Refer to related statute: ~~B&P Code 2239, 2660(a)~~[†]

**B&P CODE § 2660(x). FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION
B&P CODE § 2620.1 ~~B&P CODE 2660(x)~~**

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

**B&P CODE § 2660.1. PRESUMPTION REGARDING INCAPABILITY TO CONSENT TO
SEXUAL ACTIVITY ~~B&P CODE 2660.1~~**

Note: Pursuant to CCR §1399.15(b), any findings the licensee committed a sex offense or been convicted of a sex offense, the order shall revoke the license. The proposed decision shall not contain an order staying the revocation of the license.

*Refer to related statutes and/or regulation: B&P Code §§ 726, 2660(m), **2660(p)**; **16**
CCR § 1399.15(b)*

B&P CODE § 2660.2. ISSUANCE OF PROBATIONARY LICENSE APPLICANTS

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Refer to related statutes and/or regulation: B&P Code § 2661

**B&P CODE § 2660.4. FAILURE OR REFUSAL TO PROVIDE MEDICAL RECORDS
B&P CODE 2660.4**

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

[†] ~~B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.~~

Discipline:

Maximum: Public Reproval

A licensee who fails or refuses to comply with a request from the Board for the medical records of patient, that is accompanied by that patient's written authorization for release of records to the Board, within 15 days of receiving the request and authorization, shall pay the Board a civil penalty of one thousand dollars (\$1,000.00) per day for each day that the records have not been produced after the 15th day, unless the licensee is unable to provide records within this time period for good cause.

Refer to related regulations: 16 CCR §1399.24(b)(c)(e)

B&P CODE § 2660.5. DENIAL OF LICENSE IN SPECIFIED CIRCUMSTANCES - REGISTERED SEX OFFENDER (APPLICANT)
B&P 2660.5

Discipline: Denial of License

B&P CODE § 2660.7. SUBVERSION OF EXAMINATION B&P 2660.7

Refer to related statutes for appropriate penalties: B&P Code §§ 123, 584, ~~2288~~, 2660 (a)[†], (i) (kj)

B&P CODE § 2661. CONVICTION OF CRIME B&P CODE 2661

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. A conviction demonstrates a lack of judgment and unwillingness to obey a legal prohibition, and also exhibits characteristics and actions that do not demonstrate that he or she exercises prudence and good judgment. Therefore, the conviction is substantially related to the qualifications, functions and duties as a licensee.

Note: B&P Code § 2661 should be cited in conjunction with a conviction violation since it defines the conviction being of substantial relationship to the qualifications, functions and duties, and should not stand alone as its own cause.

Refer to related statutes and/or regulations: B&P Code §§ 490, 2236, 2660, 2660(e), 2660.2; 16 CCR §§ 1399.23, 1399.24(c)(d)

B&P CODE § 2691. PHYSICAL THERAPY CORPORATION B&P CODE 2691

Citation:

Minimum Fine: \$100

Maximum Fine: \$5,000

[†] B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

Discipline:

Minimum: Public Reproval

Maximum: Revocation

Conditions of Probation in Addition to Standard Conditions: NONE

*Refer to related ~~statute~~ regulations: 16 CCR §§ 1399.35, 1399.37, 1399.39. ~~B&P Code 2286~~
Note: If a licensee violates this section it would be a criminal offense; therefore, also see B&P
Code § 2236-2660(e).*

B&P CODE § 2692. UNPROFESSIONAL CONDUCT- CORPORATION

B&P CODE 2692

Citation:

Minimum Fine: \$100

Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval

Maximum: Revocation

B&P CODE § 2693. CORPORATION NAME

Citation:

Minimum Fine: \$100

Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval

Maximum: Revocation

B&P CODE § 2694. DIRECTORS AND OFFICERS

Citation:

Minimum Fine: \$100

Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval

Maximum: Revocation

VIOLATION OF PROBATION

Discipline:

Implementation of Original Stayed Order.

*~~NOTE: The maximum penalty should be given for repeated similar offenses or for
probation violations revealing a cavalier or recalcitrant attitude.~~*

B&P CODE §17500. FALSE ADVERTISING

*Refer to statutes and regulations for appropriate penalties: B&P Code §§ 651, 2660(b)
(g); 16 CCR § 1398.10*

TITLE 16, CALIFORNIA CODE OF REGULATIONS

CCR § 1398.6. FILING OF ADDRESSES, EMAIL ADDRESSES & AND NAME CHANGE CCR-1398.6

Refer to statutes for appropriate penalties: B&P Code §§ 136, 2660

CCR § 1398.10. ADVERTISING CCR-1398.10

Refer to related statute(s) for appropriate penalties: B&P Code §§ 651, 2274, 2660(b)(a)[†], H&S Code 17500

CCR § 1398.11. PHYSICAL THERAPY AIDE, APPLICANT, STUDENT AND INTERN IDENTIFICATION CCR-1398.11

Refer to related statute(s) for appropriate penalties: B&P Code § 680

CCR § 1398.13. PATIENT RECORD DOCUMENTATION REQUIREMENT CCR-1398.13

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Refer to related statute(s) for appropriate penalties: B&P Code § 2620.7

CCR § 1398.15. NOTICE TO CONSUMERS (FORM NTC 12-01) CCR-1398.15

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Public Reproval

Refer to related statute: B&P Code § 2660

CCR § 1398.26. APPLICATIONS OF FOREIGN EDUCATED GRADUATES CCR-1398.26

Refer to related statute(s) for appropriate penalties: B&P Code § 2653

CCR § 1398.26.5. CLINICAL SERVICE REQUIREMENTS FOR FOREIGN EDUCATED APPLICANTS CCR-1398.26.5

Refer to related statute(s) for appropriate penalties: B&P Code § 2653

[†] B&P Code 2660(a) authorizes the Physical Therapy Board of California to cite the Medical Practice Act.

CCR § 1398.37. IDENTIFICATION AND SUPERVISION OF PHYSICAL THERAPIST STUDENTS AND INTERNS DEFINED CCR-1398.37

Refer to related statute(s) for appropriate penalties: B&P Code § 2633.7

CCR § 1398.44. SUPERVISION OF PHYSICAL THERAPIST ASSISTANTS CCR 1398.44

Refer to statute(s) for appropriate penalties: B&P Code §§ 2660(a), 2622, 2630.3

CCR § 1398.52. IDENTIFICATION AND SUPERVISION OF PHYSICAL THERAPIST ASSISTANT STUDENTS AND INTERNS DEFINED CCR-1398.52

Refer to related statute(s) for appropriate penalties: B&P Code § 2630.5, 2633.7

CCR § 1399. REQUIREMENTS FOR USE OF AIDES CCR-1399

Refer to related statute(s) for appropriate penalties: B&P Code § 2264, 2630, 2630.4 2660(a)

CCR § 1399.10. SUPERVISION OF PHYSICAL THERAPISTS LICENSE APPLICANTS CCR-1399.10

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 5 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, J, K, **L, M, N, O, P**
"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statute(s) for appropriate penalties: B&P Code §§ 2636.5, 2639

CCR § 1399.12. SUPERVISION OF PHYSICAL THERAPIST ASSISTANT LICENSE APPLICANTS CCR-1399.12

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Revocation, stayed, 5 days' suspension, 3 years' probation
Maximum: Revocation

Conditions of Probation:

- 1) All "Standard Probation Conditions"
- 2) "Probation Conditions Specific to Violation" for consideration are: A, B, J, K, **L, M, N, P**

"Probation Conditions Specific to Violation" should be considered individually since some, or all, may **not** apply.

Refer to related statute(s): B&P Code §§ 2636.5, 2639

CCR § 1399.15(b). DISCIPLINARY GUIDELINES – SEX OFFENSE

Discipline:

Revocation or Denial of License

Refer to related statutes for appropriate penalties: B&P Code §§ 726, 2660(m), 2660.1

CCR § 1399.23. REQUIRED ACTIONS AGAINST REGISTERED SEX OFFENDERS
CCR 1399.23

Discipline:

Revocation or Denial of License

*Refer to related statute(s) and regulation for appropriate penalties: B&P Code §§ 480, 726, 2660.1, **2660.2**, 2660.5, ~~2608~~, **2660.2**, 2661, **16**. CCR § 1399.15(b)*

CCR § 1399.24(a). PROHIBITING ANOTHER PARTY FROM COOPERATING WITH OR DISPUTING A COMPLAINT ~~**CCR 1399.24(a)**~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reprimand
Maximum: Revocation

Standard Conditions Only

CCR § 1399.24(b). FAILURE TO PROVIDE CERTIFIED DOCUMENTS
CCR 1399.24(b)

Refer to related statute for appropriate penalties: B&P Code § 2608.5

CCR § 1399.24(c). FAILURE TO COOPERATE IN BOARD INVESTIGATION ~~1399.24(c)~~

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Standard Conditions Only

CCR § 1399.24(d). FAILURE TO REPORT TO BOARD CRIMINAL OR DISCIPLINARY INFORMATION ~~CCR 1399.24(d)~~

Refer to related statutes for appropriate penalties: B&P Code §§ 141, 490, 2660(e), ~~2661, 2660(e)~~

CCR § 1399.24(e). FAILURE TO COMPLY WITH SUBPOENA ORDER
CCR 1399.24(e)

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Standard Conditions Only

Refer to related statute: B&P Code § 2660

CCR § 1399.35. REQUIREMENTS FOR PROFESSIONAL CORPORATIONS

Refer to related statute for appropriate penalties: B&P Code § ~~2691, 2694~~

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CCR § 1399.37. SHARES: OWNERSHIP AND TRANSFER

Refer to related statute for appropriate penalties: B&P Code § 2696

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CCR § 1399.39. CORPORATE ACTIVITIES

Commented [YE16]: Spelling

Refer to related statute for appropriate penalties: B&P Code § ~~2696~~

Commented [YE17]: Replaced 2691 with 2696

CCR § 1399.61. CERTIFICATION REQUIRED - ELECTROMYOGRAPHY CCR-1399.61

Refer to related statute(s) for appropriate penalties: B&P Code § 2620.5

CCR § 1399.77. ADMINISTRATION OF MEDICATIONS CCR-1399.77

Refer to related statute(s) **and regulations** for appropriate penalties ~~and related regulations~~: B&P Code § 2620.3, ~~16~~ CCR §§ 1399.78, 1399.79

CCR § 1399.78. AUTHORIZATION AND PROTOCOLS REQUIRED FOR TOPICAL MEDICATIONS CCR-1399.78

Refer to related statute(s) **and regulations** for appropriate penalties ~~and related regulations~~: B&P Code § 2620.3, ~~16~~ CCR §§ 1399.77, 1399.79

CCR § 1399.79. AUTHORIZED TOPICAL MEDICATIONS CCR-1399.79

Refer to related statute(s) **and regulations** for appropriate penalties ~~and related regulations~~: B&P Code § 2620.3, ~~16~~ CCR §§ 1399.77, 1399.78

CCR § 1399.91. CONTINUING COMPETENCY REQUIRED CCR-1399.91

Refer to related statute(s) for appropriate penalties: B&P Code §§ ~~2649~~, 2644, ~~2649~~

CCR § 1399.92. CONTENT STANDARDS FOR CONTINUING COMPETENCY CCR-1399.92

Refer to related statute(s) for appropriate penalties: B&P Code §§ ~~2649~~, 2644, ~~2649~~

CCR § 1399.93. CONTINUING COMPETENCY SUBJECT MATTER REQUIREMENTS AND OTHER LIMITATIONS CCR-1399.93

Refer to related statute(s) for appropriate penalties: B&P Code §§ ~~2649~~, 2644, ~~2649~~

CCR §1399.94. AUTHORIZED PATHWAYS FOR OBTAINING CONTINUING COMPETENCY HOURS CCR-1399.94

Refer to related statute(s) for appropriate penalties: B&P Code §§ ~~2649~~, 2644, ~~2649~~

CCR § 1399.95. STANDARDS FOR APPROVED AGENCIES CCR-1399.95

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Maximum: Revocation of recognition as an approved agency

Refer to related statute: B&P Code § 2649

CCR § 1399.96. STANDARDS FOR APPROVED PROVIDERS CCR-1399.96

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Maximum: Revocation of recognition as an approved provider

Refer to related statute: B&P Code § 2649,

CCR § 1399.97. RECORD KEEPING (CONTINUING COMPETENCY)
CCR-1399.97

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Refer to related statute(s) for appropriate penalties: B&P Code §§2649, 2644, 2649

CCR § 1399.98. INACTIVE STATUS (CONTINUING COMPETENCY)
CCR-1399.98

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Refer to related statute(s) for appropriate penalties: B&P Code §§ 2649, 2644, 2649

CCR § 1399.99. EXEMPTION FROM CONTINUING COMPETENCY REQUIREMENTS
CCR 1399.99

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: Public Reproval
Maximum: Revocation

Refer to related statute(s) for appropriate penalties: B&P Code §§ 2649, 2644, 2649

CCR § 1399.99.2. SPONSORING ENTITY REGISTRATION AND RECORDKEEPING
REQUIREMENTS CCR 1399.99.2

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Refer to related statute(s) for appropriate penalties: B&P Code § 901

CCR § 1399.99.3. OUT-OF-STATE PRACTITIONER AUTHORIZATION TO
PARTICIPATE IN SPONSORED EVENT CCR-1399.99.3

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Refer to related statute(s) for appropriate penalties: B&P Code § 901

CCR § 1399.99.4. TERMINATION OF AUTHORIZATION AND APPEAL (OUT-OF-
STATE PRACTITIONER'S AUTHORIZATION) CCR 1399.99.4

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Refer to related statute(s) for appropriate penalties: B&P Code § 901

HEALTH AND SAFETY CODE

H&S CODE § 123110. PATIENT'S ACCESS TO HEALTH CARE RECORDS H&S
CODE 123110

Citation:

Minimum Fine: \$100
Maximum Fine: \$5,000

Discipline:

Minimum: ~~Revocation, stayed, 5 days suspension, 3 years probation~~ Public
Reproval

Maximum: Revocation

Conditions of Probation in Addition to Standard Conditions: NONE

PROBATION CONDITIONS

Probation conditions are divided into three categories: 1) Standard Conditions the Board expects in all probation cases; 2) Specific Conditions that depend on the nature and circumstances of the particular case; and 3) Conditions Specific to Alcohol and/or Controlled Substance.

STANDARD PROBATION CONDITIONS

The standard conditions generally appearing in every probation case are as follows:

1. **License Revocation, Stayed**

Respondent's license shall be revoked, with the revocation stayed.

2. **License Suspension**

Respondent's license shall be suspended for [insert specific number of days, months]. See specific violation for recommended time of suspension.

3. **Cost Recovery**

Respondent is ordered to reimburse the Board the actual and reasonable investigative and prosecutorial costs incurred by the Board in the amount of \$ _____, within _____ days of the effective date of this Decision and Order. The Board or its designee may establish a payment plan for cost recovery; however, Respondent shall pay the full amount of cost recovery at least 180 days prior to completion of probation. If Respondent has not paid the full amount of cost recovery prior to completion of probation, probation shall remain in effect until cost recovery is paid in full.

Failure to pay the ordered reimbursement, or comply with any agreed upon payment plan established by the Board or its designee, constitutes a violation of the probation order and may result in revocation of Respondent's license. The Board shall not renew or reinstate the license of any respondent who has failed to pay costs as ordered in the Decision and Order. If Respondent is in default of his/her responsibility to reimburse the Board, the Board will collect cost recovery from through the Franchise Tax Board, the Internal Revenue Service, or by any other means of attachment of earned wages legally available to the Board.

Note: Costs represent the actual investigative and prosecutorial costs.

4. **Obey All Laws**

Respondent shall obey all federal, state and local laws, the statutes and regulations governing the practice of physical therapy, and remain in full compliance with any court ordered ~~criminal~~ probation. This condition applies

Commented [YE18]: Global change – replace "his" or "her" with "their"

Commented [YE19]: In reviewing the changes with staff, it was recommended to combine both options of the language.

Language as presented at 8/24/2017 Board Mtg.:

Respondent is ordered to reimburse the Board the actual and reasonable investigative and prosecutorial costs incurred by the Board in the amount of \$ _____, within _____ days of the effective date of this Decision and Order.

Failure to pay the ordered reimbursement, or any agreed upon payment, constitutes a violation of the probation order and may result in revocation of Respondent's license. If Respondent is in default of his responsibility to reimburse the Board, the Board will collect cost recovery from through the Franchise Tax Board, the Internal Revenue Service, or by any other means of attachment of earned wages legally available to the Board.

Or

Respondent is ordered to reimburse the Board the actual and reasonable investigative and prosecutorial costs incurred by the Board in the amount of \$ _____. The Board or its designee may establish a payment plan for cost recovery; however, Respondent shall pay the full amount of cost recovery at least 180 days prior to completion of probation, or until Respondent has completed payment of all money owed in cost recovery, whichever is longer.

Failure to pay the ordered reimbursement, or any agreed upon payment, constitutes a violation of the probation order and may result in revocation of Respondent's license. If Respondent is in default of his responsibility to reimburse the Board, the Board will collect cost recovery from through the Franchise Tax Board, the Internal Revenue Service, or by any other means of attachment of earned wages legally available to the Board.

The Board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as ordered in a Decision.

Note: Costs represent the actual investigative and prosecutorial costs.

to any jurisdiction with authority over Respondent, ~~whether it is inside or outside of California.~~

Further, Respondent shall, within five (5) days ~~of~~ after any arrest, submit to the Board in writing a full and detailed account of such arrest to include the name and address of the arresting agency.

5. Compliance with Orders of a Court

Respondent shall be in compliance with any valid order of a court. Being found in contempt of any court order is a violation of probation.

6. Compliance with Criminal Probation and Payment of Restitution

Respondent shall not violate any terms or conditions of criminal probation and shall be in compliance with any restitution ordered, payments, or other orders.

7. Quarterly Reports

Respondent shall submit quarterly reports under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation.

8. Probation Monitoring Program Compliance

Respondent shall comply with the Board's probation monitoring program.

9. Interview with the Board's Probation Monitor or its Designee

Respondent shall appear in person for interviews with the Board's Probation Monitor, or its designee, upon request at various intervals.

10. Notification of Probationer Status to Employers

Respondent shall notify all present and future employers (~~during the period of probation~~) of the reason for and the terms and conditions of ~~the~~ probation.

Prior to engaging in the practice of physical therapy, Respondent shall provide a true copy of the Initial Probationary License Decision and Order, Statement of Issues or Accusation, Decision and Order, or Stipulated Decision and Order as appropriate to ~~his or her~~ their employer, supervisor, or contractor, or prospective employer or contractor, and at any other facility where Respondent engages in the practice of physical therapy before accepting or continuing employment.

Respondent shall provide the Board's pProbation ~~m~~Monitor the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors, or contractors, and shall inform the pProbation

~~Monitor~~ in writing of the facility or facilities at which Respondent will be engaging in the practice of physical therapy for purposes of allowing the Board's ~~Probation~~ ~~Monitor~~ to communicate with the employer, supervisor, or contractor regarding Respondent's work status, performance and monitoring.

~~Respondent shall provide this~~ ~~The information will be provided~~ in writing to the Board's ~~Probation~~ ~~Monitor~~ within ten (10) calendar days from the effective date of this Decision and Order, and within ten (10) calendar days prior to new employment, or change of new employer, supervisor or contractor, and will include written ~~employer~~ confirmation of receipt.

11. Notification of Name, Address or E-mail Address Change

Respondent shall notify the Board, in writing, of any and all name, address, and/or e-mail address changes within ten (10) days of the change.

12. Restriction of Practice - Temporary Services Agencies

Respondent shall not work for a temporary services agency or registry.

OR:

NOTE: If Respondent's restrictions are limited to a certain number of registries and/or temporary service agencies:

Respondent's work for a temporary services agency or registry shall be limited as follows:

1) Respondent shall be limited to work for (indicate # of temporary services or registries) temporary service agency or registry.

2) This work must be approved by the Board's Probation Monitor.

3) Respondent must disclose this disciplinary proceeding as described above in Condition # ~~[includes]~~ appropriate term # used for Notification of Probationer Status to Employers to the temporary services agency or registry.

4) Respondent must disclose this disciplinary proceeding, as described above in Condition # ~~[includes]~~ appropriate term # used for Notification of Probationer Status to Employers to the supervisor at the facility where physical therapy care is being performed.

5) Respondent must notify ~~his or her~~ the Board's Probation Monitor or Board's designee, in writing, of any change in registry or temporary services agency.

6) Respondent must have written approval by the Board's Probation Monitor prior to commencing work at a new registry or temporary services agency.

13. Restriction of Practice - Clinical Instructor of Physical Therapy Student Interns or Foreign Educated Physical Therapist License Applicants Prohibited

Respondent shall not supervise any physical therapy student interns, foreign educated physical therapist license applicants, or other individuals accumulating hours or experience in a learning capacity in physical therapy during the entire period of probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of the Decision and Order.

14. Prohibited Use of Aliases

Respondent shall not use aliases and shall be prohibited from using any name which is not ~~his or her~~ legally-recognized ~~name~~ or based upon a legal change of name.

15. Intermittent Work

If Respondent ~~works practices or performs~~ (as a paid employee or as a volunteer) less than 192 hours as a physical therapist or a physical therapist assistant in the physical therapy profession in a period of three (3) consecutive months, those months shall not be counted toward satisfaction of the probationary period. Respondent is required to immediately notify the Board's ~~p~~Probation ~~m~~Monitor or ~~his or her~~ designee if ~~he or she~~ they ~~works practice or perform~~ less than 192 hours in a three-month period. A Board-ordered suspension of practice shall not be credited toward completion of probation. Respondent's period of non-practice while on probation shall not be credited toward completion of probation.

If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All financial obligations within this Decision and Order shall remain in effect whether or not Respondent is in non-practice.

Non-practice is defined as any period of time Respondent is not practicing physical therapy as defined in Business & Professions Code **section** 2620 for at least 192 hours in a period of three (3) consecutive months in direct patient care, clinical activity or teaching, or other activity as approved by the Board.

16. Tolling of Probation

The period of probation shall run only during the time Respondent is practicing or performing physical therapy within California as a paid employee or as a volunteer. Practicing in another jurisdiction shall not be credited toward completion of probation. A Board-ordered suspension of practice shall not be credited toward completion of probation. All financial obligations within this Decision and Order shall remain in effect whether or not probation is tolled.

If, during probation, Respondent ~~does not~~ ceases to practice or perform physical therapy within California, Respondent is required to immediately notify the Board's Probation Monitor in writing of the date Respondent ceases is practicing or performing physical therapy ~~out of state~~ within California, and report the date of expected return, if any. If Respondent begins practicing or performing physical therapy by Respondent in California prior to notification to the Board's Probation Monitor, or designee of Respondent's return, the time prior to notification will not be credited toward completion of Respondent's probationary period. ~~Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.~~

17. Maintenance of Valid License

While on probation, Respondent shall maintain an active, current license with the Board, including any period during which their license is suspended or probation is tolled.

178. Violation of Probation

Failure to fully comply with any component of any of the probationary terms and conditions is a violation of probation.

If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

189. Request to Surrender License Due to Retirement, Health or Other Reasons

Following the effective date of the Decision and Order, if Respondent ceases practicing or performing physical therapy due to retirement, health or other reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request, in writing, to surrender his or her their license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender by the Board, Respondent shall no longer practice physical therapy in California and shall within 15 calendar days deliver Respondent's wallet license and wall certificate to the Board or its designee. Respondent will no longer be subject to of the tendered license, the terms and conditions of probation, shall be tolled until such time as (1) the license is no longer renewable; (2) Respondent makes application for the renewal of the tendered license; or (3) If Respondent re-applies or makes application for a new license, the application shall be treated as a petition for reinstatement of a revoked license.

Commented [YE20]:
Language revised as of 8/24/2017 review.

Language as presented at 8/24/2017 Board Mtg.:

Respondent shall, at all times while on probation, maintain an active, current license with the Board, including any period during which the license is suspended or probation is tolled.

4920. Completion of Probation

Respondent shall comply with all financial obligations required by this Order (e.g., cost recovery, restitution, probation costs) not later than 180 calendar days prior to completion of probation unless otherwise specified in this Decision and Order. Upon successful completion of probation, Respondent's license shall be fully restored.

201. California Law Examination - Written Exam on the Laws and Regulations Governing the Practice or Performance of Physical Therapy

Within ninety (90) days of the effective date of this Decision and Order, Respondent shall take and pass the Board's written examination on the laws and regulations governing the practice of physical therapy in California. If Respondent fails to pass the examination, Respondent shall not be suspended from the practice of physical therapy until a repeat the examination has been successfully passed and has been so notified by the Board, or its designee, in writing. Respondent shall pay the costs of all examinations. Passing of the examination shall not satisfy the Continuing Competency requirements pursuant to B&P Code ~~2676~~ § 2649 as a condition for renewal of license.

242. Practice or Performance of Physical Therapy While on Probation

The Board has determined that it is not contrary to the public interest for Respondent to practice and/or perform physical therapy under the probationary conditions specified in ~~the disciplinary this Decision and Order~~.

Accordingly, it is not the intent of the Board that this order, the fact that Respondent has been disciplined, or Respondent is on probation, shall be used as the sole basis for any third-party payer to remove Respondent from any list of approved providers.

This Decision and Order should not be used as the basis for any third-party payer to remove Respondent from any list of approved providers.

223. Probation Monitoring Costs

Respondent shall reimburse all costs incurred by the Board for probation monitoring during the entire period of probation. Respondent will be billed at least quarterly. Such costs shall be made payable to the Physical Therapy Board of California and sent directly to the Physical Therapy Board of California. Failure to make an ordered reimbursement within sixty (60) days of the billing shall constitute a violation of the probation order.

Respondent's license shall not be renewed or reinstated if Respondent has failed to pay all of the probation monitoring costs as ordered in this Decision and Order.

PROBATION CONDITIONS SPECIFIC TO VIOLATION

The following conditions lettered A through S are specific to the violation, and should be used depending on the nature and circumstances of the particular case.

A. Restriction of Practice - Presence of Supervising Physical Therapist

Note: The purpose of this condition is to allow Respondent (physical therapist or physical therapist assistant) to practice with a level of supervision which ensures Respondent is in compliance with the Physical Therapy Practice Act as well as the probationary conditions. If Respondent works with another physical therapist that is eligible and available to function as Respondent's supervisor, the "Supervision Required" (Condition A) should be used in lieu of Condition B. Condition A is commonly used for, but not limited to: sexual misconduct, aiding and abetting, documentation cases, behavioral issues and where Respondent is not a sole proprietor. This condition should never be used in conjunction with "B" "Practice Monitor Required".

The following probation condition shall be operative when Respondent works as a physical therapist in a practice where Respondent does not hold a vested interest (i.e. as an officer, partner or shareholder).

Choose level of supervision:

1) Full Presence/Documentation Review

The level of supervision shall be direct and require 4) the physical presence of the supervising physical therapist while physical therapy is performed by Respondent; and may require, 2) the supervisor to review patient records and any pertinent documents necessary to determine Respondent's compliance with Respondent's this Decision and Order. Direct supervision and physical presence means, the supervising physical therapist shall be near or close enough to observe or hear ~~the~~ Respondent. While this may not require sharing the same treatment room with Respondent, it does require the supervising physical therapist to be within an audible range that would ensure the immediate presence of the supervising physical therapist.

2) Limited Presence/Documentation Review

The level of supervision shall not require the physical presence of the supervising physical therapist at all times while physical therapy is performed by Respondent. However, the supervising physical therapist shall physically observe Respondent ~~shall be physically observed~~ at least once per shift, and may be required to review of patient records and any pertinent documents necessary to determine Respondent's compliance with Respondent's this Decision and Order, at least once during Respondent's shift by the supervising physical therapist.

3) No Presence/Documentation Review As Determined

The level of supervision shall not require the physical presence of the supervising

physical therapist while physical therapy is performed by Respondent; however, it will require the supervisor to review the patient records and any pertinent documents necessary to determine Respondent's compliance with Respondent's this Decision and Order on a time base as agreed upon by the Board.

Within fifteen (15) business days of the effective date of this Decision and Order, Respondent shall submit to the Board in writing, for its prior approval, the name and qualifications of one or more proposed supervisor(s) and an outline of the plan by which Respondent's practice will be supervised. Respondent shall not practice until receiving written approval from the Board, or its designee regarding Respondent's choice of a supervisor.

Each proposed supervisor shall hold a valid California physical therapist license and shall have been licensed in California for at least five (5) years and never been subject to any disciplinary action by the Board. An administrative citation and fine does not constitute discipline; and therefore, in and of itself, is not a reason to deny approval of an individual as a supervisor. The supervisor shall not be an employee of Respondent, have a relationship which is familial, financial or personal in nature with Respondent or any other type of relationship that could reasonably be expected to compromise the ability of the supervisor to render impartial and unbiased reports to the Board. ~~The supervisor shall also not be a family member of Respondent.~~ If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board.

Upon approval of the supervisor and outline of supervision, the supervisor shall sign an agreement or contract that he or she they have reviewed the conditions of ~~the licensee's~~ Respondent's disciplinary order and/or contract and agrees to supervise ~~the licensee~~ Respondent as set forth by the Board. Respondent shall submit the signed agreement or contract to the Board's Probation Monitor, or its designee. The supervisor shall have full and random access to Respondent's patient records and may evaluate all aspects of Respondent's practice. The supervisor shall complete and submit a written report, on a basis determined by the Board, verifying supervision has taken place as approved by the Board. It shall be Respondent's responsibility to ensure the supervisor submits the reports to the Board in a timely manner within fourteen (14) days of signing the report.

The supervisor's report shall include:

- A. Respondent's name and license number
- B. Supervisor's name, license number and signature
- C. Worksite location(s)
- D. Evaluation of Respondent's compliance with ~~his or her~~their probationary conditions and existing laws and regulations governing the practice of physical therapy
- E. Assessment of Respondent's progress in regards to the specific issues, deficiencies or concerns resulting from the violations identified in the Decision and Order by the Board
- F. Summary of the supervisor's conclusions and opinions concerning the issues described above and the basis for ~~his or her~~their conclusions and opinions.

The Supervisor shall keep any information used to write ~~his or her~~their report (e.g.

record of patient records reviewed) and shall make it available at the Board's request. ~~in case Board requests said information.~~ This information does not need to be submitted to the Board unless the Board or its representative requests it or if the supervisor feels the information is pertinent to include in their report.

After ~~one (1)~~ [X] year(s) of full compliance with probation, the Board, or its designee, ~~respondent may request in writing for the approval by the Board or its designee, to remove this condition entirely or consider a modification of this term to the requirement~~ to a lower level of supervision.

B. Restriction of Practice— Practice Monitoring Required

Note: This probation condition shall only ~~be applied if~~ apply at such time when the Respondent holds a vested interest in the physical therapy practice (i.e. officer, partner, shareholder, sole proprietor). This condition does not require the physical presence of another licensed physical therapist; however, it does require arranged visits by a Practice Monitor approved by the Board for documentation review and compliance reporting only. This condition should be used in conjunction with Condition A to allow for flexibility of employment should Respondent close their business ~~never be used with condition A.~~

Commented [YE21]: Struck "only" and added "and compliance reporting" to allow for broader monitoring.

The following probation condition shall be operative when Respondent works as a physical therapist in a practice where Respondent holds a vested interest (i.e. as an officer, partner or shareholder).

Within fifteen (15) business days of the effective date of this Decision and Order, Respondent shall submit to the Board in writing, for its prior approval, the name and qualifications of one or more proposed licensed physical therapist(s) to serve as Practice Monitor(s). Each Practice Monitor shall be a California licensed physical therapist, ~~and~~ shall have been licensed for at least five (5) years, and have never been subject to any disciplinary action by the Board. An administrative citation and fine does not constitute discipline and therefore, in and of itself, is not a reason to deny approval of an individual as a Practice Monitor. The ~~Practice~~ Practice Monitor shall not be an employee of ~~the~~ Respondent, have a relationship which is familial, financial, or personal in nature with Respondent or any other type of relationship that could reasonably be expected to compromise the ability of the Practice Monitor to render impartial and unbiased reports to the Board. ~~The Practice Monitor shall also not be a family member of Respondent.~~ If the Practice Monitor terminates or is otherwise no longer available, Respondent shall not practice until a new Practice Monitor has been approved by the Board. All costs associated with the Practice Monitor shall be paid by Respondent.

Respondent shall not practice until receiving written approval from the Board regarding Respondent's choice of a Practice Monitor.

Upon approval of the Practice Monitor by the Board, the Practice Monitor, in conference with the Board's ~~Probation~~ Practice Monitor, will establish the schedule upon which visits will be made to Respondent's place of employment to review Respondent's current practice and adherence to the conditions of probation. The

Practice Monitor shall have full and random access to all of Respondent's patient records at all times. The Practice Monitor shall evaluate all aspects of Respondent's practice.

The Practice Monitor shall report on Respondent's current practice and compliance with the conditions of Respondent's probation to the Board's ~~p~~Probation ~~m~~Monitor after each visit. Frequency of the visits by the Practice Monitor shall be determined by the Board. It shall be Respondent's responsibility to ensure the Practice Monitor submits the reports to the Board within fourteen (14) days of ~~the~~each visit.

The Practice Monitor's report shall include:

1. Respondent's name and license number
2. Practice Monitor's name, license number and signature
3. Worksite location(s)
4. Evaluation of Respondent's compliance with ~~his or her~~their probationary conditions and existing laws and regulations governing the practice of physical therapy
5. Assessment of Respondent's progress in regards to the correction of specific issues, deficiencies or concerns resulting from the violations identified in the Decision and Order by the Board
6. Summary of the Practice Monitor's conclusions and opinions concerning the issues described above and the basis for ~~his or her~~their conclusions and opinions

The Practice Monitor shall also maintain and submit with ~~his or her~~their reports a log of the patient charts reviewed, the date(s) of service reviewed, and the date upon which the review occurred.

C. Restriction of Practice – Prohibition of Home Care

Respondent shall not provide physical therapy services in a patient's home.

D. Restriction of Practice – Prohibition of Solo Practice

Respondent shall be prohibited from engaging in the solo practice of physical therapy. Solo practice means a physical therapy business or practice where only Respondent provides patient care.

Note: This condition applies only to a physical therapist since a physical therapist assistant may not perform physical therapy without supervision.

In cases where Respondent's ability to function independently is in doubt as a result of a deficiency in knowledge or skills, or as a result of questionable judgment, this condition should be included. ~~Solo practice means a physical therapy business or practice where only Respondent provides patient care.~~

E. Restriction of Practice - Prohibition of Self-Employment or Ownership

Respondent shall not be the sole proprietor or partner in the ownership of any business that offers physical therapy services. Respondent shall not be a Board member or an officer or have a majority interest in any corporation that offers or provides physical therapy services.

F. Restriction of Practice - Prohibition of Direct Billing of Third-Party Payers

Respondent shall not have final approval over any physical therapy billings submitted to any third-party payers in any employment.

G. Restriction of Practice – Third-Party Presence

During probation, Respondent shall have a third-party present while examining or treating _____ (name the specific patient population). Respondent shall, within ten (10) days of the effective date of the Decision and Order, submit to the Board or its designee for its approval the name(s) of the person(s) who will act as the third-party present. Respondent shall execute a release authorizing the third-party present to divulge any information that the Board may request. The person(s) acting in the role of the third-party present shall be provided with a copy of the Initial Probationary License Decision and Order, Statement of Issues or Accusation, Decision and Order, or Stipulated Decision and Order as appropriate.

H. Restriction of Practice - Prohibition ~~Not to~~ from Treating a Specific Patient Population

Respondent shall not treat any _____.
(name the specific patient population)

[Note: Examples of specific patient population include: specific gender, children, direct access clients]

I. Restriction of Practice - Prohibition from Performing Specified Physical Therapy Procedures

During probation, Respondent is prohibited from performing or supervising the performance of _____ (specific physical therapy procedure; on a specific patient population). ~~After Beginning on~~ After Beginning on the effective date of this Decision and Order, the first time ~~that~~ a patient seeking the prohibited services makes an appointment, Respondent shall orally notify the patient that Respondent does not perform _____ (e.g. a specific physical therapy procedure; on a specific patient population). Respondent shall maintain a log of all patients to whom the required notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the ~~p~~Practice ~~m~~Monitor or the Board's ~~p~~Probation ~~m~~Monitor, and shall retain the log for the entire term of probation. Failure to maintain a log as defined in the ~~section~~

condition, or failure to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.

In addition to the required oral notification, after beginning on the effective date of this Decision and Order, the first time a patient seeks the prohibited services, and each subsequent ~~time-treatment~~, Respondent shall provide a written notification to the patient stating that Respondent does not perform _____ (e.g. a specific physical therapy procedure; on a specific patient population). Respondent shall maintain a copy of the written notification in the patient's file, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the ~~p~~Practice ~~m~~Monitor or the Board's ~~p~~Probation ~~m~~Monitor, or its designee, and shall retain the notification for the entire term of probation. Failure to maintain the notification as defined in the ~~section~~ condition, or failure to make the notification available for immediate inspection and copying on the premises during business hours is a violation of probation.

If Respondent can demonstrate competency in performing _____ (e.g. a specific physical therapy procedure; on a specific patient population) to the satisfaction of a physical therapist (holding a valid and current, unrestricted license), approved by the Board's ~~p~~Probation ~~m~~Monitor, the approved physical therapist can recommend to the Board in writing that this term of ~~the~~ probation ~~and be removed~~ without ~~the probationer~~ requiring Respondent to petitioning to modify ~~the~~ probation. The Board, or its designee, will make the decision and notify Respondent of its decision in writing. Until Respondent has been notified in writing by the Board that this term has been terminated, Respondent shall continue to practice under the provision of this term.

Respondent shall pay all costs associated with this condition ~~of the evaluation~~.

J. Notification of Probation Status to Assistive Personnel

Commented [YE22]: Moved from below.

If Respondent provides supervision to assistive personnel [physical therapist assistants, or physical therapy aides], Respondent shall notify all present and future assistive personnel under their supervision (during the entire period of probation) of the reason for and terms and conditions of this Decision and Order.

Respondent shall do so by providing a copy of the Initial Probationary License, Statement of Issues, or Accusation, and Decision and Order, as applicable, to all assistive personnel, and submit to the Board confirmation of assistive personnel acknowledgement of receipt, signed by the assistive personnel within ten (10) days of the effective date of this Decision and Order, and within ten (10) days of any newly acquired assistive personnel during the entire period of probation. The confirmation(s) provided to the Board shall include the name, address and telephone number of the assistive personnel

JK. Restriction of Practice - No Supervision of Physical Therapist License Applicants or Physical Therapist Assistant License Applicants

Respondent shall not supervise any physical therapist license applicants or physical therapist assistant license applicants during the entire period of probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of this Decision and Order.

~~K~~L. Restriction of Practice - No Supervision of Physical Therapist Assistants

Respondent shall not supervise any physical therapist assistants during the entire period of probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of this Decision and Order.

Optional Language: After [x] year(s) of full compliance with probation, the Board, or its designee, may remove the restriction or authorize limited supervision of physical therapist assistants as approved by the Board.

Optional Condition

Respondent shall not supervise any physical therapist assistants during the entire period of probation, and shall terminate any such supervision relationship in existence on the effective date of this Decision and Order, unless Respondent has first obtained written approval from the Board or its designee for each person they intend to supervise.

Prior to Board approval, Respondent shall require the physical therapist assistant they intend to supervise, to review the Statement of Issues, Accusation, and the Decision and Order, as applicable in this matter. Respondent shall provide to the Board or its designee in writing, the name, address and telephone number of the physical therapist assistant they intend to supervise.

~~L~~M. Restriction of Practice - No Supervision of Physical Therapy Aides

Respondent shall not supervise any physical therapy aides during the entire period of probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of this Decision and Order.

Optional Language: After [x] year(s) of full compliance with probation, the Board, or its designee, may remove the restriction or authorize limited supervision of physical therapy aides as approved by the Board.

Optional Condition

Respondent shall not supervise any physical therapy aides during the entire period of probation and shall terminate any such supervision relationship in existence on the effective date of this Decision and Order, unless Respondent has first obtained written approval from the Board or its designee for each person they intend to supervise.

Prior to Board approval, Respondent shall require the physical therapy aide they intend to supervise, to review the Statement of Issues, Accusation, and the Decision and Order, as applicable in this matter. Respondent shall provide to the Board or its

designee in writing, the name, address and telephone number of the physical therapy aide they intend to supervise.

MN. Notification to Patients

Respondent shall notify each patient, in writing, ~~that his or her~~ their license is on probation and that [INSERT LANGUAGE SPECIFIC TO CASE, e.g. supervising physical therapist will be reviewing patient records or other specific requirement].

Such notification shall be signed and dated by each patient prior to the commencement or continuation of any examination or treatment of each patient by Respondent. A copy of such notification shall be maintained in the patient's record. Respondent shall offer ~~the~~ each patient a copy of the acknowledgement.

The notification shall include the following language unless the Board₁ or its designee₂ agrees, in writing, to a modification:

The Physical Therapy Board of California (PTBC) has placed [INSERT PHYSICAL THERAPIST/ASSISTANT] license no. [INSERT LICENSE #], issued to [INSERT LICENSEE NAME], on probation.

As a condition of probation, the above-named licensee must notify patients that [INSERT LANGUAGE SPECIFIC TO CASE, e.g. practice monitor will be reviewing patient records or other specific requirement]. In addition, ~~Respondent~~ the above-named licensee is required to notify and obtain written acknowledgement from each patient of this condition. A copy of the acknowledgement shall be offered to the patient and placed in the patient's record.

Information regarding PTBC license disciplinary actions may be accessed online at ~~www.ptbc.ca.gov~~ https://www.breeze.ca.gov.

Note: If condition "B" Practice Monitor is used, condition "M" is necessary.

X. Notice to Consumer CCR 1398.15

Although all licensees are required to provide a Notice to Consumer pursuant to California Code of Regulations, Title 16, section 1398.15, Respondent shall also provide Form NTC 12-01, August 2, 2012, to each patient or patient representative before beginning or continuing care. An acknowledgement, signed and dated by the patient, or patient representative, shall be retained in each patient's medical record demonstrating receipt.

NO. Notification of Probationer Status to Employees

If Respondent is an employer, Respondent shall notify all present ~~or~~ and future employees of the reason for and terms and conditions of the probation.

Commented [YE23]: 10/10/2017 EO suggests removal. Unnecessary.
Note: Changes to letters of conditions O – EE reflect re-organization of letters without condition "Notice to Consumer CCR 1398.15. Should Board request to leave this condition, letters will be re-organized throughout document.

Respondent shall do so by providing a copy of the Initial Probationary License, Statement of Issues, or Accusation, and Decision and Order, as applicable, to each employee and submit ~~confirmation~~ acknowledgement of receipt, signed by the employee of employee receipt to the Board within ten (10) days of the effective date of this Decision and Order, and within ten (10) days of any newly acquired employee beginning work after the effective date. The confirmation(s) provided to the Board shall include the name, address, ~~and~~ phone number, and job title of ~~the~~ each employees.

OP. Education Course(s)

Within thirty (30) days of the effective date of this Decision and Order, Respondent shall submit to the Board, or its designee, for prior approval, a physical therapy remedial educational program (including date, title, and length of course(s) in the content of _____ (specify course subject) which shall not be less than eight (8) hours. Respondent shall supply documentation verifying satisfactory completion of coursework. Respondent shall be responsible for costs incurred of the course(s). Course hours shall not satisfy the Continuing Competency requirements pursuant to B&P Code § ~~2676~~ 2649 as a condition for renewal of license.

If Respondent fails to provide documentation verifying satisfactory completion of the coursework within 180 days of the effective date of this Decision and Order, Respondent shall be suspended from the practice of physical therapy until documentation verifying satisfactory completion of the coursework is provided.

PQ. Psychiatric Evaluation

Within thirty (30) calendar days of the effective date of this Decision and Order, and on whatever periodic basis thereafter may be required by the Board, or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed Board certified psychiatrist, who shall consider any information provided by the Board, or its designee, and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board, or its designee, indicating whether Respondent is mentally fit to practice physical therapy safely. Psychiatric evaluations conducted prior to the effective date of the Decision and Order shall not be accepted towards the fulfillment of this requirement. Respondent shall pay all cost of all psychiatric evaluations, psychological testing, and any required additional ~~follow-up~~ visits.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within fifteen (15) calendar days after being notified by the Board, or its designee. Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

(Option: Condition Precedent)

Respondent shall not engage in the practice of physical therapy until notified by the Board, or its designee, that Respondent ~~is~~ has been deemed to be mentally fit to

practice physical therapy safely. The period of time Respondent is not practicing physical therapy shall not be counted toward completion of the term of probation.

QR. Psychotherapy

Within sixty (60) calendar days of the effective date of this Decision and Order, Respondent shall submit to the Board₁ or its designee₂ for prior approval the name and qualifications of a Board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five (5) years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval by the Board, or its designee, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board₁ or its designee₂ deems that no further psychotherapy is necessary based on written notice from the psychiatrist or psychologist.

The psychotherapist shall consider any information provided by the Board₁ or its designee₂ and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board₁ or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board₁ or its designee. The Board₁ or its designee₂ may require Respondent to undergo psychiatric evaluations by a Board-appointed₁ Board certified psychiatrist.

If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of physical therapy without restrictions, the Board shall have continued jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines Respondent is mentally fit to resume the practice of physical therapy without restrictions. Respondent shall pay all the costs associated with compliance of this term of all psychotherapy and psychiatric evaluations.

Note:

This condition is for cases where the evidence demonstrates Respondent has had an impairment (impairment by mental illness, alcohol abuse and/or drug self-abuse) related to the violations but is not at present a danger to Respondent's patients.

RS. Medical Evaluation

Within thirty (30) days of the effective date of this Decision and Order, and on a periodic basis thereafter, as may be required by the Board₁ or its designee, Respondent shall undergo a medical evaluation by a Board appointed physician and surgeon, who shall furnish a medical report to the Board₁ or its designee. Respondent shall pay the all costs of the associated with the medical evaluation and continued treatments.

If, following the medical evaluation, Respondent is required by the Board₁ or its designee₂ to undergo medical treatment, Respondent shall within thirty (30) days of written notification of the requirement submit to the Board₁ or its designee₂ for its prior approval the name and qualifications of a physician and surgeon of Respondent's

choice. Upon Board approval of the treating physician and surgeon, Respondent shall undergo and continue medical treatment until further notice from the Board₁ or its designee. Respondent shall have the treating physician and surgeon submit quarterly status reports to the Board₁ or its designee₁ indicating whether Respondent is capable of practicing physical therapy safely.

Optional Condition

Respondent shall not engage in the practice of physical therapy until notified by the Board₁ or its designee₁ of its determination that Respondent is medically fit to practice safely.

ST. Medical Treatment

Within fifteen (15) days of the effective date of this Decision and Order, Respondent shall submit to the Board₁ or its designee₁ for its prior approval the name and qualifications of a physician of Respondent's choice. Upon approval, Respondent shall undergo and continue medical treatment until the Board₁ or its designee₁ deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports to the Board₁ or its designee₁ indicating whether Respondent is capable of practicing physical therapy safely. The Board₁ or its designee₁ may require Respondent to undergo periodic medical evaluations by a Board appointed physician. Respondent shall pay ~~the~~ all **costs associated with** ~~of~~ the medical treatment(s).

U. Relinquish Wallet License and Wall Certificate

Respondent shall relinquish and shall forward or deliver their wallet license to practice and the wall certificate to the Board within ten (10) days of the effective date of the Decision and Order.

Note: This term used on surrender and revocation cases only.

**CONDITIONS APPLYING THE UNIFORM STANDARDS
SPECIFIC TO ALCOHOL
AND CONTROLLED SUBSTANCES**

The following conditions, lettered **TV through AAEE**, must be used in cases where alcohol or a controlled substance was involved in the violation.

V. Cease Practice

From the effective date of this Decision and Order, Respondent shall cease practice until the Board or its designee determines that Respondent is safe to return to practice.

W. Substance Abuse Rehabilitation Program

Within fifteen (15) calendar days from the effective date of this Decision and Order, Respondent shall enroll and participate in the Board's rehabilitation program at Respondent's cost until the rehabilitation program determines that Respondent's participation is no longer necessary. Respondent shall comply with all components of the rehabilitation program. Respondent shall sign a release authorizing the rehabilitation program to report all aspects of participation of the rehabilitation program as requested by the Board, or its designee.

If Respondent fails to comply with the requirements of the rehabilitation program, terminates the program without permission, or is expelled for cause, it shall constitute a violation of probation, and Respondent shall be immediately suspended from the practice of physical therapy.

TX. Clinical Diagnostic Evaluation (CDE)

Within thirty (30) days of the effective date of the Decision and Order, Respondent shall undergo a CDE from a licensed practitioner who holds a valid, unrestricted license to conduct CDE's, has at least three (3) years of experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The Board may request Respondent to undergo a CDE at any time during the period of probation. The ~~evaluations~~ CDE shall be conducted in accordance with accepted professional standards for conducting substance abuse CDE's.

Respondent shall undergo a CDE to determine whether the Respondent has a substance abuse problem and whether ~~the~~ Respondent is a threat to ~~himself/himselfselves or herself~~ or others. The evaluator shall make recommendations for substance abuse treatment, practice restrictions, or other recommendations related to ~~the~~ Respondent's rehabilitation and ability to safe practice safely.

Respondent shall not be evaluated by an evaluator that has had a financial, personal, familial, or business relationship with ~~the~~ Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

During the evaluation, if ~~Respondent~~ it is determined that ~~Respondent is to be~~ a threat to ~~himself/himselfes or herself~~ or others, the evaluator shall notify the Board within 24 hours of such a determination.

For all evaluations, ~~the evaluator shall provide~~ a final written report ~~shall be provided~~ to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed thirty (30) days.

~~Respondent may return to either full time or part time work if the Board determines he or she is fit to do so based upon consideration of the CDE report and the following criteria:~~

Y. Determination on Return to Practice

The Board shall use the following criteria in determining whether or not Respondent is safe to return to full-time or part-time work, what practice restrictions shall be imposed on Respondent, and whether Respondent shall be required to participate in inpatient, outpatient, or any other type of treatment:

- Findings and recommendation(s) of CDE report;
- Respondent's ~~L~~license type;
- ~~Licensee's~~ Respondent's history;
- Documented length of sobriety/time that has elapsed since last substance use;
- Scope and pattern of substance abuse;
- Treatment history;
- Medical history and current medical condition;
- Nature, duration, and severity of substance abuse; ~~and,~~
- Whether the licensee Respondent is a threat to ~~himself/himselfes or herself~~ or others.

While awaiting the Board's determination, Respondent shall be randomly drug tested at least two (2) times per week as part of the rehabilitation program.

~~The Board shall determine whether or not the Respondent is safe to return to full-time or part time work, and what restrictions shall be imposed on the Respondent. However, Respondent shall not return to practice until he or she has thirty days of negative drug tests.~~

~~If the Respondent is required to participate in inpatient, outpatient, or any other type of treatment, the Board shall take into consideration the recommendation of the CDE, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.~~

In the event that interpretation or clarification of any of the Conditions Applying the Uniform Standards is necessary, the Uniform Standards shall be controlling.

U. Substance Abuse Rehabilitation Program

~~Within fifteen (15) calendar days from the effective date of this Decision and Order, Respondent shall enroll and participate in the Board's rehabilitation program at Respondent's cost until the rehabilitation program determines that participation in the rehabilitation program is no longer necessary.~~

~~Respondent shall comply with all components of the rehabilitation program. Respondent shall sign a release authorizing the rehabilitation program to report all aspects of participation of the rehabilitation program as requested by the Board or its designee.~~

~~Failure to comply with requirements of the rehabilitation program, terminating the program without permission or being expelled for cause shall constitute a violation of probation by Respondent and shall be immediately suspended from the practice of physical therapy.~~

~~[Optional language: This condition may be waived by the board upon a written finding by the CDE that Respondent is not a substance abusing licensee.]~~

VZ. Abstain from Use of Controlled Substances and Dangerous Drugs

Respondent shall abstain completely from personal use, possession, injection, consumption by any route, including inhalation, of all controlled substances as defined in the California Uniform Controlled Substances Act. This prohibition does not apply to medications lawfully prescribed to Respondent for a bona fide illness or condition by a practitioner licensed to prescribe such medications. Within fifteen (15) calendar days of receiving any lawful prescription medications, Respondent shall notify the ~~recovery substance abuse rehabilitation~~ program in writing of the following: prescriber's name, address, and telephone number; medication name and strength; ~~and~~ issuing pharmacy name, address, and telephone number. Respondent shall also provide a current list of prescribed medication with the prescriber's name, address, and telephone number on each quarterly report submitted to the Board's Probation Monitor, or its designee. Respondent shall provide the Board's ~~p~~Probation ~~m~~Monitor, or its designee, with a signed and dated medical release covering the entire probation period.

Respondent shall identify for the Board's approval a single coordinating physician and surgeon who shall be aware of Respondent's history of substance abuse and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, and controlled substances. Once a Board-approved physician and surgeon has been identified, Respondent shall provide a copy of the Initial Probationary License Decision and Order, Statement of Issues or Accusation, Decision and Order, or Stipulated Decision and Order, as appropriate, to the coordinating physician and surgeon. The coordinating physician and surgeon shall report to the Board or its designee on a quarterly basis Respondent's compliance with this condition.

The Board may require that only a physician and surgeon who is a specialist in addictive medicine be approved as the coordinating physician and surgeon.

If Respondent has a positive drug screen for any substance not legally authorized, Respondent shall be contacted and instructed to leave work and ordered by the Board to cease any practice and may not practice unless and until notified by the Board. The Board will notify Respondent's employer, if any, and worksite monitor, if any, that Respondent may not practice. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, Respondent shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. This period of suspension will not apply to the reduction of this probationary period.

[Optional language: This condition may be waived or modified by the ~~h~~Board's Probation Monitor or its designee upon a written finding by the Clinical Diagnostic Evaluator that Respondent is not a substance abusing licensee.]

WAA. Abstain from the Use of Alcohol

Respondent shall abstain completely from the use of alcoholic beverages.

[Optional language: This condition may be waived by the ~~h~~Board upon a written finding by the Clinical Diagnostic Evaluator that Respondent is not a substance abusing licensee.]

XBB. Biological Testing

Respondent shall immediately submit to ~~and pay for~~ any random and directed biological fluid or hair sample, breath alcohol, or any other mode of testing required by the Board, or its designee. All examination(s) and laboratory testing costs associated with this condition shall be paid by Respondent.

Respondent shall be subject to a minimum range of fifty-two (52); ~~but not to exceed, to one-hundred and four (104)~~ random tests per year within the first year of probation, and a minimum range of thirty-six (36) ~~to one-hundred and four (104)~~ random tests per year thereafter, for the duration of the probationary term. However, in cases where there is evidence that ~~the~~ Respondent has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the Board, the Board may ~~give consideration to that testing in~~ altering the testing frequency schedule so that it is equivalent to this standard.

Respondent shall make daily contact as directed by the Board to determine if ~~he or she~~ they must submit to drug testing. To ensure test results are sent immediately to the Board, Respondent shall have the test performed by a Board-approved laboratory certified and accredited by the U.S. Department of Health and Human Services on the same day that ~~he or she~~ they is/are notified that a test is required. ~~This shall ensure that the test results are sent immediately to the Board.~~ Failure to comply If Respondent fails to comply within the time specified, it shall be considered an admission of a positive drug screen and constitute a violation of probation. If the a urine test results in a determination that the urine was too diluted for testing, the result shall be considered an admission by Respondent of a positive urine screen and constitutes a violation of probation. If a positive result is obtained, the Board may

~~order suspend Respondent to cease all practice, and require Respondent to immediately undergo a physical examination and to complete laboratory or diagnostic testing to determine if any underlying physical condition has contributed to the diluted result and to suspend Respondent's license to practice. Any such examination or laboratory and testing costs shall be paid by Respondent. A positive diluted result is one which, based on scientific principles, indicates Respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined Respondent altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and Respondent must cease practicing. Respondent shall not resume practice until notified by the Board.~~ If Respondent tests positive for a banned substance, Respondent shall be contacted and instructed to leave work and ordered to cease all practice. Respondent shall not resume practice until notified by the Board. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

[Optional language: This condition may be waived or modified by the ~~Board's~~ Board's Probation Monitor or its designee upon a written finding by the Clinical Diagnostic Evaluator that Respondent is not a substance abusing licensee.]

The "Exceptions to Testing Frequency Schedule" identified in Uniform Standard #4 apply.

YCC. Major Violations

~~This provision applies if Respondent commits a violation of the rehabilitation program or any other condition applying the uniform standards specific to controlled substance(s).~~

If Respondent commits a major violation, Respondent shall immediately upon notification by the Board, cease practice until notified otherwise in writing by the Board.

Major ~~v~~iolations include, but are not limited to, the following:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required CDE;
3. Committing multiple minor violations of probation conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or other state or federal law;
6. Failure to obtain ordered biological testing for substance abuse;
7. Testing positive for a banned substance; ~~and~~
8. Knowingly using, making, altering, or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

This provision applies if Respondent commits a violation of the rehabilitation program or any other condition applying the uniform standards specific to controlled substance(s).

ZDD. Facilitated Group Support Meetings

Within fifteen (15) days from the effective date of ~~the~~ Decision and Order, Respondent shall submit to the Board₁ or its designee₂ for prior approval the name of one or more group support meeting facilitator(s). Respondent shall participate in facilitated group support meetings within fifteen (15) days after a notification of the Board's₁ or its designee's₂ approval of the meeting facilitator. When determining the type and frequency of required facilitated group support meeting attendance, the Board₁ or its designee₂ shall give consideration to the following:

- ~~The licensee's~~ Respondent's history
- The documented length of sobriety/time that has elapsed since substance abuse
- The recommendation of the clinical evaluator
- The scope and pattern of substance abuse
- ~~The licensee~~Respondent's treatment history;
- The nature, duration, and severity of substance abuse

Respondent shall submit ~~Verified~~ documentation of attendance ~~shall be submitted by Respondent~~ with each quarterly report to the Board's Probation Monitor. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

~~If a facilitated group support meeting is ordered,~~ The group support facilitator shall meet the following qualifications and requirements:

1. ~~The group meeting facilitator shall have a~~ A minimum of three (3) years of experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or ~~of~~ other nationally certified organizations.
2. ~~The group meeting facilitator s~~ Shall not have had a financial relationship, personal relationship, or business relationship with ~~the licensee~~ Respondent in the last five (5) years.
3. ~~The group facilitator s~~ Shall provide to the Board₁ or its designee₂ a signed document showing ~~the licensee~~ Respondent's name, the group name, the date and location of the meeting, ~~the licensee~~ Respondent's attendance, and ~~the licensee's~~ Respondent's level of participation and progress.
4. ~~The group meeting facilitator s~~ Shall report any unexcused absence(s) to the Board₁ or its designee₂ within twenty-four (24) hours.

[Optional language: This condition may be waived or modified by the Board's Probation Monitor, or its designee upon a written finding by the Clinical Diagnostic Evaluator that Respondent is not a substance abusing licensee.]

AAEE. Worksite Monitor

Respondent shall have a worksite monitor as required by this term. The worksite monitor shall not have any current or former financial, personal, or familial relationship with ~~the licensee~~ Respondent, or other relationship that could reasonably be expected

to compromise the ability of the worksite monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but ~~the licensee~~Respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board. However, under no circumstances shall ~~a licensee~~Respondent's worksite monitor be an employee of ~~the licensee~~Respondent.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that ~~he or she~~they hasve reviewed the terms and conditions of ~~the licensee's~~Respondent's disciplinary order and agrees to monitor ~~the licensee~~Respondent as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring ~~the licensee~~Respondent:

1. ~~a) At least once per week, or more frequently if required by the Board, H~~ave face-to-face contact with ~~the licensee~~Respondent ~~at least once per week~~ in the work environment ~~or more frequently if required by the Board~~.
2. ~~b)~~ Interview other staff in the office regarding ~~the licensee's~~ Respondent's behavior, if applicable.
3. ~~c)~~ Review ~~the licensee~~Respondent's work attendance.

The worksite monitor shall report to the Board as follows:

- Any suspected substance abuse must be verbally reported to the Board and ~~the licensee~~Respondent's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours, the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within forty-eight (48) hours of occurrence.
- ~~The worksite monitor shall complete and s~~Submit a written report monthly or as directed by the Board. The report shall include: ~~the licensee~~Respondent's name; license number; worksite monitor's name and signature; ~~worksite monitor's~~ license number; worksite location(s); dates licensee had face-to-face contact with monitor; staff interviewed if applicable; attendance report; any change in behavior and/or personal habits; and any indicators leading to suspected substance abuse.

~~The licensee~~ Respondent shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor regarding Respondent.

~~If Respondent tests positive for a banned substance, the Board will immediately notify Respondent's employer that the Respondent's license has been ordered to cease practice.~~

[Optional language: This condition may be waived or modified by the Board's Probation Monitor, or its designee, ~~board~~ upon a written finding by the Clinical Diagnostic Evaluator that Respondent is not a substance abusing licensee.]

RECOMMENDED LANGUAGE FOR ISSUANCE AND PLACEMENT OF A LICENSE ON PROBATION AND REINSTATEMENT OF LICENSE

Probation without Uniform Standards

IT IS HEREBY ORDERED that [Physical Therapist or Physical Therapist Assistant] License No. [#] issued to Respondent [name] is REVOKED. However, the order of revocation is STAYED and Respondent is placed on probation for [#] years, or until Respondent has completed payment on all money owed in cost recovery, whichever is longer, on the following terms and conditions:

Probation with conditions including the Uniform Standards

IT IS HEREBY ORDERED that [Physical Therapist or Physical Therapist Assistant] License No. [#] issued to Respondent [name] is REVOKED. However, the order of revocation is STAYED and Respondent is placed on probation for [#] years or completion of the substance abuse rehabilitation program plus one (1) year, and all money owed in cost recovery is paid, whichever is longer, on the following terms and conditions.

Surrender of License

IT IS HEREBY ORDERED that [Physical Therapist or Physical Therapist Assistant] License No. [#] issued to Respondent [name] is surrendered and accepted by the Physical Therapy Board of California.

1. Respondent shall lose all rights and privileges as a [physical therapist or physical therapist assistant] in California as of the effective date of this Decision and Order.
2. On or before the effective date of this Decision and Order, Respondent shall cause to be delivered their wallet license and wall certificate to the Board.
3. If Respondent ever files an application for licensure in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in the Accusation No. [xx] shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.
4. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. [XX] shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
5. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$[XX] prior to petitioning for reinstatement of their physical therapist/assistant license.
6. The surrender of Respondent's physical therapist/assistant license and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Physical Therapy Board of California.

Petition for Termination of Probation GRANTED

The Petition for Early Termination of Probation filed by Petitioner [NAME] is GRANTED. The probation of [Physical Therapist or Physical Therapist Assistant] License No. PT/PTA, issued to [Respondent's Name], is hereby terminated.

Petition for Termination of Probation DENIED

The Petition for Early Termination of Probation filed by Petitioner [NAME] is DENIED.

Or with conditions:

The Petition for Early Termination of Probation filed by Petitioner [NAME] is DENIED; however, Petitioner's probation is modified and probation shall end upon completion of the following conditions:

1. The Board is notified that Petitioner has completed the Drug and Alcohol Recovery Program (Maximus); and
 2. Sixty (60) days have elapsed after the Board's receipt of such notice.
- (note: 1 & 2 are sample language)

Petition for Reinstatement of License GRANTED

The Petition for Reinstatement filed by Petitioner [NAME] is GRANTED. Petitioner's Physical Therapist/Assistant license is reinstated; however, the order of reinstatement is immediately stayed and the reinstated license is placed on probation for a period of [xx] (x) years under the following terms and conditions:

Petition for Reinstatement of License DENIED

The Petition for Reinstatement filed by Petitioner [NAME] is DENIED.

Applicant Placed on Probation Based on an Initial Probationary License

"IT IS HEREBY ORDERED that the application for licensure as a [physical therapist or physical therapist assistant] of respondent [name] for an unrestricted license is hereby denied. However, an initial probationary license shall remain issued to Respondent, subject to the following terms and conditions:

Applicant Placed on Probation Based on a Denial of Licensure

"IT IS HEREBY ORDERED that the application for licensure as a [physical therapist or physical therapist assistant] of respondent [name] for an unrestricted license is hereby GRANTED upon successful completion of all licensing requirements. A license shall be issued, provided that all licensing requirements are completed within [timeframe] of the effective date of this Decision and Order. Upon issuance, however, said license shall immediately be REVOKED. However, the order of revocation shall be STAYED, and the

license is placed on probation for [#] years subject to the following terms and conditions:” If a license is not issued within one year of the effective date of this Decision and Order, the application is ordered denied, and a new application for licensure will be required.

GLOSSARY OF TERMS

Accusation - Charges filed against a licensee alleging violation(s) of the Physical Therapy Practice Act.

Business and Professions Code (B&P Code) - The statutes in law governing the businesses and professions. The Physical Therapy Practice Act begins with section 2600 of the Business and Professions Code. There are some other sections of the B&P Code named in this document that affect the practice of physical therapy but are not included in the Physical Therapy Practice Act. The Physical Therapy Practice Act can be accessed through the Physical Therapy Board of California website at www.ptbc.ca.gov.

California Code of Regulations (CCR) - Regulations define and clarify the intent of the statutes (laws). The regulations specific to physical therapy are located in Title 16, Chapter 13.2, ~~Article 6~~ of the California Code of Regulations and can be accessed through the Physical Therapy Board of California website at www.ptbc.ca.gov.

Citation - A means of addressing relatively minor violations, which do not warrant discipline in order to protect the public. Citations are not disciplinary actions, but are matters of public record.

Decision - The order of the Board in a disciplinary action.

Default Decision - Licensee fails to respond to Accusation by filing a Notice of Defense or fails to appear at an administrative hearing resulting in a default decision.

Diversion - The Board does not divert licensees from discipline.

Health and Safety Code (H&S Code) - Statutes of law pertaining to the health and safety of the citizens of California. Certain sections of the law contained in this document pertain to the practice of physical therapy. These statutes can be accessed through the Physical Therapy Board of California website at www.ptbc.ca.gov.

Initial Probationary License (IPL) - The Board may in its sole discretion issue a probationary license to any applicant for licensure who is guilty of unprofessional conduct but who has met all other requirements for licensure. An IPL is not considered disciplinary action and is removed from the record upon completion of probation. The IPL is posted on the Board's website only during the period of probation.

Interim Suspension Order - An order issued upon petition, suspending a licensee from all or a specified part of his or her physical therapy practice of, or assisting in the provision of, physical therapy.

Petition to Revoke Probation - Charges filed against a probationer seeking revocation of their physical therapy or physical therapy assistant license based upon violation(s) of probation.

Practice Monitor (Probation Condition Term B) - The practice monitor is a licensed physical therapist ~~that~~who serves as a subject matter expert to review the probationer's current practice and to evaluate all aspects of the probationer's practice. The practice monitor is approved by the Board and reports to the Board's ~~p~~Probation ~~m~~Monitor. The practice monitor is used in lieu of a supervising physical therapist when probationer holds a vested interest in the physical therapy practice.

Probation Monitor - The Probation Monitor is an employee of the Physical Therapy Board that monitors a probationers to ensure compliance with the terms and conditions of ~~their~~Respondent's probation.

Probation Tolloed - Credit for time served towards the probationary period does not begin until the probationer commences practice in the State of California.

Public Letter of Reprimand – In lieu of filing a formal accusation, the Board may, pursuant to B&P Code, section 2660.3, upon stipulation or agreement by the licensee, issue a public letter of reprimand. If the licensee does not agree to the issuance of the letter, the ~~b~~Board shall not issue the letter and may proceed to file a formal accusation. A public letter of reprimand is considered disciplinary action.

Public Reapproval – A formal public reapproval, pursuant to B&P Code, section 495, may be issued for an act constituting grounds for suspension or revocation of a license. This requires filing of a formal accusation. A public reapproval is considered disciplinary action.

Rehabilitation – A part of a disciplinary action taken in cases of substance abuse.

Revoked - ~~The right to practice is ended. The license is revoked as a result of disciplinary action rendered by the Board, and the licensee is prohibited from engaging in the practice, or assisting in the provision, of physical therapy.~~

Revoked, stayed, probation - "Stayed" means the revocation is postponed, put off. Professional practice may continue so long as the licensee complies with specific probationary terms and conditions. Violation of probation may result in the revocation that was postponed.

Statement of Issues - Charges filed against an applicant due to alleged violation(s) of the Physical Therapy Practice Act. If found to be true, the charges may result in discipline.

Supervising Physical Therapist - (Probation Condition Term A) - The supervising physical therapist ensures the probationer adheres to the Physical Therapy Practice Act as well as the probationary conditions and practices in the same facility as the probationer. The supervisor has full and random access to probationer's patient records and evaluates all aspects of probationer's practice. The supervising physical therapist ~~is~~must be approved by the Board's ~~and reports to the Board's~~ ~~p~~Probation ~~m~~Monitor, or designee. The role of the supervising physical therapist may vary depending on the level of supervision set forth in the Decision and Order.

Surrender of License - The licensee ~~turns in~~ surrenders their license to the Board, subject to acceptance of the surrendered license by the Board, and the licensee is prohibited from engaging in the practice, or assisting in the provision, of physical therapy, ~~subject to acceptance by the Board. The right to practice is ended.~~

Suspension - The licensee is prohibited from ~~practicing~~ engaging in the practice, or assisting in the provision, of physical therapy for a specific period of time.

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Uniform Standards) - Addresses penalties established for licensees dealing with substance abuse violations per Senate Bill 1441 (Ridley-Thomas, Ch. 548, Stats. 2008), developed by the Substance Abuse Coordination Committee, within the Department of Consumer Affairs.

Worksite Monitor (Probation Condition Term Z) - The worksite monitor is a person, usually a physical therapist, who observes for signs of substance abuse through face to face contact, interviews and attendance monitoring. The ~~W~~worksite ~~M~~monitor ~~is~~ must be approved by the Board's Probation Monitor, or designee, ~~rehabilitation program~~ and reports to the Board's rehabilitation program on the status of the probationer.

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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

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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 Adopted Meeting Minutes

November 15, 2017 9:00 a.m.

November 16, 2017 9:00 a.m.

Ohlone College
Health Science and Environmental
Science Division
39399 Cherry Street, Room NC 1100
Newark, CA 94560

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.

1. Call to Order

The Physical Therapy Board of California (Board) meeting was called to order by Vice President Rabena-Amen at 9:03 a.m. and recessed at 4:57 p.m. on November 15, 2017. The Board reconvened at 9:01 a.m. and adjourned at 2:47 p.m. on November 16, 2017.

2. Roll Call and Establishment of Quorum

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

All members were present except for Katarina Eleby and Tonia McMillian; a quorum was established. Also present at the meeting were: Tara Welch and Salwa Bojack, Legal Counsels; Jason Kaiser, Executive Officer; and Sarah Conley and Monny Martin, Board staff.

3. Review and Approval of August 23-24, 2017 Meeting Minutes – Becky Marco

Ms. Conley presented the draft August minutes on Ms. Marco's behalf. It was noted by Dr. Drummer there were discrepancies in the vote records on agenda items #4 and #16. Dr. Drummer also questioned the necessity for the roll call voting if it was not recorded in the minutes. Ms. Welch advised an accounting of the roll call vote should be documented in the minutes. The Board concluded the minutes should be amended to reflect the roll call votes, the day on which the vote took place in the event an agenda item was taken out of order and attendance or absence of each Board member. The Board delegated the amendments to be made by the Executive Officer and staff accordingly for the President's signature.

MOTION: To approve the August 23-24, 2017 minutes as amended.

M/S: Alviso/Drummer

VOTE: Alviso – Aye
Dominguez- Aye
Drummer – Aye
Eleby – Absent
McMillian – Absent
Rabena-Amen - Aye
Watkins - Aye
5-0 Motion carried

4. Acting President's Report – Alicia Rabena-Amen

(A) 2017 Adopted Meeting Calendar

Ms. Rabena-Amen commented that 2017 is coming to an end, leaving nothing to discuss.

(B) 2018 Proposed Meeting Calendar

Dr. Drummer questioned whether the 2018 calendar had been adopted; Mr. Kaiser responded it had been adopted. Dr. Drummer; therefore, suggested removing the reference to "Plan B." The Board discussed setting a date for Strategic Planning in conjunction with the March 2018 meeting dates and Dr. Dominguez advised because of CAPTE activities he would be restricted from attending on the Wednesday before the scheduled meeting in March. Mr. Kaiser advised more discussion would be had under the Executive Officer's report.

While the Board was conversing about meeting dates, Ohlone College offered to host the Board in December 2018.

5. Executive Officer's Report – Jason Kaiser

Mr. Kaiser discussed the roadmap developed by DCA's Solid Planning Solutions and advised, whether used or not, is a service paid for through pro rata. Dr. Drummer questioned whether Mr. Kaiser had seen the result of their work and whether he had confidence in the outcome. Mr. Kaiser responded while in the past he may not have been comfortable relying on their service, he has since seen the quality of their current product.

Mr. Kaiser and Dr. Drummer talked about the Board's outreach efforts at the California Physical Therapy's Association Annual Conference and expressed gratitude for being able to participate once again after seven years. Mr. Kaiser added to further outreach efforts he has accepted invitations to present at three programs in 2017 and 2018 and is looking forward to more invitations. Ms. Rabena-Amen questioned if the Outreach Committee appointed by President Eleby had a chance to meet; Mr. Kaiser replied they had not yet met.

Mr. Kaiser presented Veterinary Medical Board's proposed regulatory language on animal physical rehabilitation and noted it is in its regulatory process infancy. Ms. Welch stated there had already been a modification to the language in subsection (e.

While the Board was awaiting agenda item #8 and prior to entering into closed session it fielded questions from the Ohlone College students, which ranged from what the Board does in closed session to how to become a Board member.

6. Closed Session

The Board went into closed session at 9:09 a.m. and again at 3:20 p.m.

- (A) Pursuant to Government Code section 11126(c)(3), Deliberation on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceedings
- (B) Pursuant to Government Code section 11126(a)(1), Evaluation of Executive Officer

7. Reconvene Open Session

The Board reconvened at 10:45 a.m. after going into closed session at 9:09 a.m. and reconvened again at 4:56 p.m. after going into closed session at 3:20 p.m. The Board recessed at 4:57 p.m.

8. Maximus – Healthcare Professionals Diversion Program Presentation - *Stephanie Trumm, Maximus*

Ms. Trumm presented on the history, mission, structure and components of the program.

9. Discussion and Possible Board Action – *Sunset Review Report – Jason Kaiser*

- (A) Discussion and Possible Board Action Regarding AB 1706, (Committee on Business and Professions) Healing Arts: Chiropractic Practice: Occupational Therapy: Physical Therapy

Mr. Kaiser advised AB 1706 was chaptered into law extending the Board until January 1, 2022. He further advised the bill included repeal of Business and Professions Code (BPC) section 2648.7 authorizing retired license status exemption. The repeal allows the Board to rely on BPC section 464 for retired license status exemption. The Bill also grants the Board discretion when granting exemptions from BPC section 2653(b) and exempts licensees from specific English-speaking countries. Finally, the Bill repeals BPC section 2688.5, which requires the Board to submit a report to the legislature when the Board increases its fees. The Bill did not include extending fee caps which are currently at their ceiling.

10. Legislation Report – *Jason Kaiser*

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

- i. Discussion and Possible Board Action Regarding AB 208 (Eggman) Deferred Entry of Judgment Pretrial Diversion

Mr. Kaiser referred the members to the report included in the agenda book and advised AB 208 had been amended to a point where the concerns of the Board had been alleviated. He also pointed out that AB 387, the Minimum Wage bill for Health Professionals had been Ordered to the Inactive File.

11. Rulemaking Report – *Becky Marco*

(A) Discussion and Possible Board Action Regarding the 2017 Rulemaking Update

i. Examination Passing Standard/Setting Examination Score

Mr. Kaiser reported on Ms. Marco's behalf that the required documentation had been submitted to the Department of Consumer Affairs (DCA) and it was at the beginning of the new rulemaking process implemented by DCA.

(B) Discussion of Issues and Possible Board action regarding Guidelines for Issuing Citations and Imposing Discipline, 6th Edition

Mr. Kaiser presented the issues of concern raised in the Briefing Paper. Dr. Dominguez questioned whether it's 30 days of negative tests or is it 30 tests in 30 days in "issue #1"? Mr. Martin responded it is a common question from probationers to which he explains each term of an Administrative Order to the Respondent and he advises the 30 days of negative tests usually results in closer to 45 days as the number of days is dependent on the participation of the Respondent. Dr. Alviso suggested the language be placed in "Term Y" which will ensure it is included in the Administrative Order. Ms. Welch suggested mirroring language of "Term Y" in the Overview. The Board concluded this issue with clarifying the period of 30 days by amending language contained in "Term Y" to read:

"The Board shall determine whether or not the Respondent is safe to return to full-time or part-time work, and what restrictions shall be imposed on the Respondent. However, Respondent shall not return to practice until he or she has negative drug tests for a period of at least 30 days."

They will also mirror the modified language in "Term Y" in the Overview. The Board discussed this at length and concluded to add Business and Professions Code section 480 to the Guidelines with a minimum discipline of Public Repeal and maximum discipline of Application Denial.

The Board accepted the other three staff recommendations used in the Briefing Paper regarding Cost Recovery, Maintenance of a Valid License and Notice to Consumer. The Board concluded its review and adopted the proposed modifications to the Guidelines for Issuing Citations and Imposing Discipline, 6th Edition.

MOTION: To approve the proposed regulatory changes as modified, direct the Executive Officer to take all steps necessary to initiate the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and if no adverse comments are received during the 45-day comment period, and no hearing is requested, adopt the proposed regulatory changes as modified.

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

(C) 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

The Board discussed the language as presented by Mr. Kaiser and agreed to amend the language by adding date ranges and quotation marks to the titles of each CWT. It further decided to strike from the title of CWT 6, “*For Implementation Beginning January 1, 2016*” and add in parenthesis language “for individuals who graduated on or after January 1, 2017.”

MAIN MOTION: To approve the proposed regulatory changes and direct the Executive Officer to take all steps necessary to initiate the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and if no adverse comments are received during the 45-day comment period and no hearing is requested, adopt the proposed regulatory changes as modified.

M/S: Drummer/Watkins

MOTION TO AMEND MAIN MOTION: To add the language “as modified” to the main motion.

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

MAIN MOTION AS AMENDED: To approve the proposed regulatory changes as modified and direct the Executive Officer to take all steps necessary to initiate the

rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and if no adverse comments are received during the 45-day comment period, and no hearing is requested, adopt the proposed regulatory changes as modified.

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

12. Discussion and Possible Board Action Regarding 2018 Rulemaking Calendar- *Becky Marco*

Mr. Kaiser presented the proposed 2018 Rulemaking Calendar.

MOTION: To adopt the proposed 2018 Rulemaking Calendar as presented.
M/S: Watkins/Alviso
VOTE: Alviso – Aye
Dominguez – Aye
Drummer – Aye
Eleby – Absent
McMillian – Absent
Rabena-Amen – Aye
Watkins – Aye
5-0 Motion carried

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).]

There was no public comment.

14. Recess

The Board recessed at 4:57 p.m. on Wednesday, November 15, 2017 – Day one

Agenda – Thursday, November 16

15. Call to Order

The Physical Therapy Board of California (Board) meeting was called to order by Vice President Rabena-Amen at 9:01 a.m. on November 16, 2017.

16. Roll Call and Establishment of Quorum

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

All members were present with the exception of Katarina Eleby and Tonia McMillian, and a quorum was established. Also present at the meeting were: Tara Welch and Salwa Bojack, Legal Counsels; Jason Kaiser, Executive Officer; Sarah Conley and Monny Martin, Board staff.

17. 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.

18. Closed Session

The Board did not enter into closed session on day two, November 16, 2017.

- (A) Pursuant to Government Code section 11126(c)(3), Deliberation on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceeding
- (B) Pursuant to Government Code section 11126(a)(1), Evaluation of Executive Officer

19. Reconvene Open Session

The Board did not enter into closed session.

20. Consumer and Professional Associations and Intergovernmental Relation Reports

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

There was no representative from the FSBPT present. However, Mr. Kaiser, Mr. Watkins and Dr. Rabena-Amen all shared their experience from the Annual Meeting. Mr. Kaiser advised he was appointed to the Council of Board Administrators Nominating Committee and currently sits on the Continuing Competency Committee while Ms. Rabena-Amen sits on the Foreign Educated Committee. He went on to express the importance of being a presence and representing the Board. Mr. Watkins' shared his observation was that the FSBPT was more commercial oriented than consumer protection oriented. Ms. Rabena-Amen followed-up by commenting she was proud of the California Board and its focus on its mission. Mr. Rabena-Amen asked to have the Performance Evaluation Tool developed by FSBPT on the Board's next agenda.

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

Karen Nelson, Assistant Deputy Director of Board and Bureau Services reported on staff changes; the quarterly Leadership forum on September 2nd; the Future Leadership Program Development launch in May; Pro Rata Workgroup meetings August and October; DCA Strategic Plan release in July; and, mandatory sexual harassment training is required in 2017.

(C) California Physical Therapy Association (CPTA)

No representative was present.

21. Board Member Training – Jason Kaiser

(A) Council on Licensure, Enforcement and Regulation (CLEAR) Administrative Rulemaking

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

After the training, the Board once again responded to questions from the Ohlone College students.

22. Administrative Services Report

(A) Budget– Araceli Strawmier

Mr. Kaiser presented on behalf of Ms. Strawmier drawing attention to the State's migration to a new accounting system that has suspended budget reports temporarily.

(B) Outreach – Araceli Strawmier

Mr. Kaiser directed the Board to the report in the agenda materials and explained recruitment for a staff person designated specifically for outreach is underway. He added the Board is seeking a new template for its website design.

23. Application Report – Sarah Conley

Ms. Conley presented on her report included in the agenda book and fielded questions regarding the data presented.

24. Licensing Services Report – Sarah Conley

(A) Continuing Competency Report

Again, Ms. Conley directed the members to the report included in the agenda book. Ms. Rabena-Amen questioned whether those audits where compliance is obtained are less labor intensive. Mr. Kaiser explained they all require an equal amount of attention.

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

i. Nursing and Rehab at Home

MOTION: To withdraw Approval Agency Recognition from Nursing and Rehab at Home.

M/S: Drummer/Watkins

VOTE: Alviso – Aye
Dominguez - Aye
Drummer - Aye
Eleby – Absent
McMillian - Absent
Rabena-Amen - Aye
Watkins – Aye
5-0 Motion carried

ii. TERRIO Physical Therapy and Fitness

MOTION: To withdraw Approval Agency Recognition from TERRIO Physical Therapy and Fitness.

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

iii. North Coast Rehab, Inc.

MOTION: To withdraw Approval Agency Recognition from North Coast Rehab, Inc.

M/S: Watkins/Rabena-Amen

VOTE: Alviso – Aye
Dominguez - Aye
Drummer - Aye
Eleby – Absent
McMillian - Absent
Rabena-Amen - Aye
Watkins – Aye
5-0 Motion carried

iv. Care Resources

MOTION: To withdraw Approval Agency Recognition from Care Resources.

M/S: Dominguez/Watkins

VOTE: Alviso – Aye
Dominguez - Aye
Drummer - Aye
Eleby – Absent
McMillian - Absent
Rabena-Amen - Aye
Watkins – Aye
Vote: 5-0 Motion carried

25. Consumer Protection Services Report – Monny Martin

Mr. Martin presented the report as included in the agenda materials and remarked how the performance measures reports are one quarter behind. The Board reviewed the data and commented on the volume.

26. Probation Monitoring Report – Monny Martin

Mr. Martin reported there are 93 licensees on probation, and of the 93 probationers, 8 are tolling and 22 are currently enrolled and participating in the Board’s Drug and Alcohol Recovery Monitoring Program, equaling 27% of all licensees on probation.

Mr. Kaiser commented on the volume of cases being managed by all enforcement staff which needs to be addressed in the future since the enforcement analysts currently are assigned approximately 100 cases each. And, Mr. Martin is monitoring close to that amount at 93 probationers. Dr. Drummer remarked it was impressive that none of the probationers were in violation which was representative of Mr. Martin’s efficiency.

27. New “DCA Search” License Look Up Web Application – Sarah Conley

Ms. Conley presented on the new DCA Search License Look Up Web Application. She advised how it is now real time search and separate from the Board’s search system which avoids taxing the system. She added that the new web application is also mobile friendly.

28. Board Member Elections

(A) President

NOMINATION: Mr. Watkins nominated Dr. Rabena-Amen as Board President.

NOMINEES: Rabena-Amen

MOTION: To elect Dr. Rabena-Amen as Board President.

M/S: Watkins/Alviso

VOTE: Alviso – Aye
Dominguez – Aye
Drummer – Aye
Eleby – Absent
McMillian – Absent
Rabena-Amen – Aye
Watkins – Aye
5-0 Motion carried.

(B) Vice-President

NOMINATION: Dr. Dominguez nominated Dr. Drummer as Board Vice President.

NOMINATION: Dr. Rabena-Amen nominated Mr. Watkins as Board Vice President.

NOMINEES: Dr. Drummer and Mr. Watkins

MOTION: To elect a Board Vice President.

M/S: Rabena-Amen/Dominguez

VOTE: Alviso – Drummer

Dominguez – Drummer
Drummer – Watkins
Eleby – Absent
McMillian – Absent
Rabena-Amen – Watkins
Watkins – Watkins
3-2 in favor of Mr. Watkins/Motion carried.

(C) FSBPT Delegate

NOMINATION: Mr. Watkins nominated Dr. Rabena-Amen as Board FSBPT Delegate
NOMINATION: Dr. Rabena-Amen nominated Dr. Drummer as Board FSBPT Delegate
NOMINEES: Drummer and Rabena-Amen
MOTION: To elect a Board FSBPT Delegate
M/S: Watkins/Alviso
VOTE: Alviso – Drummer
Dominguez – Drummer
Drummer – Rabena-Amen
Eleby – Absent
McMillian – Absent
Rabena-Amen – Drummer
Watkins – Rabena-Amen
3-2 in favor of Dr. Drummer/Motion carried.

(D) FSBPT Alternate Delegate

NOMINATION: Mr. Watkins nominated Dr. Dominguez as Board FSBPT Alternate Delegate
Dr. Dominguez declined the nomination.
NOMINATION: Dr. Rabena-Amen nominated Mr. Watkins as Board FSBPT Alternate Delegate
NOMINATION: Dr. Drummer nominated Dr. Dominguez as Board FSBPT Alternate Delegate
Dr. Dominguez sought information regarding the degree of commitment and accepted the nomination.
NOMINEES: Dominguez and Watkins
MOTION: To elect a Board FSBPT Alternate Delegate
M/S: Alviso/Drummer
VOTE: Alviso – Dominguez
Dominguez – Watkins
Drummer – Dominguez
Eleby – Absent
McMillian – Absent

Rabena-Amen – Dominguez
Watkins – Watkins
3-2 in favor of Dr. Dominguez/Motion carried

(E) FSBPT Back-up Alternate Delegate

MOTION: To adopt the procedure of establishing back-up alternate delegates by alphabetical order of Board members.
M/S: Drummer/Dominguez
VOTE: Alviso – Aye
Dominguez – Aye
Drummer – Aye
Eleby – Absent
McMillian – Absent
Rabena-Amen – Aye
Watkins – Aye
5-0 Motion carried.

29. 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).]

Dr. Rabena-Amen thanked Ms. Welch for service as counsel to the Board.

30. Agenda Items for Future Meeting –

March 22 & 23, 2018
Department of Consumer Affairs
HQ2 Hearing Room
1747 North Market Blvd.
Sacramento, CA 95834

Agenda items for the next meeting are FSBPT's Performance Evaluation Tool (PET), Application Processing and Strategic Planning.

31. Adjournment

The meeting adjourned at 2:47 p.m.

Staff report from the
March 22, 2018
Board Meeting
(Agenda Item 11(C))
and approved
minutes therefrom



Physical Therapy Board of California

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Briefing Paper

Date: March 13, 2018

Prepared for: PTBC Members

Prepared by: Elsa Ybarra

Subject: CCR 1399.15, Guidelines for Issuing Citations and Imposing Discipline (Guidelines)

Purpose: To propose two final revisions to the language of the Guidelines for Issuing Citations and Imposing Discipline included by reference in section 1399.15 of Article 8, Division 13.2, Title 16 of the California Code of Regulations, specifically:

- Definition of Substance Abuse Rehabilitation Programs
- Business and Professions Code section (BPC) 480

Attachments: - Modified language

Background:

The Board initially adopted into regulation the "Model Guidelines for Imposing Discipline" in July 1997. Since then the Board has adopted into regulation, language modifying the title and content of the Guidelines on four separate occasions.

The Board considered further language modifications to address current issues identified by staff and counsel at the August 2017 meeting. Board staff incorporated the modifications and presented it to the Board at the November 2017 Board meeting. The Board made further modifications and was adopted.

Update since the November 2017 meeting:

When revising the Guidelines as directed by the Board at the November 2017 meeting, there were two additional areas identified resulting in further consideration by the Board. Only the sections requiring Board consideration are attached. If approved, these revisions will be incorporated into the existing rulemaking packet.

The two sections are:

- 1) The Definition of Substance Abuse Rehabilitation Programs has been amended to delete the reference to a “diversion program” since it no longer exists pursuant to the current statutes.
- 2) Business and Professions Code section 480 has been amended to include the minimum and maximum disciplines pursuant to each of the specific subsections as specified in BPC 480.

Action Requested:

Consideration of the following motion:

“I move we approve the proposed modified text presented today and incorporate these changes to the existing rulemaking packet approved at the November 2017 Board Meeting. Direct the Executive Officer to take all steps necessary to initiate the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and if no hearing is requested, adopt the proposed regulatory changes as modified.”

DEFINITION OF SUBSTANCE ABUSE REHABILITATION PROGRAMS

The Board does not consider licensees who have been ordered to participate in the Board's ~~diversion~~ Substance Abuse Rehabilitation Program (rehabilitation program) to be "in diversion." ~~Rather,~~ the Board considers these individuals to be in a substance abuse rehabilitation program, (hereafter, referred to as the "rehabilitation program"). As a result, the Board will not use the term "diversion" in these disciplinary ~~g~~Guidelines, to describe licensees on probation or terms and conditions of probation related to the rehabilitation program. Instead the phrase "rehabilitation program" will be used.

There are two pathways into the Board's rehabilitation program:

(1) Participants with drug and/or alcohol addiction issues who have self-referred to the rehabilitation program and are not under a disciplinary order; and, (2) Participants who have been ordered into the Board's rehabilitation program ~~as a result of~~ resulting from violations of the Physical Therapy Practice Act related to drugs and/or alcohol addiction.

Self-Referrals

When a licensee enrolls in the Board's rehabilitation program as a self-referral, the participation is confidential. However, if the rehabilitation program determines a self-referred participant is ~~determined to be~~ is too great a risk to the public health, safety, and welfare to continue the practice of physical therapy, the rehabilitation program shall report the facts shall be reported by the rehabilitation program to the Executive Officer of the Board and shall provide all documents and information pertaining to and supporting that conclusion ~~shall be provided to the Executive Officer of the Board.~~ The Board may refer the matter may be referred for investigation and disciplinary action ~~by the Board.~~ Each physical therapist or physical therapist assistant who requests participation in a rehabilitation program shall agree to cooperate with the rehabilitation program designed for ~~him or her~~ them. Any failure to comply with the rehabilitation program may result in termination of participation in the rehabilitation program.

Probationary Participants

Probationary participants ~~are required to~~ shall comply with terms of probation or risk losing their license. Pursuant to ~~section 315 of the~~ Business and Professions Code section 315, the Board uses the Substance Abuse Coordination Committee's *Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 4-2011)* (hereafter, "Uniform Standards"). A clinical diagnostic evaluation will be ordered as a term of probation and other Conditions Applying the Uniform Standards will also be included.

While self-referred licensees are not subject to terms and conditions in these Guidelines, they are subject to nearly identical contractual terms of participation and the violation of those terms could lead to termination of participation in the rehabilitation program.



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Debra Alviso, PT, DPT

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Katarina Eleby

Tonia McMillian

Physical Therapy Board of California Adopted 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

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).

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

MOTION: To approve the continuance of Natalie Kolbrak Petition for Reinstatement of License.
M/S: Eleby/Alviso
VOTE: Alviso – Aye
Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins - Aye
7-0 Motion carried

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.

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

5. Reconvene Open Session

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

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

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

Mr. Kaiser solicited the Board for their feedback on how the votes for the elections were captured and if the Board agreed with the level of detail and formatting of the meeting 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.

10. Legislation Report – Brooke Arneson

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

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

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

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

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

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

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

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

Ms. Arneson provided a brief overview and update on the status of AB 2386 to the Board. Ms. DeFoe, CPTA Executive Director, reported that CPTA is one of 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

11. Rulemaking Report – Brooke Arneson

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

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

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

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

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

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

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

MOTION: To approve the proposed modified text presented and amended today and incorporate these changes to the existing rulemaking packet approved at the November 2017 Board Meeting. Direct the Executive Officer to take all steps necessary to initiate the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package, 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.

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

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

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

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

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

M/S: Drummer/Dominguez

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

18. Closed Session

(A) Pursuant to Government Code section 11126(c)(3), Deliberation on Disciplinary

Actions and Decisions to be Reached in Administrative Procedure Act Proceeding

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

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

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

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

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

25. Consumer Protection Services Report – *Cristy Livramento*

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

26. Probation Monitoring Report – *Monny Martin*

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

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

27. 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).]

28. Agenda Items for Future Meeting –

June 20-21, 2018
Western University
Rodney P. Wineburg Center (RCW)
Cooper Hall
309 East 2nd Street.
Pomona, CA 91766

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

29. Adjournment

The meeting adjourned at 5:20 p.m.

Staff report from the
June 20, 2018 Board
Meeting (Agenda
Item 15(C)) and
approved minutes
therefrom



Physical Therapy Board of California

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

Physical Therapy Board of California

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Board Members

President

Alicia Rabena-Amen, PT, DPT

Vice-President

TJ Watkins

Members

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Katarina Eleby

Tonia McMillian

Physical Therapy Board of California Adopted Meeting Minutes

June 20, 2018 9:00 a.m.

June 21, 2018 9:00 a.m.

Western University

Rodney P. Wineburg Center (RCW)

Cooper Hall

309 East 2nd Street

Pomona, CA 91766

Board Staff

Jason Kaiser, Executive Officer

Sarah Conley, Manager

Liz Constancio, Manager

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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.

Wednesday, June 20, 2018

1. Call to Order

The Physical Therapy Board of California (Board) meeting was called to order by President Dr. Rabena-Amen at 9:01 a.m. and recessed at 5:39 p.m. on June 20, 2018. The Board reconvened at 9:12 a.m. and adjourned at 5:04 p.m. on June 21, 2018.

2. Roll Call and Establishment of Quorum

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, Monny Martin and Vincent Azar, Board staff.

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

Dr. Rabena-Amen read the Board's mission statement: To advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act.

(A) Petition for Reduction of Penalty – Termination of Probation – Cindy Chunfat, PT

This matter was heard before a quorum of the Board. Rodney P. Wineberg, Administrative Law Judge (ALJ), Office of Administrative Hearings, sat with the Board and presided over the hearing. Nicholas B.C. Schultz, Deputy Attorney General, represented the Attorney General of the State of California, under Government Code section 11522. Petitioner Cindy Chunfat, PT was present and represented herself. Evidence was received, the record was closed, and the matter was submitted for decision.

(B) Petition for Reduction of Revoked License – Natalie Ann Kolbrak

This matter was heard before a quorum of the Board. Rodney P. Wineberg, ALJ, Office of Administrative Hearings, sat with the Board and presided over the hearing. John Gatschett, Deputy Attorney General, represented the Attorney General of the State of California, under Government Code section 11522. Petitioner, Natalie Ann Kolbrak, was present and represented herself. Evidence was received, the record was closed, and the matter was submitted for decision.

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.

The Board went into closed session at 12:07 p.m. and reconvened at 3:00 p.m. on day 1, June 20, 2018.

5. Reconvene Open Session

The Board reconvened at 3:00 p.m. after going into closed session at 12:07 p.m. on day 1, June 20, 2018.

6. Review and Approval of March 22-23, 2018 Meeting Minutes – Brooke Arneson

Mr. Kaiser presented the draft March minutes on Ms. Arneson's behalf. Dr. Dominguez commented on page 12, under Agenda Item #17, there was a typo for the Annual Meeting Delegate Assembly and the date should be amended to October 25-27, 2018.

MOTION: To adopt the minutes as amended with the correction on line 111, correcting the date range 25 through 27.
M/S: Eleby/Watkins
VOTE: Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins - Aye
6-0 Motion carried

7. President's Report – Alicia Rabena-Amen

(A) 2018 Adopted Meeting Calendar

Ms. Eleby questioned whether there was a venue for the December 5-6, 2018 Board meeting. Mr. Kaiser responded that there was not a confirmed location yet.

(B) 2019 Proposed Meeting Calendar

Dr. Drummer informed the Board that the CPTA Annual Conference is planned for October 12-13, 2019 and will be a tri state conference with Nevada and Arizona which will be held in Las Vegas, Nevada. Mr. Kaiser raised doubts on whether PTBC would be able to participate in the outreach event due to the Executive Order restricting out of state travel and that Las Vegas is problematic for State entities to visit.

Dr. Rabena-Amen stated that the Board usually adopts the proposed calendar at the end of the year.

8. Executive Officer's Report – Jason Kaiser

Mr. Kaiser discussed that the Board was focusing its resources to address outreach needs, and an outreach liaison position was established. Mr. Kaiser stated that he was sad to report that the outreach position is currently vacant, and the Board was

reestablishing the position as Communication and Education Analyst. Mr. Kaiser informed the Board that they are currently in the process of recruitment for that position.

Mr. Kaiser stated that legislation regarding Animal Rehabilitation would be reported under the Legislation Report. He apprised the Board that the Veterinary Medical Board (VMB) appointed a new Executive Officer, Jessica Sieferman, and that she will be starting the first week of July. Mr. Kaiser discussed that the VMB is currently promulgating animal rehabilitation regulations, therefore staff are monitoring these proposed regulations for impact to the Board.

Mr. Kaiser reported that Board responded to the 180-day response to DCA's Internal Audit Office (IAO) and that staff continues to work diligently with the IAO to address the findings.

Mr. Kaiser discussed the necessity for the Board's relocation, as the Board has grown to a point where the current suite that was originally designed for 13 staff now has 26 staff. Mr. Kaiser shared that the Board is in lease negotiations and that the soft term of the lease expires in March of 2019. Mr. Kaiser stated that the Board is looking into a space outside of the existing suite or potentially another larger space in the same building. Mr. Kaiser informed the Board that the Department of General Services has a plan to relocate not only the Board, but DCA and the Business, Consumer Services and Housing Agency to a single location in Sacramento that will be a million plus square feet by the year of 2025 so that changes the strategy of how the Board is negotiating their lease.

9. Discussion and Possible Board Action Regarding the Strategic Plan – *Jason Kaiser*

Mr. Kaiser presented the draft of the 2018-2022 Strategic Plan and solicited feedback from the Board. Mr. Kaiser stated that once the Strategic Plan was adopted by the Board, the final version would be sent to DCA's Office of Publications, Design and Editing (PD&E) where it would be put into publishing form similar to the Board's previous Strategic Plan and Progress Notes.

Board members requested that the Strategic Plan be amended with the following: on page 3 include a picture of the Board and a headshot of each Board member; and Dr. Drummer asked that on page 10; Goal 3.5 that the Board's website and e-blast come before the other listed entities under existing technologies.

Dr. James Syms, a licensee, thanked the Board for including Goal 1: Enforcement; 1.1 to identify and implement improvements to the investigation and discipline to decrease enforcement processing times and stated that was very important to decrease claim processing times.

MOTION: To adopt the proposed strategic plan as amended
M/S: Eleby/Watkins
VOTE: Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins - Aye
6-0 Motion carried

10. Public Comment on Items Not on the Agenda

Dr. James Syms questioned why there is a discrepancy in the passing rate of applicants taking the National Physical Therapy Exam (NPTE) versus the California Law Exam (CLE). Mr. Kaiser responded that this question comes up quite often, and that the greatest contributing factor is that students are much more prepared for the NPTE. Additionally, Mr. Kaiser explained that the Commission on Accreditation in Physical Therapy Education (CAPTE) does not require schools to teach about California licensing laws. Mr. Kaiser stated that the Board does try to address the laws and regulations during outreach campaigns and that first-time pass rates are lower on the CLE and that second time pass rates improve greatly. Mr. Kaiser explained that the CLE was developed in the same way as the NPTE, it is psychometrically sound and was created with subject matter experts and that the questions are just as difficult as the questions on the NPTE. Dr. Syms thanked the Board for holding Board meetings at PT and PTA schools and for outreach presentations for students.

11. Recess

The Board recessed at 5:39 p.m. on Wednesday, June 20, 2018 – Day one

Thursday, June 21, 2018

12. Call to Order

The Physical Therapy Board of California (Board) reconvened at 9:12 a.m. and adjourned at 5:04 p.m. on June 21, 2018, day two.

13. Roll Call and Establishment of Quorum

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, Monny Martin and Vincent Azar, Board staff.

14. Legislation Report – Brooke Arneson

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

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

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

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

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

Ms. Arneson provided a brief overview and update on the status of AB 2138 to the Board and stated that the Board has an opposed position on the bill. Ms. Arneson informed the Board that the bill was amended in the Senate the morning of the Board meeting and presented a summary of the recent amendments. Mr. Kaiser stated that would lessen the Board’s ability to take any kind of action on a sole conviction and in this case, as far down as nonviolent crime. Mr. Kaiser stated that this bill as written, would hinder the ability of the Board’s Enforcement Program to investigate something that could be extremely egregious that the Board may consider to be a harm to consumer protection. Mr. Kaiser asked the Board to potentially submit a second letter of opposition. Mr. Kaiser also stated that the number of applicants denied by the Board during the past two fiscal years combined, was very small: only seven applicants were denied licensure due to their criminal history; and of those seven, six were issued a probationary

license and one applicant did not pursue a license after the denial. Mr. Kaiser informed the Board that he has been advocating to try to set up a meeting with the authors office of the bill to discuss the Boards concerns. Dr. Drummer asked how many Boards are within DCA, and how many of those Boards are health care boards. Mr. Kaiser responded that there are 39 Boards and approximately 12 are health care Boards. Dr. Rabena-Amen asked if there was any feedback from the staff of the author regarding the health care Board's concerns of the bill as written. Mr. Kaiser responded that the author's office has acknowledged the concerns of the health care Boards; however, no amendments have been made to address those concerns in the bill. Mr. Kaiser stated that many professional associations have provided opposition and there have been no professional associations in support of this bill. Dr. Rabena-Amen stated that she would be in support of the Board drafting a second letter of opposition.

Dr. James Syms, a licensee, asked Mr. Kaiser to clarify how this bill would be considered a "double standard" for discipline regarding an applicant versus a licensee. Mr. Kaiser responded that under the provision of the bill, as written, it would implement different requirements for initial license as opposed to discipline for a licensee. Mr. Kaiser also explained that this bill would affect the 1441 Standards for substance abusing licensees; it would mitigate the list of violations to serious felonies as defined in the Penal Code. Mr. Kaiser stated that DUI's or possession of controlled substances would no longer be considered a reason for denial of licensure; however, would still be considered for discipline of a licensee.

Ms. Bojack asked for clarification on whether the bill would be limiting the list of violations to serious felonies or violent felonies. Mr. Kaiser responded that the bill initially limited the list of violations to violent felonies and it has recently been amended to serious felonies.

Mr. Kaiser requested authority and direction to pursue meetings with the author and author's staff about AB 2138. Mr. Kaiser also solicited the Board for additional direction regarding a second letter of opposition on AB 2138. Dr. Dominguez requested that stronger language be used in the opposition letter.

MOTION: To authorize the executive officer and staff to draft a letter of opposition to Assembly Bill 2138.

M/S: Drummer/Watkins

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

MOTION: To provide the Executive Officer with the direction to pursue meetings with the authors and/or the author's staff of AB 2138 to present the Board's opposition to the bill and provide the Executive Officer with the requested authority and direction discussed.

M/S: Watkins/Dominguez

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

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

Ms. Arneson provided a brief overview and update on the status of AB 2221 to the Board.

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

Ms. Arneson provided a brief overview and updated the Board that this bill died in the Senate Appropriations Committee.

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.

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

Ms. Arneson provided a brief overview and updated the Board that this bill died in the Senate Appropriations Committee.

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. Mr. Kaiser asked the Board if there were any questions regarding this bill. Mr. Kaiser stated that the most significant amendment was creating its own separate Board instead of under the Occupational Therapy Board of California.

Ms. Eleby questioned whether title protection would be sufficient. Mr. Kaiser responded that title protection was suggested during the last couple legislative sessions, however this legislation would create the California Athletic Trainer Board with its own autonomy and recent amendments narrowed the scope. Mr. Kaiser informed the Board that the past opinion of the Governor has been that title protection would be sufficient.

Dr. Drummer stated that he is concerned as this bill pushes the boundaries of what Athletic Trainers are allowed to do to more than what their education provides for and the scope of patient care that they would provide under this bill would far exceed what an Athletic Trainer is expected to do. Mr. Kaiser responded that he shares the same concerns as Dr. Drummer, however, with the recent amendment limiting the access to that practitioner helps to alleviate some of his concerns.

Dr. James Syms, CPTA member, stated that CPTA has an opposed position to AB 3110 and feels that title protection would be sufficient. Dr. Syms informed the Board that CPTA continues to work with the author's office and legislature to address their concerns. Dr. James Syms, licensee, suggested that the Board consider an "oppose unless amended" position on the bill in lieu of a "watch" position.

MOTION: To authorize the Executive Officer and staff to develop a letter of opposition, unless amended, for AB 3110.

M/S: Drummer/McMillian

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

Dr. Rabena-Amen solicited the Board for suggested amendments to AB 3110. Dr. Drummer stated that he has concerns regarding the insufficient supervision by a physician of an athletic trainer as outlined in this bill. In addition, he raised concerns that the conditions of this bill could allow an athletic trainer to assess a patient's condition and offer treatment and the ability to diagnose is well outside of the education and training of an athletic trainer. Another concern Dr. Drummer stated was the overly broad definition of activity to include anyone who has been injured while moving. Ms. Eleby also raised concerns regarding provisions within AB 3110 that would authorize the Director of the Department of Consumer Affairs to seek and receive donations from the California Athletic Trainers Association and any other private person or entity as an obvious conflict of interest. Ms. Eleby stated that corporate donations or donations from the professional association is not appropriate in the development of this Athletic Trainer Board.

Ms. Bojack recommended that each Board member indicate, in an informal straw poll, whether they approve of the foregoing direction to the Executive Officer. The straw poll was conducted and the foregoing direction to the Executive Officer was approved by the unanimous consent of a quorum of the Board.

viii. Discussion and Possible Board Action Regarding SB 1298 (Skinner) The Increasing Access to Employment Act

Ms. Arneson provided a brief overview and updated the Board that this bill died in the Senate Appropriations Committee.

ix. Discussion and Possible Board Action Regarding SB 1448 (Hill) Healing Arts Licensees: Probation Status: Disclosure

Ms. Arneson provided a brief overview and updated the Board that this bill was amended on June 11, 2018, and on June 19th was referred to the Senate Appropriations Committee. Ms. Arneson clarified that the only Board's that would be affected by the provisions in this bill were those that were listed in the bill language.

15. Rulemaking Report – Brooke Arneson

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

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

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

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

(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

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

Mr. Kaiser clarified that it is difficult to estimate rulemaking timelines with the new review process and that the Board renewed the Retired Annuitant position that Rebecca Marco, the Board's previous Executive Officer, is in to help facilitate rulemaking for an additional fiscal year. Mr. Kaiser stated that at the December 2018 meeting there will be language for the Board to consider regarding the additional rulemaking items that are on the rulemaking calendar.

16. Consumer and Professional Associations and Intergovernmental Relation Reports

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

No representatives were present. Dr. Rabena-Amen stated that the Leadership Issues Forum was coming up the following month.

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

Karen Nelson, Assistant Deputy Director of Board and Bureau Services provided Mr. Kaiser with a written update to be presented on her behalf. Mr. Kaiser advised the Board that the next Leadership Call is scheduled for Monday, June 25th and the next Quarterly Director's Meeting is scheduled for Monday, August 6th. Mr. Kaiser reported

on behalf of Ms. Nelson that the department hosted it's first licensing and enforcement workgroup meeting which identified business processes and best practices that will strengthen the Boards in licensing and enforcement.

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.

(C) California Physical Therapy Association (CPTA)

Mr. Kaiser stated that the CPTA Annual Conference is out of state for 2019, and the Board will make all efforts to attend, however, with the existing Executive Order that only allows out of state travel for mission critical business, the Board may not be able to attend.

17. Closed Session

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

The Board entered closed session on day two, June 21, 2018 at 12:00 p.m.

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

18. Reconvene Open Session

The Board reconvened into open session to adjourn at 5:04 p.m. on day 2, June 21, 2018.

19. Administrative Services Report

(A) Budget

Mr. Kaiser presented the Budget report and stated that the Board is still in transition to the new accounting system, Fi\$cal and 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 and that the budget reports provided in the materials is provided using internal tracking by Board staff and DCA Budget staff since there are no reconciliation reports from the Fi\$Cal system.

(B) Outreach

Mr. Kaiser presented the outreach report to the Board.

20. Application Services Report

Mr. Kaiser presented the Application Services Report. He noted, that there was a 3-5% increase in the number of applications received, and that the Board continues to assess what staffing requirements are needed to facilitate the increase in workload and growth. Mr. Kaiser stated that 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.

Mr. Mitch Kay, PT licensee, stated that many students ask how long, once they receive a passing score on the NPTE can they start to practice physical therapy. Mr. Kaiser responded that if all requirements for licensure are met and there are no deficiencies, a license is issued within 45 days.

21. Licensing Services Report

Mr. Kaiser presented the Licensing Services Report. He reported that there has been an increase in the number of Active licenses and the number of Inactive licenses has decreased since Q3 last year.

(A) Continuing Competency Report

Mr. Kaiser directed the members to the report included in the agenda book. He reported that there are a number of requests to have continuing competency approval recognition removed.

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

i. ABA Physical Therapy Associates

MOTION: To remove recognition from ABA Physical Therapy Associates from our Continuing Competency approval agency.

M/S: Rabena-Amen/Eleby

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

ii. Boehme Workshops, Inc.

MOTION: To remove recognition from Boehme Workshops, Inc. from our Continuing Competency approval agency.

M/S: Drummer/Watkins

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

iii. CHA Hollywood Presbyterian Medical Center

MOTION: To remove recognition from CHA Hollywood Presbyterian Medical Center from our Continuing Competency approval agency.

M/S: Watkins/Drummer

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

iv. Encompass Consulting and Education, LLC

MOTION: To remove recognition from Encompass Consulting and Education, LLC from our Continuing Competency approval agency.

M/S: Eleby/Rabena-Amen

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

v. Evidence in Motion

MOTION: To remove recognition from Evidence in Motion from our Continuing Competency approval agency.
M/S: Watkins/McMillian
VOTE: Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins – Aye
6-0 Motion carried

vi. Medical Consulting Media, Inc.

MOTION: To remove recognition from Medical Consulting Media Inc. from our Continuing Competency approval agency.
M/S: McMillian/Watkins
VOTE: Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins – Aye
6-0 Motion carried

vii. Online EUs.com, Inc

MOTION: To remove recognition from Online EUs.com from our Continuing Competency approval agency.
M/S: McMillian/Watkins
VOTE: Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins – Aye

6-0 Motion carried

viii. Rehab eLearn

MOTION: To remove recognition from Rehab eLearn from our Continuing Competency approval agency.

M/S: Eleby/Drummer

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

ix. Saint Francis Memorial Hospital

Dr. Drummer requested clarification regarding the identification of this hospital. Mr. Kaiser clarified that this hospital is located at 900 Hyde Street, San Francisco, California. Dr. Drummer noted that page 274 of the meeting materials refers to CHA Hollywood Presbyterian Medical Center, rather than Saint Francis Memorial Hospital. Mr. Kaiser clarified that this is an error that will be corrected in the briefing paper.

MOTION: To remove recognition from Saint Francis Memorial Hospital from our Continuing Competency approval agency.

M/S: McMillian/Watkins

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

x. Sonoma Psycho-Oncology

MOTION: To remove recognition from Sonoma Psycho-Oncology from our Continuing Competency approval agency.

M/S: McMillian/Rabena-Amen

VOTE: Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye

Watkins – Aye
6-0 Motion carried

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

Mr. Kaiser stated that the presentation will be postponed due to technical difficulties until the September Board Meeting; however, the materials for the presentation will be included on the Board's website under this meeting.

23. Consumer Protection Services Report

Mr. Kaiser directed the members to the consumer protection services report included in the agenda book. He stated that the Board's newsletters will now include discipline summary reports.

24. Probation Monitoring Report – Monny Martin

Mr. Kaiser directed the members to the probation monitoring report included in the agenda book. He stated that there are 84 probationers monitored by a single probation monitor and many probationers reside in the Southern California region which makes monitoring challenging. Mr. Kaiser stated that Executive Officers will be looking at standard number 4 which looks at bodily fluid testing, and determined if existing rule is appropriate or if advances in technology and available services need to be changed.

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).]

Dr. James Syms asked where to find the proposed language for regulations that the Board adopted at previous meetings. Mr. Kaiser stated that proposed regulations are on the Board's website under the "Proposed Regulations" tab. Mr. Kaiser also pointed out that once legal counsel approves adopted rulemaking language, it will be added to the website. Ms. Bojack also stated that adopted language can be found under the materials for prior Board meetings. Dr. Syms thanked the Board for holding it's June meeting at Western University.

26. Agenda Items for Future Meeting –

September 13-14, 2018
Department of Consumer Affairs, Hearing Room
2005 Evergreen Street
Sacramento, CA 95815

27. Adjournment

The meeting adjourned at 5:04 p.m. on day two, June 21, 2018.

Staff report from the
June 20, 2019 Board
Meeting (Agenda
item 8(B) and
approved minutes



Briefing Paper

Date: June 6, 2019

Prepared for: PTBC Members

Prepared by: Elsa Ybarra

Subject: 1399.15, Guidelines for Issuing Citations and Imposing Discipline (Guidelines)

Purpose: To propose revisions to the language of the Guidelines for Issuing Citations and Imposing Discipline included by reference in section 1399.15 of Article 8, Division 13.2, Title 16 of the California Code of Regulations, specifically:
- Definition of Substantial Relationship and Rehabilitation Criteria

Attachments: Proposed language for BPC Section 480 of the Disciplinary Guidelines (Necessitated by AB 2138)

Background:

The Board initially adopted into regulation the “Model Guidelines for Imposing Discipline” in July 1997. Subsequent to then the Board has adopted language modifying the title and content of the Guidelines into regulation on four separate occasions.

The Board has since considered proposed language modifications to address current issues identified by staff and counsel at the August 2017, November 2017 and the March 2018 meetings. Board staff modified the language adopted by the Board at said meetings accordingly.

However, when learning AB 2138 would most likely be signed by the Governor, Board staff considered the lengthy and burdensome regulatory process and thought it may be prudent to wait before modifying the Guidelines language until legal counsel provided guidance on whether regulatory modifications would be necessary to conform with changes in law that will become operative on July 1, 2020 resulting from Assembly Bill 2138 since these modifications would in turn impact the Guidelines..

It was advised AB 2138 requires boards to amend existing regulations governing substantially related crimes or acts and rehabilitation criteria. The Boards existing regulations addressing substantial relations criteria and rehabilitation reside in sections 1398.20; 1398.21 and 1398.22 of the California Code of Regulations. The proposed amendments to these sections were addressed under Agenda Items 12 B, C and D at the March 2019 meeting.

Action Requested:

Consideration of the following motion: “To approve the proposed regulatory changes as modified and direct the Executive Officer to take all steps necessary to initiate the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period and if no hearing is requested, adopt the proposed regulatory changes as modified.”

PHYSICAL THERAPY BOARD OF CALIFORNIA
PROPOSED LANGUAGE

Proposed amendments to the regulatory language are shown in single underline for new text.

(1) Amend Section 1399.15 in Article 8, Division 13.2 of Title 16 of the California Code of Regulations, Guidelines for Issuing Citations and Imposing Discipline to read as follows:

B&P CODE § 480(a)(1). GROUNDS FOR DENIAL OF APPLICATIONS FOR LICENSURE; CONVICTION OF CRIME

Discipline:

Minimum: License Issued with Public Reapproval

Maximum: Denial of License

Refer to related statute for Conditions of Probation: B&P Code § 490

B&P CODE § 480(a)(2). GROUNDS FOR DENIAL OF APPLICATIONS FOR LICENSURE; DISHONESTY, FRAUD, OR DECEIT

Discipline:

Minimum: License Issued with Public Reapproval

Maximum: Denial of License

Refer to related statutes for Conditions of Probation B&P Code §§ 810 and 2660(j)

B&P CODE § 480(a)(3). GROUNDS FOR DENIAL OF APPLICATIONS FOR LICENSURE; DONE ANY ACT IF DONE BY A LICENTIATE

Discipline:

Minimum: License Issued with Public Reapproval

Maximum: Denial of License

Refer to the corresponding statutes for Conditions of Probation.

B&P CODE § 480(d). GROUNDS FOR DENIAL OF APPLICATIONS FOR LICENSURE; FALSE STATEMENT OF FACT FOR APPLICATION

Discipline:

Minimum: License Issued with Public Reapproval

Maximum: Denial of License

Conditions of Probation:

1) All “Standard Probation Conditions”

2) “Probation Conditions Specific to Violation” for consideration are: A, B, C, D, E, F, J, K, L, M, N

Refer to related statutes: B&P Code §§ 498, 499, 580, 581, 582, 583, 2660(c), and 2660(j)



Physical Therapy Board of California

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

Physical Therapy Board of California

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Board Members

President

Alicia Rabena-Amen, PT, DPT

Vice-President

TJ Watkins

Members

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Katarina Eleby, M.A.

Tonia McMillian

Physical Therapy Board of California Adopted Meeting Minutes

June 20, 2019 9:00 a.m.

June 21, 2019 9:00 a.m.

California State University, Long Beach,
The Barrett Athletic Conference Center,
Room 223
1250 Bellflower Blvd.
Long Beach, CA 90840

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, June 20, 2019

1. Call to Order

The Physical Therapy Board of California (Board) meeting was called to order by President Dr. Rabena-Amen at 9:03 a.m. and recessed at 6:26 p.m. on June 20, 2019. The Board reconvened at 8:59 a.m. and adjourned at 3:06 p.m. on June 21, 2019.

2. Roll Call and Establishment of Quorum

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: Michael Kanotz, Legal Counsel; Jason Kaiser, Executive Officer; Elsa Ybarra, Sarah Conley, Brooke Arneson, Monny Martin, April Beauchamps, Kim Rozakis and Timothy Davis.

Mr. Watkins read the Board's mission statement: To advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act.

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

(A) Petition for Modification of Probation/Termination of Probation – Matthew Isenberg, PT

This matter was heard before a quorum of the Board. Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings, sat with the Board and presided over the hearing. Christine Friar, Deputy Attorney General, represented the Attorney General of the State of California, under Government Code section 11522. Petitioner Matthew Isenberg, PT was present and represented himself. Evidence was received, the record was closed, and the matter was submitted for decision.

(B) Petition for Modification of Probation/Termination of Probation – Kelly Hosking, PT

This matter was heard before a quorum of the Board. Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings, sat with the Board and presided over the hearing. Christine Friar, Deputy Attorney General, represented the Attorney General of the State of California, under Government Code section 11522. Petitioner Kelly Hosking, PT was present and represented herself. Evidence was received, the record was closed, and the matter was submitted for decision.

(C) Petition for Modification of Probation/Termination of Probation – Michael Maga, PT

This matter was heard before a quorum of the Board. Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings, sat with the Board and presided over the hearing. Christine Friar, Deputy Attorney General, represented the Attorney General of the State of California, under Government Code section 11522. Petitioner Michael Maga, PT was present and represented herself. Evidence was received, the record was closed, and the matter was submitted for decision.

After submission of the matters, the Board convened 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.

(C) Pursuant to Government Code section 11126, subdivisions (e)(1) and (2)(A), the Board will convene to confer with, or receive legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

The Board entered closed session at on day one, June 20, 2019, at 1:35 p.m. to deliberate on Agenda Item 3(A), 3(B) and 3(C). The Board reconvened open session at on 5:07 p.m. day one, June 20, 2019.

5. Reconvene Open Session

The Board reconvened into open session at 5:07 p.m. on day one, June 20, 2019.

6. Review and Approval of March 21-22, 2019 Meeting Minutes – Brooke Arneson

Mr. Kaiser presented the draft March 2019, meeting minutes on day two, June 21, 2019 of the meeting. Dr. Rabena-Amen complimented staff on the meeting minutes.

MOTION: Adopt the proposed March 21-22, 2019, Meeting Minutes.

M/S: Eleby/Watkins

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

7. Legislation Report – Brooke Arneson

(A) 2019/20 Legislative Session Summary

Mr. Kaiser presented the legislative report on behalf of Ms. Arneson. He provided the members with important dates from the legislative calendar and stated that the format of the legislative report was changed to provide a better visual on the process and progress of each bill during the legislative session.

i. AB 5 (Gonzalez) Worker Status: Independent Contractors

Mr. Kaiser did not provide an update on AB 5.

ii. AB 71 (Melendez & Kiley) Employment Standards: Independent Contractors and Employees

Mr. Kaiser did not provide an update on AB 71.

iii. AB 193 (Patterson) Professions and Vocations

Mr. Kaiser stated that AB 193 died in Committee.

iv. AB 476 (Blanca Rubio) Department of Consumer Affairs: Task Force: Foreign Trained Professionals

Mr. Kaiser stated that this bill may impact the Board if passed as the Board would participate in the task force regarding foreign trained professionals to determine if there are any unnecessary barriers to licensure for those that are foreign trained.

v. AB 496 (Low) Business and Professions

Mr. Kaiser reported that AB 496 would affect the Board as it opens up the Board's Practice Act to make minor edits to gendered base terms and other basic terms such as "licentiate" would be replaced with "licensee."

vi. AB 544 (Brough) Professions and Vocations: Inactive Licenses Fees and Accrued and Unpaid Renewal Fees

Mr. Kaiser reported that this bill failed the deadline and died in Committee.

vii. AB 613 (Low) Professions and Vocations: Regulatory Fees

Mr. Kaiser reported that AB 613 is authored by Assembly Member Evan Low and it is designed to allow Boards to look at their fees and Boards would be able to increase fees based on the cost book of California; mainly this would be attributed to inflation or other overhead costs. Mr. Kaiser stated that the legislature has heard from many Boards during the Sunset Process regarding the difficulties of justifying and raising fees and this bill would provide another avenue for Boards to pursue.

Dr. Drummer questioned how this bill affects Boards, such as ours, when fees are already at the statutory cap. Mr. Kaiser stated that a great deal of discussion has occurred regarding this issue and because the language in the bill is a separate vehicle for fee increases and separate statutory authority, the statutory language outlined in this bill would supersede the fee cap in statutory language which would allow the Board to increase its fees over the statutory cap based on the price book of California percentage. Mr. Kanotz, legal counsel, added that the fee increase addressed in AB 613 would not be subject to the regulatory process.

Mr. Kaiser stated that there is a great deal of ambiguity regarding the proposed bill text and how it will conflict with existing statutes which has not been addressed yet during the legislative session.

Dr. Drummer clarified that the fee increase would likely be incremental based on the California Price Index which is usually only a few percent. Mr. Kaiser responded that Dr. Drummer was correct and added that this bill would not change the normal regulatory process to increase fees; it would just be adding an additional vehicle for the Board to pursue a fee increase.

viii. AB 1076 (Ting) Criminal Records: Automatic Relief

Mr. Kaiser stated that AB 1076 primarily affects the Department of Justice (DOJ) and specifically the criminal background information that the Board receives from DOJ. This bill would automate DOJ's criminal records relief process and would remove criminal information from the record if an applicant meets the criteria for expungement, it would happen automatically and as a result the Board would not be made aware of a good portion of convictions that currently would be disclosed in the criminal record.

Dr. Rabena-Amen asked what the specified exceptions were as written in the bill text. Mr. Kaiser responded that right now it is a broad term as they will need to determine with all the different Boards, Bureaus, Professions and entities outside of the Department what exceptions will need to be made in the future. Mr. Kaiser further clarified that the exceptions would be professions that would be excluded from this as it would be deemed a danger to the public.

ix. AB 1592 (Bonta) Athletic Trainers

Mr. Kaiser did not provide an update on AB 1592.

x. SB 53 (Wilk & Lackey) Open Meetings

Mr. Kaiser stated that SB 53 looks at the Open Meetings Act and it would require that any committees that the Board would form with two people or more be subject to the Open Meetings Act. This requirement could affect the Board and could create a difficulty in logistics, extended calendar timelines and increase in costs for meetings.

Mitch Kay, physical therapist with the California Physical Therapy Association (CPTA) asked what the costs associated with sending out a notice for a meeting would be and what other expenses would be incurred by the Board. Mr. Kaiser responded that the cost of noticing the meeting is not much since that can be done electronically, however logistically planning the meeting; including securing venues to hold the meetings and webcasting and broadcasting services for public accessibility would be an issue.

Ms. Eleby added that she was concerned with the Board's ability to be nimble and handle Board business in between Board meetings and utilize the smaller Committee to bring issues back to the Board for a decision.

Dr. Rabena-Amen stated she would be comfortable with opposing this bill. Ms. Eleby agreed that she also agreed with opposing the bill. Dr. Drummer added that the Board discussed this bill at the March 2019, meeting and in the past few years, and of note, Governor Brown did veto two separate versions, stating that there is adequate public protection. Dr. Dominguez was not comfortable opposing the bill without the Board suggesting specific amendments. Dr. Drummer stated that the only amendment he would be comfortable suggesting is amending the word "advisory" to action committee or amending it to imply that the committee would have more power than just being advisory to the full Board. Mr. Kaiser added that the Board has not taken a position on this bill when it was introduced in previous legislative sessions.

Dr. Drummer asked that PTBC staff keep the Board apprised of the status of SB 53 and if necessary, the Board could call an emergency meeting or teleconference in August to take a position on the bill and the Board agreed with Dr. Drummer's suggestion.

xi. SB 425 (Hill) Health Practitioners: Licensee's File: Probationary Physicians and Surgeons Certificate: Unprofessional Conduct

Mr. Kaiser did not provide an update on SB 425.

xii. SB 537 (Hill) Workers Compensation: Independent Bill Review

Mr. Mitch Kay, PT and CPTA member spoke on behalf of SB 537 as CPTA introduced this bill. Mr. Kay provided the Board with a summary of SB 537 and stated that in mid-July this bill would be heard by the Assembly Insurance Committee. Mr. Kaiser stated that the bill would be going to the Assembly Appropriations Committee soon. Mr. Kay stated that CPTA will be meeting the last week of June 2019, to discuss potential amendments to SB 537 that will be brought forward by insurance companies. Dr. Rabena-Amen stated that she supported the Board taking a support position on SB 537.

Dr. Drummer questioned if the issues outlined in the bill could potentially create a problem with limiting access to quality and convenient physical therapy care for patients with a worker's compensation case. Mr. Kaiser agreed that it could potentially over time create limited access to physical therapy services. Dr. Rabena-Amen added that she believes that workers compensation consumers do not always get timely care because of this issue.

Mr. Watkins stated he had concerns the Board is not addressing the Board's mandate of protecting the public and this bill could potentially be infringing on advocating for the profession when speaking about compensation and the issues addressed in the bill and asked how the public will be impacted in the short and long term. Mr. Kay responded that wait times have increased for workers compensation consumers and they are at a disadvantage with striving to find local coverage and quality care.

Ms. McMillian stated that she supported SB 537 and Ms. Eleby agreed. Mr. Watkins stated that the Board's mandate is public protection, so he felt a neutral position is better for the Board. Ms. Eleby stated that she felt it was a unique situation where the Board could protect the public and protect its licensees. Ms. McMillian added that consumers would be affected by availability and quality care which directly pertains to the patient. Dr. Drummer added that the author of the bill, Senator Hill, and those supporting the bill would not endorse this cause if it was about financial gain for providers and physical therapists. Dr. Drummer stated that

the author is intently focused on support of the workers compensation system and adequate, proficient and accessible care for consumers of California.

MOTION: To adopt a position of support for SB 537 and authorize the Executive Officer to draft a letter of support to be submitted to the bill's author, the chair of the assembly business and professions committee and the governor should the bill in its current status be enrolled

M/S: McMillian/Eleby

VOTE: Dominguez- Aye
Drummer – Aye
Eleby – Aye
McMillian – Aye
Rabena-Amen - Aye
Watkins – No
5-1 Motion carried

8. Rulemaking Report

(A) 2019 Rulemaking Update – *Brooke Arneson*

- i. Examination Passing Standard/Setting Examination Score
- ii. Guidelines for Issuing Citations and Imposing Discipline, 6th Edition
- iii. Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant/Coursework Tool
- iv. Federation of State Boards of Physical Therapy's (FSBPT) Performance Evaluation Tool for Foreign Educated Physical Therapists Completing a Supervised Clinical Practice in the United States
- v. Substantial Relationship Criteria
- vi. Rehabilitation Criteria for Denial and Reinstatement of Licensure
- vii. Rehabilitation Criteria for Suspensions and Revocations

Mr. Kaiser highlighted that since the previous Board meeting the three rulemaking files regarding the AB 2138 regulations are now with DCA legal counsel for review and we will be working with legal counsel on the Initial Statement of Reasons and will bring this regulation back to the Board for a hearing date.

(B) Discussion and Possible Board Action to Amend Title 16, California Code of Regulations Section 1399.15 Guidelines for Issuing Citations and Imposing Discipline – *Elsa Ybarra*

Ms. Ybarra presented the proposed changes on the Disciplinary Guidelines rulemaking package. Ms. Ybarra referred members to the handout of proposed changes provided. Ms. Ybarra stated that the Board already adopted the Disciplinary Guidelines, however the changes necessitated from the passage of AB 2138 warranted revisions to the Disciplinary Guidelines presented on the handout for Board consideration to avoid having to do another rulemaking package in the future.

Ms. Ybarra stated that the changes were very minor, including updating the Board members and reflecting the new Governor of California. In addition, Ms. Ybarra stated that on the second page of the handout the Denial of Licensure and Issuance of an Initial Probationary License, also needed to be amended to reflect AB 2138 changes. The existing language (four bullets) was deleted and added the bill language from AB 2138 regarding the applicants with criminal convictions.

Mr. Kaiser added that the major changes warranted from the passage of AB 2138 was the time duration for history of criminal convictions of 7 years and also the types of violations that are not listed as substantial crimes within the Penal Code so there will be crimes the Board cannot consider during their deliberation and determination.

Dr. Rabena-Amen asked if those crimes the Board cannot consider were considered by the Board now and Mr. Kaiser responded yes. Dr. Rabena-Amen asked Mr. Kaiser for an example and Mr. Kaiser stated a DUI would be an example; as it is not listed nor defined in the Penal Code as being a significant crime; therefore, a DUI that was over 7 years old would not be able to be considered by the Board in their determination. Dr. Drummer asked in the case where there is a pattern of DUI's how is that affected by the passage of AB 2138. Mr. Kaiser responded that the Board would lose evidentiary pattern as they would only be able to view the convictions that occurred during the 7-year period as evidence of a violation.

Mr. Kaiser stated some additional examples would be domestic disturbances, drunk in public, disturbing the peace etc. which can help the Board in establishing patterns of behavior. Mr. Kaiser stated that sexual misconduct and grand theft is on the list of significant crimes within the Penal Code, so the Board would be able to look at those crimes.

Mr. Kaiser stated that the Board did write a letter of opposition to AB 2138 and the changes proposed to the Disciplinary Guidelines is to plug in the language from AB 2138 into the Disciplinary Guidelines. Mr. Kanotz, legal counsel stated that one thing to note is that AB 2138 only applies to the initial granting of a license; when the Board is

considering discipline all those previous acts are available for the Board's consideration. Mr. Kanotz also clarified that the law doesn't take effect until July 1, 2020 and DUI convictions are still substantially related; however, the 7-year timeframe limits the Board's ability to consider those convictions for an applicant only, not for current licensees.

Ms. Ybarra directed members to page 170-171 which is the new BPC 480 grounds for denial to conform to AB 2138.

Ms. Eleby suggested some minor edits including the following: on page 1 of the proposed language the last bullet point should begin with "the applicant" to be consistent with the other bullet points and the inconsistencies with the use of capitalization on the word "Section" throughout the language should be corrected to be uniform throughout.

MOTION: To approve the proposed regulatory changes as modified and direct the Executive Officer to take all steps necessary to initiate the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period and if no hearing is requested, adopt the proposed regulatory changes as modified.

M/S: Watkins/Eleby

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

(C) Discussion and Possible Board Action to Amend Title 16, California Code of Regulations Section 1398.26.1 Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant – *Brooke Arneson*

Mr. Kaiser presented the proposed language for CCR 1398.26.1 and thanked Mr. Kanotz, legal counsel, for his help in rewriting the proposed language to make it easier to understand. Mr. Kaiser reported that in the process of amending the language, staff

discovered, with the help with Dr. Drummer, that FSBPT is providing a new product, a coursework tool that is updated for Physical Therapy Assistants so the new language for Board consideration includes both PTA Tools 1 and 2. Mr. Kaiser directed the Board to a handout which reflected the addition of both PTA tools.

Dr. Drummer stated that the proposed language is to address foreign trained PT's and PTA's and the beginning and title of this section as written, doesn't fully clarify that this is about foreign trained applicants in programs that are not yet accredited, applying for licensure. Dr. Drummer also stated that not all programs are degree programs, so he suggested that "education" should be used in lieu of "degree." Dr. Rabena-Amen agreed with Dr. Drummer's suggested amendments. Mr. Kanotz, legal counsel, provided the Board with suggested amendments to the language replacing Degree with "Foreign Education" in the title, and in subdivision (a) inserting after "physical therapy educational programs" adding "that are not located in the United States."

Ms. Eleby suggested inserting "FSBPT" before Course Work Tool in subdivision e(7) and e(8) for consistency.

Dr. Drummer questioned whether it was necessary to include the number of coursework tools incorporated by reference in subdivision (e) because it does not take into consideration FSBPT creating new coursework tools in the future which would mean if that occurred the Board would have to amend the regulation again. Mr. Kanotz, legal counsel, stated referencing the number of publications incorporated by reference was not necessary; it was historical language and the Board decided to strike the number "eight" from the proposed language.

Dr. Drummer suggested using that word "appropriate" in lieu of the word "corresponding" in subdivision (b) and to also add at the end of the sentence in subdivision (b) "in accordance with subdivision (e)" to better clarify the publications incorporated by reference. Mr. Kanotz agreed with Dr. Drummer's amendments to subdivision (b).

Ms. Eleby also suggested adding the acronym "(FSBPT)" into subdivision (b) after "Federation of State Boards of Physical Therapy's" to be consistent with the rest of the proposed language.

MOTION: To approve the proposed amended text for noticing a 45-day comment period, and direct staff to take all steps necessary to initiate the formal rulemaking process. If no adverse

comments are received during the 45-day comment period and no hearing is requested, delegate to the Executive Officer the authority to adopt the proposed regulatory changes as modified and make any technical or non-substantive changes that may be required in completing the rulemaking file.”

M/S: Drummer/Eleby

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

9. 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).]

The Board requested public comment on items not on the agenda, and there was no public comment.

Dr. Rabena-Amen welcomed and thanked Mr. Michael Kanotz, the Board’s newly appointed legal counsel.

10. Recess

The Board recessed at 6:26 p.m. on the first day of the meeting, Thursday, June 20, 2019.

Friday, June 21, 2019

11. Call to Order

The Board reconvened at 8:59 a.m. and adjourned at 3:06 p.m. on day two, June 21, 2019.

12. Roll Call and Establishment of Quorum

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: Michael Kanotz, Legal Counsel; Jason Kaiser, Executive Officer; Elsa Ybarra, Sarah Conley, Monny Martin, April Beauchamps, Kim Rozakis and Timothy Davis.

Mr. Watkins read the Board's mission statement: To advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act.

13. Closed Session

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

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

(C) Pursuant to Government Code section 11126, subdivisions (e)(1) and (2)(A), the Board will convene to confer with, or receive legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

The Board did not enter into closed session on Day Two, June 21, 2019, of the Meeting.

14. Reconvene Open Session

The Board did not enter into closed session on Day Two, June 21, 2019, of the Meeting.

15. President's Report – *Alicia Rabena-Amen*

(A) 2019 Adopted Meeting Calendar

Dr. Rabena-Amen questioned the location for the September 18-19, 2019, meeting and Mr. Kaiser stated that the location is still being finalized; however, the meeting would take place in the Bay Area. Mr. Kaiser also stated that the December 12-13, 2019, meeting would take place in Sacramento, at the DCA Hearing Room on Evergreen Street. Ms. Eleby asked that the FSBPT Leadership Issues Forum on July 13-14, 2019, be highlighted on the calendar.

(B) 2020 Proposed Meeting Calendar

Dr. Rabena-Amen presented the 2020 meeting calendar. Dr. Drummer questioned the dates that were scheduled in the Bay Area and the Southern California for the June and September meetings. Mr. Kaiser responded that staff try to consider the legislative calendar, educational programs, graduating classes timeframes when picking dates and locations for the Board meetings in hopes to get more student participation from the programs.

Dr. Drummer informed the Board that CPTA's Annual Conference will be held on October 2-4, 2020 in Anaheim, CA and he would like that added to the 2020 proposed calendar.

Dr. Rabena-Amen stated the Board would take action on this calendar at the December 2019, meeting.

16. Executive Officer's Report – Jason Kaiser

Mr. Kaiser presented the Executive Officer's Report.

(A) Administrative Services

Mr. Kaiser welcomed Timothy Davis to the Board who will be serving as a liaison for the PTBC Board members. Mr. Kaiser stated the Board currently has multiple vacancies and a few more that the Board will be recruiting for in July. Mr. Kaiser stated that the Board will be recruiting for an Assistant Executive Officer. Dr. Rabena Amen asked Mr. Kaiser when PTBC anticipates hiring the additional staff and Mr. Kaiser responded that most of the positions go into effect July 1, 2020; however, there is not room at our current location to accommodate additional staff above the few positions the Board is already recruiting for.

(B) Applications

The Board was referred to Agenda Item 20 for a detailed report.

(C) Licensing/Continuing Competency

The Board was referred to Agenda Item 21 and 22 for a detailed report.

(D) Consumer Protection Services

The Board was referred to Agenda Item 23 for a detailed report.

(E) Outreach

The Board was referred to Agenda Item 18(B) for a detailed report.

(F) PTBC Relocation

Mr. Kaiser reported that the Board is on track for relocation upstairs and is currently in the planning phase and transitioning to negotiations phase and staff will be preparing the floor plan, selecting and approving new equipment and furniture. Dr. Rabena-Amen asked if there was a timeline for the move upstairs and Mr. Kaiser responded that he anticipated that the Board would be in the new location by June 2020. Dr. Rabena-Amen asked if there was additional information on DCA moving to a central location. Mr. Kaiser responded that the plan to move all the DCA Boards and Bureaus to a centralized location has been cancelled because of logistical issues.

Ms. McMillian requested that when staff are choosing furniture and equipment to also take into consideration employees who are breastfeeding and need additional resources to facilitate those needs. Mr. Kaiser responded that the Board has a designated lactation room in the building.

(G) Strategic Plan

Mr. Kaiser reported that staff are working on the objectives and goals outlined in the Strategic Plan as well as with the facilitator from SOLID. He stated that as part of the PTBC's action plan, staff satisfaction surveys were sent to staff to complete and will establish a baseline measurement of employee satisfaction and SOLID facilitated a focus group to address solutions and tie them into the existing strategic plan.

Dr. Rabena-Amen stated that this meeting will be Vice-President Watkins last meeting on the Board and expressed her concern with having two vacancies on the Board which could potentially put the Board in jeopardy of having a quorum. Mr. Kaiser added that Mr. Watkins position is appointed by the Speaker of the Assembly, so staff will be reaching out to them to fill the vacancy.

17. Consumer and Professional Associations and Intergovernmental Relation Reports

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

No representatives were present. Ms. Eleby, the Board's FSBPT delegate reported on behalf of FSBPT. She stated that FSBPT will be holding its Leadership Issues Forum on July 13-14, 2019, in Alexandria, Virginia. Ms. Eleby reported that additionally, FSBPT would be holding Regulatory Training for

Members and Board Staff including legal counsel on August 16-18, 2019, also in Alexandria, Virginia. Ms. Eleby stated FSBPT would also be holding their 2019 Annual Meeting and Delegate Assembly on October 24-26, 2019, in Oklahoma City, Oklahoma.

Ms. Eleby asked if the other members of the Board who sit on taskforces or committees had any updates for the Board. Dr. Rabena-Amen stated that the member survey task force survey results would be presented during the Leadership Issues Forum (LIF) meeting in July 2019. Dr. Dominguez stated that the education committee is finalizing programming and the committee is working on a theme for next year. Mr. Kaiser stated that the Board assessment taskforce meets on Monday, June 25, 2019, to finalize their presentation for LIF and the endorsement or taskforce geared toward license verification/endorsement has finalized their recommendations and will be presenting those also at the LIF meeting.

Ms. Eleby stated that FSBPT recently participated in the International Network of Physiotherapy Regulatory Authorities conference in Geneva, Switzerland in May 2019.

Ms. Eleby reported that Colorado is now accepting compact privileges as part of the PT compact, Delaware recently introduced compact legislation and Maryland's Governor signed the PT compact bill making Maryland the 25th state to issue licensure compact privileges. Ms. Eleby stated she can share with staff an updated licensure compact map. Mr. Kaiser clarified that 25 states are in the licensure compact; however only 4 or 5 states are issuing the privileges which changes on a quarterly basis as states promulgate regulation.

Ms. Eleby stated that a NPTE workshop is now available on the west coast and FSBPT is preparing to host the NPTE workshop for educators on Saturday and Sunday, October 5-6, 2019, in Los Angeles at the Hyatt Regency. She reported that educators should expect to receive insight on how the NPTE is developed and how to prepare students for the NPTE as well as hands on assistance on writing tests similar to the NPTE.

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

Karen Nelson, Assistant Deputy Director of Board and Bureau Services provided an update to the Board on behalf of DCA. Ms. Nelson reported that Director Dean Graffilo left his post as Director of DCA on April 19, 2019, and the Governor's office is currently working toward finding a new successor. Ms. Nelson stated that during the transition, Chief Deputy Director, Chris Shultz hosted the June 3rd Director's Quarterly Meeting.

Ms. Nelson reported that in January DCA launched a publicly accessible page where the public can view licensing statistics for all of DCA's Boards and Bureaus and in April they incorporated the enforcement and application data into the portal which will be helpful to Boards and Bureau's in providing data and statistics.

Ms. Nelson stated that on May 22nd the Future Development Leadership individuals graduated, and Ms. Nelson thanked Mr. Kaiser for his participation in the steering committee. Ms. Nelson also thanked Mr. Watkins for coming to the Board panel for one of the sessions and the participants expressed their appreciation for his presentation.

Ms. Nelson reported that DCA retained KH Consulting to conduct the Executive Officer Salary Study and there was a slight delay due to challenges from receiving information from other states to compare with DCA Boards. Ms. Nelson stated that the study is currently being reviewed by Agency and DCA is aiming to release the final report in the next few weeks and as soon as it is released, DCA will convene a teleconference with the Executive Officers as well as Board Presidents so they can provide an overview of the findings. Ms. Nelson stated that DCA will be meeting individually with the programs to go over the findings in detail.

Ms. Nelson reminded the Board that all Board members and DCA employees are required to complete the sexual harassment prevention training this year. Ms. Nelson also informed the Board that DCA is working very closely with Agency and the Governor's Office in making sure that appointments and vacancies are addressed, and she stated that she would inform them that there could be a quorum issue with the Board's two current vacancies.

(C) California Physical Therapy Association (CPTA)

No presentation was made on behalf of CPTA.

18. Administrative Services – Discussion and Possible Board Action

(A) Budget Report – *Kim Rozakis*

Ms. Rozakis presented the Budget Report on behalf of budget staff. She reported that for fiscal year 2018/19, there is a projected reversion of \$150,000 to the fund streamlining the cost savings.

Ms. Rozakis informed the Board that the Spring Finance Letter was approved by the Department of Finance which will provide for funds for the Board's location move. Mr. Kaiser added that the Spring Finance Letter (SFL) will allow for the Board to use

the money already set aside in the Architecture Revolving Fund (ARF) to assist the Board with the move. Mr. Kaiser also stated that the authority for those funds are only available for a certain amount of time, so it creates a sense of urgency for the move to be done timely.

Ms. Eleby asked how much money was set aside in the ARF and Mr. Kaiser answered that \$550,000 has been saved. Ms. Eleby asked how much the total move would cost the Board and Mr. Kaiser responded that the Board is still in the estimates phase of the move; however, since the Board is moving into undeveloped space the costs could be higher than the money set aside in the ARF.

Mr. Kaiser added that an SFL is a budget change proposal that is off calendar; its for emergency situations that cannot wait for the regular budget change proposal process. Dr. Rabena-Amen asked how many times the Board has used a Spring Finance Letter in the past and Mr. Kaiser responded that this is the second time the Board has considered an SFL; and the first time the Board found other means and did not pursue an SFL. Mr. Kaiser added that this SFL applies to all the Boards, and Commissions within DCA that are moving from the Evergreen Street Location.

Ms. Eleby asked when the traditional budget change proposal season was, and Mr. Kaiser responded that it is a year long process and budget change proposal concept papers are being prepared now and they go along with the governor's budget timeline. Mr. Kaiser added that the budget change proposals are done in August and approval is heard usually around March.

Dr. Rabena-Amen asked what the \$99,000 scheduled reimbursement was for and Mr. Kaiser responded that it is a placeholder for fingerprint processing costs. Mr. Kaiser clarified that scheduled reimbursements are for things that we know of and then there are also unscheduled reimbursements, such as cost recovery that are unknown.

Dr. Drummer questioned why the general expense line item is at 123% of the budget spent. Mr. Kaiser responded that there are a few line items where the Board is exceeding their authorized budget and that budget staff throughout the year will continue to readjust the line items.

Dr. Drummer asked why the Board Member line item is over expended and Mr. Kaiser responded that historically, the Board usually over expends that line item and those costs are attributed to travel and per diem expenses which can include case

review etc. Dr. Rabena- Amen asked if that line item was unusual from previous fiscal years and Mr. Kaiser responded no and that it would be readjusted in the next fiscal year or two. Ms. Eleby thanked the Board's budget analyst, Carl Nelson for his diligence in monitoring the Board's budget.

(B) Outreach Report – *April Beauchamps*

Ms. Beauchamps reported that the Board's website had a 6% decrease with the laws section having the most significant decrease at 17% compared to prior fiscal year. Ms. Beauchamps stated that the reason for the decrease on the laws section is due to more outreach being done at schools where the laws and regulation books are being handed out and QR codes are being given to the students, so they access the laws and regulations through downloading the pdf instead of using the website page.

Ms. Beauchamps stated that the forms page had the second largest decrease of 16% and this is due to the Board going green and removing the forms and directing users to use BreZE. Ms. Beauchamps reported that the "About Us" section of the website has also increased due to social media directing people to that tab for meeting agendas locations etc.

Ms. Beauchamps reported a 43% increase in the traffic for Facebook and stated that she added FaceBook Definitions to the outreach briefing paper. Ms. Beauchamps stated that the post with the most activity this quarter was the Skate MD video which reached 6.9 thousand people and there were 580 clicks, and 483 engagements (which includes likes, hearts, wows, comments and shares).

Ms. Beauchamps reported that the Board conducted four outreach events this quarter: University of the Pacific on January 16th, California State University, Fresno on January 22nd, University of California, San Francisco /San Francisco State University on February 5th and University of the Pacific again on February 13th.

Ms. Beauchamps stated that the Spring 2019 Progress Notes were released in May and the Board has gotten a lot of great feedback on the publication. Ms. Beauchamps informed the Board that the progress notes contained an article about hosting a board meeting and two schools have already contacted the Board wanting to host a meeting. In addition, Ms. Beauchamps reported schools that the Board has yet to visit, have contacted the Board requesting outreach presentations.

19. Discussion and Possible Board Action on the Board Member Administrative Manual – April Beauchamps

Ms. Beauchamps presented the Board Member Administrative Manual for Board consideration. The Board made additional edits to the proposed Board Member Administrative Manual.

MOTION: To approve the Board Administrative Manual as amended and grant the Executive Officer and his staff to make any non-substantive changes

M/S: Eleby/Watkins

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

20. Application Services – Discussion and Possible Board Action – Sarah Conley

- (A) Program Updates
- (B) Statistical Reports

Ms. Conley reported that applications have increased 20%, (approximately 100 applications) which is a significant impact to workload. Ms. Conley stated that there are strategies to mitigate the negative impact to the increased workload which include external strategies such as increased outreach and having applicants apply online and internal strategies such as system changes and processes. Ms. Conley stated that the Board’s outreach strategies have been successful in disseminating information which is reflected in the statistical reports that show the online PT and PTA applications have increased significantly. Ms. Conley stated that staff remain focused on increasing the use of the online application as BreEZe accounts are further developed with increased functionality.

Ms. Conley reported that the percentage of military applications increased significantly, and the number of licensees and exam statistics remain consistent in comparison to last fiscal year.

Mr. Kaiser added there may be two more PTA programs in Northern California soon and an additional three PTA programs have applied with the Commission on Accreditation in Physical Therapy Education (CAPTE) and are at various stages in the development process.

Dr. Drummer noted the lack of variability in the passing score statistics between the previous fiscal year and year-to-date this fiscal year.

Dr. Rabena-Amen stated that she would like to see the pass rates go up for the California Law Exam and questioned whether there is an emphasis on the laws and regulations in the school programs. Dr. Rabena-Amen added that she does not want the emphasis to be on just studying to pass the exam but rather on knowing the California practice act.

21. Licensing Services – Discussion and Possible Board Action – Sarah Conley

- (A) Program Updates
- (B) Statistical Reports

Ms. Conley reported that there is an increase in the number of address changes submitted online from last year and additionally, the number of renewal and name change transactions processed has increased. Ms. Conley also stated that the number of address changes, duplicate and verification requests have decreased which is attributed to licensees being encouraged to utilize online transactions through BreEZe in lieu of using paper forms.

Ms. Conley added that staff workload is more reconciling reports vs. data entry because licensees have more control (through BreEZe) over their own information and they can go into their account and update their information and many requests can be processed instantaneously once done online.

Ms. Eleby asked that a chart be added to the materials that shows the number of total licensees by license type.

Dr. Rabena-Amen questioned what a verification request is, and Ms. Conley responded that it is also referred to as an endorsement and is certifying a California license when the licensee is applying in another state.

22. Continuing Competency Services – Discussion and Possible Board Action – Sarah Conley

- (A) Program Updates
- (B) Statistical Reports

Ms. Conley reported that there was an update to the materials for the quarter 2 PT pass rate of 93% as a pending audit was resolved. Ms. Conley stated that the PTA audit pass rate is 81%.

Dr. Rabena-Amen asked how quickly approval agencies who have lost continuing competency recognition are reflected on the Board's website and Ms. Conley responded that the website reflects this information within a few weeks from the date recognition was removed by the Board. Mr. Kaiser added that the Board's website shows when recognition was removed from an approval agency which provides a history record for the agency.

Ms. Conley added that the strategic plan developed with the help of DCA's SOLID has been extremely helpful with streamlining the Board's goals and objectives and tracking the Board's progress in meeting the goals identified in the Board's strategic plan.

23. Consumer Protection Services – Discussion and Possible Board Action– *Elsa Ybarra*

- (A) Program Updates
- (B) Statistical Reports

Ms. Ybarra referred members to the CPS report and stated that the quarter 3 statistics look great and gave thanks to her staff for their continued hard work.

Mr. Kaiser stated that the statistic for the year-to-date transmittals to Attorney General (total average days to complete) is only 518.3 which is under the Consumer Protection Enforcement Initiative (CPEI) performance measures which is difficult to accomplish. The Board thanked Ms. Ybarra and staff for their hard work.

24. Probation Monitoring Services – Discussion and Possible Board Action – *Monny Martin*

- (A) Program Updates
- (B) Statistical Reports

Mr. Martin reported that the Board currently has 88 licensees on probation for various causes with 16 tolling out of state. Mr. Martin stated that 16 licensees are currently participating in the Board's Drug and Alcohol Recovery Monitoring Program, equaling 22%.

Mr. Martin reported that 4 licensees entered probation and 5 licensees completed probation in quarter 3. Mr. Martin added that 3 licensees entered, and 3 licensees completed Maximus, the Board's Drug and Alcohol Recovery Monitoring Program.

Mr. Martin stated that he has been working on a new contract for the Board's Drug and Alcohol Recovery Monitoring Program along with other Drug and Rehabilitation Program Managers and DCA's contract unit and the contract should go out to bid soon and those bids will be scored in September, so a vendor is anticipated to be in place by the end of this year.

Ms. Eleby asked what the contract term length is for the Board's Drug and Alcohol Recovery Monitoring Program and Mr. Martin responded that the contract the Board is currently in with Maximus was for 5 years with two extension years built into the contract and the Board is currently in the last of the two extension years. Mr. Kaiser added that a great deal goes into the contract negotiation and it can be a very lengthy process.

Ms. Eleby asked if the Board could receive the probation monitoring report that is included in the evidence to review, for petitioners, prior to the hearing. Mr. Kaiser stated he would consult with the Attorney General on the discovery process because defense counsel should be privy to that as well, so there may be a timing issue with that. Ms. Ybarra added that the probation report is usually provided by the petitioner and they are aware of it, and it is part of the discovery process and it is kept back until the Attorney General presents it as part of the evidence. Mr. Kanotz, legal counsel stated that he will research this issue and see how the probation monitoring report could be provided in advance to the Board if possible.

Dr. Drummer asked how many probationers are in Northern California vs. Southern California and Mr. Martin responded that he groups probationers into two groups: the Los Angeles greater area and everywhere else in California and that the Los Angeles greater area has about half of the Board's probationers. Dr. Rabena-Amen asked Mr. Martin how long the visits with probationers are and he responded they are about 45 minutes to an hour which makes it a challenge to fit too many in one day. Mr. Kaiser added that the potential for probationers is about 100 at any given time; and that the Board would want a face to face visit with every probationer every quarter or as needed which is hard for one probation monitor to accomplish which is why the Board is trying to provide justification to increase the probation monitoring program to increase the level of its effectiveness.

25. Board Member Training – Travel Procedures – *Kim Rozakis and Timothy Davis*

Due to time constraints, no presentation was made on the Travel Procedures and it will be moved to the September 2019, meeting.

26. 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).]

Davit Shambazyan, a first-year physical therapy student at California State University, Long Beach, approached the Board with some questions. Mr. Shambazyan asked how many times a year the Board meets in Long Beach and Mr. Kaiser responded that the Board meets quarterly, and one of those 4 meetings is designated to be held in Southern California. Mr. Shambazyan stated that he looked forward to attending meetings in the future and would speak with his cohorts on attending meetings of the Board. Mr. Kaiser added that Board staff would be back at CSU, Long Beach in a few weeks to give a presentation to the students on the application process and the role and history of the Board. Dr. Drummer also informed Mr. Shambazyan that the first day of the meeting included hearings of licensees under probation and that those archived webcasts could be found on the Board's website or YouTube. Ms. McMillian added that the Board is made up of both professional members and public members.

Joan Van Natta, licensed physical therapist, stated that the Board meeting process was much more complex than she expected and thanked the Board for their hard work and the opportunity to be a part of the process.

27. Agenda Items for Future Meeting –

September 18-19, 2019
TBD, Bay Area, CA

Ms. Eleby and Dr. Drummer requested that there be an election for vice-president to account for Mr. Watkins vacant Board position.

Ms. Eleby requested a presentation or handout from Maximus on what the clinical diagnostic exam entails to get a better understanding of how an individual is deemed appropriate or not appropriate and how that is measured. Ms. Eleby also asked for a course outline or syllabus for the diversion program and what Maximus uses to determine when someone can be released from the program. Ms. Eleby stated that this could wait until the Board is back in Sacramento.

Dr. Drummer requested an agenda item to discuss modifying the current pocket license or potentially dispensing with the pocket license because this information is immediately available and accurate and current online.

Dr. Dominguez asked for a presentation on the mechanics of the adjudication process and how to go through a case and extract the pertinent information and formulate an opinion. Dr. Drummer added in this presentation he would like to have a refresher on the role of the DAG and Counsel, the overlap and separation of the Board and how the pieces play together in the process. Mr. Kanotz stated he would be happy to help work on this presentation and stated that this might be better suited for when the Board is back in Sacramento for a Board meeting.

Mr. Watkins requested that once a year a presentation should be provided to delineate when the Board is in the public protection mandate vs. discussing the profession and that it is an important boundary to observe and Mr. Watkins felt that the Board could never get enough training on the importance of that separation.

Mr. Kaiser asked if the Board would be interested in the services that the Office of Administrative Hearings (OAH) provides by a representative from OAH or an Administrative Law Judge. The Board stated they would like a presentation by OAH. Mr. Kanotz stated this could be included in the adjudication process presentation.

Dr. Rabena-Amen stated that she would like to revisit the Board's California Law Exam (CLE) to discuss the law exam and continue the discussion about future licensee's knowing the law vs. passing an exam.

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.

28. Adjournment

The meeting adjourned at 3:06 p.m.

Staff report from the
September 17, 2020
Board Meeting
(Agenda item 11(C))
and approved
minutes of the Board



Briefing Paper

Date: September 3, 2020

Prepared for: PTBC Members

Prepared by: Clay Jackson

Subject: 1399.15, Guidelines for Issuing Citations and Imposing Discipline (Guidelines)

Purpose: To propose revisions to the language of the Guidelines for Issuing Citations and Imposing Discipline included by reference in section 1399.15 of Article 8, Division 13.2, Title 16 of the California Code of Regulations

Attachments: [Modified language](#)

Background:

The Board initially adopted into regulation the “Model Guidelines for Imposing Discipline” in July 1997. The Board has since adopted language modifying the title and content of the Guidelines into regulation on four separate occasions.

The Board has considered proposed language modifications to address current issues identified by staff and counsel at the August 2017, November 2017, March 2018 and the June 2019 meetings. Board staff modified the language adopted by the Board at said meetings accordingly and referred the materials to the Department of Consumer Affairs’ to begin the Initial Phase of the review in June 2019. In the most recent review, two sections were identified for modification and require consideration for adoption by the Board. They are as follows:

“SUBSTANCE ABUSE REHABILITATION PROGRAM - OVERVIEW OF PARTICIPANT REQUIREMENTS & AND COSTS”

Staff is proposing to delete all reference to costs associated with the Substance Abuse Rehabilitation Program to avoid having to amend California Code of Regulation section 1399.15 each time the costs escalate. The costs are set by the contracted vendor of the program and not by the Board.

PROBATION CONDITIONS SPECIFIC TO VIOLATION

New section "BB." Biological Fluid Testing – language was stricken in error. Staff is proposing to restore it back to its original state.

Action Requested:

If the language is approved as proposed, the motion is as follows:

“Approve the proposed regulatory text for Title 16, CCR section 1399.15, and direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review, and, if no adverse comments are received, authorize the Executive Officer to take all steps necessary to amend the preceding rulemaking package, initiate a revised rulemaking process, make any non-substantive technical or grammatical changes to the package, and set the matter for hearing if requested.”

SUBSTANCE ABUSE REHABILITATION PROGRAM

Monthly Administrative Fee: The participant shall pay the monthly administrative fee directly to the rehabilitation program. ~~The monthly administrative fee is currently \$288. The monthly administrative fee may increase 3-5% annually each July. Costs Fees are dependent on the contracted costs. For additional information, please visit <https://www.ptbc.ca.gov/licensees>~~

Random Biological Testing (RBT) & Fee: ~~Currently the average cost of each RBT is approximately \$60.00 plus the collection fee at the testing site which can cost up to \$125.00 and possibly more if the applicant is required to test on a weekend. Additionally, there are charges for the medical review officer (MRO) who reviews any positive drug test results, at the Board's request. Medical reviews are usually a direct result of problematic (i.e. positive) RBT results.~~

~~The participant is required to pay the RBT at a fee set by the rehabilitation program. The frequency of testing can vary and is scheduled randomly throughout the year, including weekends and holidays. For additional information, please visit <https://www.ptbc.ca.gov/licensees>~~

Professional Support Group Meeting Fees: The participant pays the monthly support group meeting fees directly to the support group facilitator. Support groups all charge different fees and negotiate directly with the participant. ~~For additional information, please visit <https://www.ptbc.ca.gov/licensees>. Average costs range from \$200-\$500 monthly. Participants may be required to attend support groups once or twice weekly.~~

XBB. Biological Testing

Respondent shall immediately submit to ~~and pay for~~ any random and directed biological fluid or hair sample, breath alcohol, or any other mode of testing required by the Board, or its designee. All examination(s) and laboratory testing costs associated with this condition shall be paid by Respondent.

Respondent shall be subject to a minimum range of fifty-two (52), ~~but not to exceed, to~~ one-hundred and four (104) random tests, per year, within the first year of probation, and a minimum range of thirty-six (36) ~~to one-hundred and four (104)~~ random tests, per year, thereafter, for the duration of the probationary term. However, in cases where there is evidence that the Respondent has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

Respondent shall make daily contact, as directed by the Board, to determine if ~~he or she~~ the Respondent must submit to drug testing. To ensure test results are sent immediately to the Board, Respondent shall have the test performed by a Board-approved laboratory, that is certified and accredited by the U.S. Department of

Commented [YE1]: Staff is proposing to delete all reference to costs associated with the Substance Abuse Rehabilitation Program to avoid having to amend California Code of Regulation section 1399.15 each time the costs escalate. The costs are set by the contracted vendor of the program and not by the Board.

Commented [YE2]: Same as above.

Commented [YE3]: Same as above.

Health and Human Services, on the same day that ~~he or she~~ the Respondent is notified that a test is required. ~~This shall ensure that the test results are sent immediately to the Board. Failure to comply~~ If Respondent fails to comply within the time specified, it shall be considered an admission of a positive drug screen and constitute a violation of probation. If ~~the~~ a urine test results in a determination that the urine was too diluted for testing, the result shall be considered an admission, by Respondent, of a positive urine screen and constitutes a violation of probation.

If a positive result is obtained, the Board may order suspend Respondent to cease all practice, and require Respondent to immediately undergo a physical examination and complete laboratory or diagnostic testing to determine if any underlying physical condition has contributed to the diluted result ~~and to suspend Respondent's license to practice. Any such examination or laboratory and testing costs shall be paid by Respondent.~~ A positive result in this case, is one which, based on scientific principles, indicates Respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined Respondent altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and Respondent must cease practicing. Respondent shall not resume practice until notified by the Board. If Respondent tests positive for a banned substance, Respondent shall be contacted and instructed to leave work and ordered to cease all practice. Respondent shall not resume practice until notified by the Board. All alternative drug testing sites, due to vacation or travel outside of California, must be approved by the Board prior to the vacation or travel.

[Optional language: This condition may be waived or modified by the ~~Board's~~ Board's Probation Monitor or its designee upon a written finding by the Clinical Diagnostic Evaluator that Respondent is not a substance abusing licensee.]

The "Exceptions to Testing Frequency Schedule" identified in Uniform Standard #4 apply.

Commented [YE4]: Previous proposed language replaced the word "diluted" with "positive" in this sentence; however, after further review, it was noted this change of the word would lose its ability to differentiate the intent.

Commented [YE5]: Previous proposal struck this section of the paragraph in error because it was thought to be duplicative; therefore, proposing to restore the language to its original state.



Board Members

President

Alicia Rabena-Amen, PT, DPT

Vice-President

Katarina Eleby, M.A.

Members

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Tonia McMillian

Vacant, Professional Member

Vacant, Public Member

Physical Therapy Board of California Adopted Meeting Minutes

September 17, 2020 9:00 a.m.

Department of Consumer Affairs
Public WebEx and Teleconference
Platform

Board Staff

Jason Kaiser, Executive Officer

Sarah Conley, Manager

Liz Constancio, Manager

Elsa Ybarra, Manager

Brooke Arneson, Executive

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, September 17, 2020

1. Call to Order

The Physical Therapy Board of California (Board) meeting was called to order by President Dr. Rabena-Amen at 9:18 a.m. and adjourned at 4:04 p.m. on September 17, 2020.

2. Roll Call and Establishment of Quorum

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

All members were present, and a quorum was established. Also present at the meeting were: Michael Kanotz, PTBC Legal Counsel; Jason Kaiser, Executive Officer; Brooke Arneson, Board staff, and Trisha St. Clair, DCA SOLID Webcast Moderator.

Dr. Drummer read the Board's mission statement: To advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act.

3. 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).)

The Board requested public comment on items not on the agenda, and there was no public comment.

4. Review and Approval of June 25, 2020 Meeting Minutes – Brooke Arneson

Ms. Arneson presented the draft June 25, 2020, meeting minutes. Dr. Drummer asked that Mr. Kanotz's title of "DCA Legal Counsel", be edited to specify that he is the "Boards Legal Counsel." Dr. Drummer stated on page 25, that Ms. Kalis's name was misspelled.

MOTION: Adopt the proposed June 25, 2020, Meeting Minutes as amended.

M/S: Dominguez/McMillian

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

5. President's Report

(A) 2020 Adopted Meeting Calendar

Mr. Kaiser suggested keeping the proposed December 10-11, 2020, meeting on the calendar and at this time anticipated that it would be a WebEx format and if Board business mandated that it would not be a two-day meeting, the meeting would be held on December 10th.

Dr. Drummer added that the CPTA Conference would be held on October 3-4th, 2020 and that it would be a virtual event.

(B) 2021 Proposed Meeting Calendar

Mr. Kaiser stated that the 2021 proposed meeting calendar was provided for informational purposes and no adoption of the 2021 calendar was necessary at this time. Mr. Kaiser added that due to the pandemic, he proposed leaving the 2021 calendar dates as they are on the calendar and re-visiting them at the next meeting to make any changes.

Dr. Syms informed the Board that the CPTA Annual Conference for 2021 will be October 9-10, and it is still to be determined if it will be an in-person meeting or virtual event.

6. Executive Officer's Report

(A) Administrative Services

Mr. Kaiser reported that the Board is currently recruiting for a few vacancies; and with COVID, teleworking and staff redirected to contact tracing, having these vacancies filled is of the utmost importance. Mr. Kaiser stated that the Board is recruiting for a Probation Monitor within the Consumer Protection Unit; a Staff Services Analyst to be the Board Member's Liaison in the Administrative Services Unit; and an Office Technician in the Application Unit.

Mr. Kaiser updated the members that the Board's Assistant Executive Officer position has been filled by Ms. Elsa Ybarra and he extended his congratulations to her.

Mr. Kaiser also extended his congratulations to two staff members at the Board: Ms. Angel Otley in the Applications Unit was promoted to a Staff Services Analyst and Mr. Vincent Azar in the Enforcement Unit was promoted to an Associate Governmental Program Analyst.

(B) Board Member Appointments

Mr. Kaiser reported that the Department would be using PTBC's Board Member Tracking Chart and providing it to other Boards and Bureau's and the Executive team as a template for tracking Board Member appointments and thanked staff for their hard work on the document.

(C) Strategic Plan

Mr. Kaiser reported that staff have continued to work on the goals and objectives identified in the strategic plan and are making headway and progress despite the pandemic. Mr. Kaiser added that a new analyst at SOLID; Ms. Tricia St. Clair, was assigned to the Board to help with the action plan identified in the Strategic Plan.

(D) PTBC Relocation

Mr. Kaiser reported that construction in the new suite is about 90% completed and due to the pandemic; California Prison Industry Authority

(CALPIA), responsible for providing the cubicle furniture in the new suite, are short staffed so the Board's projected move-in date has been delayed to the first or second week of November 2020 provided that there are no further holdups.

Dr. Drummer asked if there were any updates from the Speaker of the Assembly on new appointments to the Board. Mr. Kaiser responded that staff have had conversations with DCA and the Deputy Director of Board and Bureau Relations, Carrie Holmes, regarding the Board member vacancies and the Board has been assured that the vacancies are being worked on being filled; however, there are no projected timelines to provide to the Board at this time.

7. Discussion Regarding Waivers Issued by the Director of the California Department of Consumer Affairs

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

a. First Extension- DCA Waiver-20-27

b. Second Extension- DCA Waiver DCA-20-53

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

(C) DCA Waiver DCA-20-09- Examination Requirement for Continued Physical Therapy

a. First Extension- DCA Waiver-20-28

b. Second Extension- DCA Waiver DCA-20-46

(D) DCA Waiver DCA-20-25- Extending Time to Satisfy Examination Requirements

Mr. Kaiser reported on the waivers and the extensions applicable to physical therapist and physical therapist assistant licensees that were granted during the state of emergency resulting from COVID-19.

Mr. Kaiser stated that the waiver most pertinent to the Board's licensing population was the renewal waivers and the continuing education waivers. Both waivers have received a first and second extension; which is currently in effect. Mr. Kaiser stated that if a licensee's license should expire during that length of time stated in the waiver, they are exempt from having to provide the continuing education requirement during the renewal period; however, after the order expires the licensee will be expected to fulfill their 30 hours requirement in the following 6 months. Mr. Kaiser added that the waiver for reinstatement of licensure affects licensees in retired license status.

Mr. Kaiser stated that for applicants, there is a waiver to extend examination requirements which will allow for an application to be extended for an additional 6 months; which could allow an applicant two more attempts at satisfying the examination requirements.

Dr. James Syms asked for licensees, whose license is soon to be expired, how do they check the continued education box in the renewal application. Mr. Kaiser responded that the waiver is an opportunity to provide an accommodation to our licensees during this time, and the question on the renewal application is asking the licensee if they are in compliance with the continuing competency regulation. Mr. Kaiser added that since the waivers are in effect during this time of renewal, a licensee can clearly mark yes, they are in compliance with the continuing competency regulation on the renewal form. Mr. Kaiser stated that a licensee is still expected to complete their continuing competency requirement within 6 months of the end of the waiver.

8. Board Meeting Training – Changing Hats: Conflicts Between Professional Interests and Public Protection in Board Decision-Making – Rebecca Allensworth – As Provided by FSBPT

Ms. Allensworth presented a prerecorded virtual training for members on Changing Hats: Conflicts between Professional Interests and Public Protection in Board Decision-Making.

9. Consumer and Professional Associations and Intergovernmental Relations Reports

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

There was no representative on behalf of FSBPT. Mr. Kaiser stated that due to the pandemic, the Leadership Issues Forum was held virtually on July 22nd and the Board participated. Mr. Kaiser added that content that is usually provided during this meeting will be provided every two weeks until the FSBPT Delegate Assembly, which is scheduled for October 22-24th, 2020. Mr. Kaiser added that FSBPT provided numerous webinars over the past two weeks and they will be shared with the Board as Board Member Training. Mr. Kaiser stated that a report on the Delegate Assembly would be provided at the December 2020 meeting.

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

Ms. Carrie Holmes, Deputy Director for Board and Bureau Relations provided the Board with an update on behalf of DCA. Ms. Holmes reported that in July 2020 the DCA Budget Office and Office of Information Services launched four new budget expenditure and revenue reports utilizing FISCAL information which are very informative and easy to generate. Ms. Holmes added that DCA is working on three additional reports which will be available soon.

Ms. Holmes added that another DCA priority is improving the timeline and transparency for regulations and the DCA Regulations Unit was created to directly assist Boards and an online tracking system, Sharewell, is currently being tested to help provide timelines, and streamline the rulemaking process and review. Ms. Holmes stated that the testing cohort for Sharewell has been completed and DCA is currently working with the pilot group and soliciting feedback from them to help make the online system as useful as possible and soon a rollout schedule will be available.

Ms. Holmes stated that DCA has been busy issuing waivers for licensees during the pandemic and 56 waivers have been currently issued. Ms. Holmes added that DCA is looking at areas where changes can be made on an ongoing basis after the pandemic for efficiencies and welcomed any feedback from Boards.

Ms. Holmes reported that the Board's current Board member vacancies are on DCA's radar and DCA is doing all they can to help fill those vacancies. Ms. Holmes thanked Mr. Kaiser for his help with this issue. Ms. Holmes added that the applicant pool for public members can be small so if any Board members know of anyone that might be a great fit, please encourage them to put in an application. Ms. Holmes stated that DCA would be sending out a communications toolkit next week to help Boards spread the word about appointments on social media.

(C) California Physical Therapy Association (CPTA)

Dr. James Syms represented the CPTA and provided an update to the Board. Dr. Syms stated that PTBC is invited to be an exhibitor at the virtual annual conference on October 3-4, 2020.

Dr. Syms reported that CPTA submitted in writing, an inquiry regarding the physical therapist removal of drains or iv's and asked if there was a status update on the Board's response to that inquiry. Mr. Kaiser responded that the Board received the inquiry and that the Board is almost done with their response as it has been necessary to work with DCA Legal Counsel assigned to the Board. Mr. Kaiser added that once the Board has the response formalized it will be sent to the Association hopefully within the next 30 days.

10. Legislation Report – Brooke Arneson

(A) 2019/20 Legislative Session Summary

Ms. Arneson presented the legislative report and provided the members with an update on how the COVID-19 pandemic has impacted the legislative calendar and stated that there was a 75% decrease in the number of bills that went to the Governor's Office for signature this year compared to last year. Ms. Arneson referred the members to the legislative summary in the meeting materials and discussed the current status and changes to each bill since the last Board meeting as follows:

- i. AB 888 (Low) Opioid Prescriptions: Information: Nonpharmacological Treatments for Pain

Ms. Arneson reported that AB 888 is dead as it did not pass out of the Senate by the deadline.

- ii. AB 1263 (Low) Contracts: Consumer Services: Consumer Complaints

Ms. Arneson reported that AB 1263 is dead as it did not pass out of the Senate by the deadline however the provisions outlined in this bill were amended into SB 1474 which extends the Boards Sunset year by one year and will be discussed later in the legislation report.

- iii. AB 1616 (Low) Department of Consumer Affairs: Boards: Expunged Convictions

Ms. Arneson reported that this bill is dead as it did not pass out of the Senate by the deadline.

- iv. AB 1665 (Bonta) Athletic Trainers

Ms. Arneson reported that AB 1665 is dead as it did not pass out of the Senate by the deadline and that a copy of the Board's opposition letter was included in the meeting materials.

- v. AB 1850 (Gonzalez) Worker Classification: Employees and Independent Contractors

Ms. Arneson reported that AB 1850 is dead as it did not pass out of the Senate by the deadline.

- vi. AB 2028 (Aguiar-Curry) State Agencies: Meetings

Ms. Arneson reported that AB 2028 is dead as it did not pass out of the Senate by the deadline.

- vii. AB 2113 (Low) Refugees, Asylees, and Immigrants: Professional Licensing

Ms. Arneson reported that AB 2113 was ordered to engrossing and enrolling on September 1st and the Governor has not yet acted on it.

- viii. AB 2410 (Cunningham) Athletic Trainers

Ms. Arneson reported that AB 2410 is dead as it did not pass out of the Senate by the deadline. Ms. Arneson added that a copy of the Board's Support Letter was included in the meeting materials.

- ix. AB 2549 (Salas) Department of Consumer Affairs: Temporary Licenses

Ms. Arneson reported that AB 2549 is dead as it did not pass out of the Senate by the deadline.

- x. AB 3045 (Gray) Department of Consumer Affairs: Boards: Veterans: Military Spouses: Licenses

Ms. Arneson reported that AB 3045 is dead as it did not pass out of the Senate by the deadline.

- xi. SB 878 (Jones) Department of Consumer Affairs Licensing: Applications: Wait Times

Ms. Arneson reported that SB 878 was ordered to engrossing and enrolling on September 10th and the Governor has not yet acted on the bill.

- xii. SB 1474 (BPED Committee) Business and Professions

Ms. Arneson reported that SB 1474 would extend the Board's Sunset date by one year and also was recently amended to include provisions from AB 1263 and this bill was enrolled and presented to the Governor however he has not yet acted on the bill.

Dr. Rabena-Amen asked how AB 2113 would impact Board staff should it pass. Mr. Kaiser responded and stated that given the volume of applications that the Board receives for foreign credentials applicants, the impacts of this bill would be minor and absorbable, and the Board would be able to assist the applicant with the clinical placement and site approval. Dr. Drummer asked does AB 2113 require the applicant to declare that they are a refugee or granted asylum and Mr. Kaiser responded that yes, the bill language does require that, however there may be changes that would need

to be made to the electronic BreEZe system to implement the provisions of this bill.

Dr. Rabena-Amen asked how SB 878 would impact Board staff should it pass. Mr. Kaiser responded that this bill has been on our radar for quite some time and it is something that the Board has talked about doing voluntarily. Mr. Kaiser added that a few weeks ago the Board started posting wait times on the Board's social media so that applicants can see the intake and licensure times. Mr. Kaiser added that the requirements of this bill are still vague, and the Board wants to be able to provide this information on the applicant's tab on the website and as staff become more familiar with BreEze and the data it provides, the data can be reported with reporting timeframes monthly and then update weekly.

Mr. Kaiser reported that with SB 1474 extending the Board's Sunset by one year, the Board will now expire January 1st, 2023, and the Board will not be going through Sunset this year, it will be next year. Mr. Kaiser stated that we anticipate receiving the Sunset report in June or July of 2021, then PTBC will form a panel and strategy and will come to the Board with recommendations of changes for Sunset next year.

Dr. James Syms from CPTA, stated that regarding AB 888; CPTA wanted to invite the Board to a virtual symposium on November 7, 2020 which will identify the PT's current research involvement in pain and how important it is for prescribers to discuss non pharmacological forms of intervention. Dr. Syms added that this bill is a step forward for health care to be more preventative to opioid addiction and address opioid use before it is a problem, and this was a high-profile crisis before the pandemic. Dr. Drummer asked how individuals can join that symposium and Dr. Syms responded that it is on CPTA's website.

11. Rulemaking Report – Brooke Arneson

(A) 2019 Rulemaking Update

Ms. Arneson presented an overview of the rulemaking report and referred the members to the rulemaking update in the meeting materials and discussed the current status of each rulemaking item.

i. Examination Passing Standard/Setting Examination Score

Ms. Arneson reported that in June 2019, PTBC staff forwarded the pre-review regulation documents (the Initial Statement of Reasons, Notice and Proposed Language) to DCA Legal for review. Ms. Arneson added that in mid-February 2020, DCA Legal provided Board staff with their suggested edits and Board

staff resubmitted the rulemaking package for initial phase review to DCA Legal in June 2020. Ms. Arneson stated that on July 20th PTBC withdrew the rulemaking package and documents due to lack of necessity. Mr. Kaiser added that staff had extensive conversations with DCA's Office of Professional Examination Services (OPES) and setting a pass point and putting it in regulation was not specified in statute and so OPES recommended avoiding putting the exam pass point in regulation. Mr. Kaiser added that the Board would provide the exam pass point on the Board's website as information readily available to applicants.

ii. Guidelines for Issuing Citations and Imposing Discipline, 6th Edition

Ms. Arneson reported that with the passage of AB 2138 (Chapter 995, Statutes of 2018) it was determined that the Disciplinary Guidelines needed to be amended further and modified proposed language was presented and adopted at the June 2019 meeting and in June 2019 PTBC staff forwarded the initial rulemaking package to DCA Legal for review. Ms. Arneson added that additional modifications to the Guidelines are necessary and will be discussed further under Agenda Item 11(C).

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

Ms. Arneson reported that in November 2019, PTBC staff forwarded the pre-review regulation documents (Initial Statement of Reasons, Notice and Proposed Language) to DCA Legal for review. Ms. Arneson added that Board staff have worked with DCA Legal on suggested edits and in August 2020 the initial rulemaking package was submitted to DCA Legal for review.

iv. FSBPT's Performance Evaluation Tool for Foreign Educated Physical Therapists Completing a Supervised Clinical Practice in the United States

Ms. Arneson reported that in November 2019, PTBC staff forwarded the pre-review regulation documents (Initial Statement of Reasons, Notice and Proposed Language) to DCA Legal for review. Ms. Arneson added that Board staff worked with DCA Legal on suggested edits and in August 2020 the rulemaking package was submitted to DCA Legal for initial phase review.

v. Substantial Relationship Criteria

vi. Rehabilitation Criteria for Denial and Reinstatement of Licensure

vii. Rehabilitation Criteria for Suspensions and Revocations

Ms. Arneson reported that the rulemaking package was submitted to DCA Legal for review in October 2019 and on December 26th the initial rulemaking

package was submitted to Agency and in February 2020, Agency provided the Board with non-substantive edits. Ms. Arneson added that Board staff worked with DCA Legal to address these edits and resubmitted the package back to Agency for review and it was approved April 16, 2020. Ms. Arneson stated that the Notice was published by Office of Administrative Law (OAL) on June 26, 2020, and the 45-day public comment period ended on August 21, 2020 and the Board will review written comments received on this rulemaking package under Agenda Item 11(B) and discuss any modifications that may be necessary to the rulemaking package.

Ms. Arneson reported that all other items on the rulemaking tracking form are for potential rulemaking packages that will be presented to the Board for consideration in the upcoming year.

(B) Discussion and Possible Board Action regarding the Substantial Relationship Criteria; Rehabilitation Criteria for Denial and Reinstatement of Licensure; and Rehabilitation Criteria for Suspensions and Revocations regulation – Clay Jackson

Mr. Clay Jackson, the Boards assigned regulatory attorney reported on the suggested modifications necessary to the AB 2138 rulemaking package as deemed by both DCA and OAL. Mr. Jackson stated that in January 2019, DCA worked with the Attorney General's Office and others to form a template that all the Boards could use for the AB 2138 regulations.

Mr. Jackson stated that the first rulemaking package was submitted in November 2019 by the California Veterinary Medical Board (VMB), and when it went to OAL they requested numerous changes, therefore, the rulemaking package needed to be withdrawn and it also necessitated that the other DCA Boards make the same changes to their proposed rulemaking packages in order for them to be approved by OAL.

Mr. Jackson referred members to the text and presented the suggested edits by OAL in the meeting materials:

BPC 1399.20(2) adding "to be substantially" to address OAL's suggestion so that references to substantial relationship could be addressed together in one regulation.

BPC 1399.20(b)(2) striking "and" which was deemed by OAL as a nonsubstantive change.

Adding BPC 480 to the "Authority Cited."

BPC 1399.21(a), OAL believed that the term “eligible” was unclear and it could be viewed as referring to other eligibility requirements for licensure, rather than referring to fitness or suitability for licensure.

Dr. Drummer suggested that in 1399.21(a) the sentence needed an “and” or an “or not” following the suggested edit to make the sentence an appropriate sentence and link the sentence. Mr. Jackson stated that it would be a non-substantive change. Mr. Kanotz, Board’s legal counsel, added that he didn’t suggest adding the “and” to this subsection. Dr. Drummer suggested adding a comma to the section. Mr. Jackson stated the comma was in the original revision done last year. Mr. Kaiser added that it is a preference of style; and Dr. Drummer responded that the comma should be included in this subsection.

BPC 1399.21(b) OAL viewed the stricken text to be unclear in specifying the circumstances when the regulation would apply. OAL changed the text from a catch-all approach to where each application is specified. The cited sections are an exhaustive list of the sections that authorize the Board to deny a license.

BPC 1399.21(b)(1) “professional misconduct” was suggested to be added.

BPC 1399.21(b)(3) due to the addition of the practice act references in paragraph (b), OAL considered this change to be a necessary conforming change to account for the additional grounds for denial apart from Section 480.

BPC 1399.22(b) OAL viewed the stricken text to be unclear in specifying the circumstances when the regulation would apply. OAL changed the text from a catch-all approach to where each application is specified. The cited sections are an exhaustive list of the sections that authorize the Board to discipline a license.

BPC 1399.22(b)(1) “disciplinary actions” was suggested to be added.

BPC 1399.22(b)(5) strike “divisions” and replace with subsection.

Mr. Jackson reported that all edits that were suggested by OAL have been made to the Board’s proposed language.

MOTION: Approve the proposed regulatory text for Title 16, CCR sections 1399.20, 1399.21, and 1399.22, and direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review, and, if no adverse comments are received, authorize the Executive

Officer to take all steps necessary to amend the preceding rulemaking package, initiate a revised rulemaking process, make any non-substantive technical or grammatical changes to the package, and set the matter for hearing.

M/S: Drummer/McMillian

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

(C) Discussion and Possible Board Action regarding the Guidelines for Issuing Citations and Imposing Discipline, 6th Edition regulation – Clay Jackson

Mr. Clay Jackson, the Boards assigned regulatory attorney reported on the suggested modifications necessary to the proposed Disciplinary Guidelines rulemaking package as deemed by both DCA. Mr. Jackson stated that in the most recent review, two sections were identified for modification and require consideration by the Board:

“Substance Abuse Rehabilitation Program”- Overview of Participant Requirements and Costs- Staff proposed to delete all reference to costs associated with the Substance Abuse Rehabilitation Program to avoid having amend CCR section 1399.15 each time the costs escalate. The costs are set by the contracted vendor of the program and not by the Board.

Mr. Jackson agreed with the proposal to delete all reference to costs associated with the Substance Abuse Rehabilitation Program. Mr. Kaiser added that these costs are better listed on the Board’s website that is tailored to an individual’s circumstances and updated frequently with costs as they change; therefore, the use of hyperlinks is more clear.

Dr. Drummer stated that he liked the hyperlinks directing people to the specific places to find the information they needed.

Dr. Drummer suggested under “Random Biological Testing” adding the word “costs” directly after the word “RBT.” The Board agreed

with this edit. Mr. Kaiser stated the edit would be made to the proposed language.

Dr. Drummer suggested striking “all charge different fees and” under the “Professional Support Group Meeting Fees.” The Board agreed with this edit. Mr. Kaiser stated the edit would be made to the proposed language.

“Probation Conditions Specific to Violation”- New section “BB.” Biological Fluid Testing- language was stricken in error. Staff proposed to restore it back to its original state.

Dr. Drummer suggested striking “associated with this condition” from the last sentence in the first paragraph of BB. Biological Testing. The Board agreed with this suggestion. Mr. Kaiser stated the edit would be made to the proposed language.

Dr. Drummer suggested striking “a minimum range of” in the second sentence under BB. Biological Testing. The Board agreed with this edit and Mr. Kaiser stated the edit would be made to the proposed language.

Dr. Drummer suggested striking “drug testing” from the third paragraph under BB. Biological Testing and replacing it with “biological testing” since that is the language that is used consistently. The Board agreed with this edit. Mr. Kaiser stated the edit would be made to the proposed language.

Dr. Drummer suggested replacing test “results” with test “sample” on the fifth paragraph under BB. Biological Testing. In addition, Dr. Drummer suggested, striking “urine screen” and replacing with “positive result.” The Board agreed with this edit. In addition, the Board agreed with making this paragraph a new paragraph to break it up for clarity. Mr. Kaiser stated the edit would be made to the proposed language.

MOTION: Approve the proposed regulatory text with edits for Title 16, CCR section 1399.15, and direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review, and, if no adverse comments are received, authorize the Executive Officer to take all steps necessary to amend the preceding rulemaking package, initiate a revised rulemaking process, make

any nonsubstantive technical or grammatical changes to the package, and set the matter for hearing if requested.

M/S: Drummer/McMillian

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

12. Administrative Services Quarterly Update

(A) Budget Report

Mr. Kaiser reported that recently the Board has new reports generated from FI\$Cal; the State's new accounting system that will help reconcile the Board's budget; however, there is a large learning curve in transitioning from previous reports to the FI\$Cal reports and he thanked staff for their hard work. Mr. Kaiser added that the Board is very aware of the bottom line and is receiving expected revenues despite the pandemic.

Mr. Kaiser reported that the Board is also very cognizant of its spending during this time especially with the Board's move and there were some added expenditures for the move upstairs; however, due to planning, the Board was able to manage those increased costs and put money back into the fund. Mr. Kaiser added that budget savings came from caps on line item spending; position vacancies and being hyper vigilant of the Board's spending.

Dr. Rabena-Amen asked what the Board's budget for temp help is. Mr. Kaiser responded that the Board does not have a line item for temp help. Dr. Rabena-Amen asked if the Board anticipated any new line items in the budget report and Mr. Kaiser responded that staff are always looking at that option and would need to collect 3 years of data before recommending to the budget office to have a line item amended or added.

Mr. Kaiser stated that the budget report display will change in the future because of the new reports the Board is receiving from FI\$Cal; however, staff would try to keep the formatting as consistent as possible. Mr. Kaiser added that over time adjustments have been made to line items to show a better depiction of the Board's spending.

Dr. Drummer asked if the Board is responsible for the salary of the employee who has been delegated to contact tracing due to the pandemic. Mr. Kaiser responded that yes, the Board is fiscally responsible for the salary of the position redirected for contact tracing and the Board is fortunate that only one position has had to be redirected at this time and in the future an executive order may demand additional positions.

(B) Outreach Report

Mr. Kaiser reported that website traffic has decreased on the Board's homepage; however, it is to be expected due to the efficient delivery of information by other tools, such as social media and listserv which disseminates information to our stakeholders.

Mr. Kaiser reported that due to the pandemic, the Board has had to cancel in-person presentations to educational programs; however, the Board has been utilizing electronic means and recently provided virtual presentations to Gurnick Academy; California State University, Sacramento; University of Pacific and is anticipating presenting at the upcoming CPTA convention.

Mr. Kaiser added that the Listserv system was recently updated, and it now allows for additional reports that the Board will be able to utilize as we learn how to use the new features of the software. Dr. Drummer asked how many current emails Listserv contains, and Mr. Kaiser responded that the Board has just under 30,000 emails in Listserv which includes both license types.

Dr. James Syms asked if there were any reports of emails being dropped in the Listserv system. Mr. Kaiser responded the Board is not aware of dropped emails occurring; however there have been situations where an interested party has thought they had their email address on file with the Board and in researching that email; staff have found that it was never officially submitted with the Board or it was entered incorrectly and never verified. Dr. Syms asked if a licensee renews their license through BreEZe does that automatically put their email on the Listserv list. Mr. Kaiser responded that the email address used to create a BreEZe account is separate from PTBC's Listserv.

13. Application Services Quarterly Update

(A) Program Statistics

(B) Statistical Reports

Dr. Rabena-Amen asked why the percentages in the tables do not add up and Mr. Kaiser responded that they will not add up as they are percentage categories.

Dr. Drummer asked if foreign applicants are included in Out of State and Mr. Kaiser responded yes.

Mr. Kaiser stated that there has been a significant decrease in the receipt of applications in the last quarter as a result of the pandemic which is due to the delay of graduation dates and delay of clinical placements. Mr. Kaiser added that this should be remedied in the next quarter as these issues are resolved.

Dr. Rabena-Amen questioned what non-accredited PT programs are; and Mr. Kaiser responded that they are foreign programs and any program that is not CAPTE or PACE accredited.

Dr. James Syms stated that some of the labels were missing in the tables and Mr. Kaiser responded that it is usually caused by the ADA conversion issue between the original PDF and ADA compliant version of the PDF and that the tables would be edited and updated on the Board's website.

14. Licensing Services Quarterly Update

- (A) Program Statistics
- (B) Statistical Reports

Dr. Drummer stated that the pie charts are very interesting and informative and added that he was surprised that California adjacent states (Oregon, Arizona, Nevada) make such a small percentage of the out of state locations for California licensees. Dr. Rabena-Amen added that she was also surprised to see that 11% of Out of Country licensees are from Japan. Mr. Kaiser added that the information displayed is based on the address of record and not their residential address.

15. Continuing Competency Services Quarterly Update

- (A) Program Statistics
- (B) Statistical Reports

Mr. Kaiser reported that due to the pandemic, the Board has had to redirect continuing competency resources to Application Services to help with the operational need, therefore no licensee audit data is being reported at this meeting.

16. Consumer Protection Services Quarterly Update

- (A) Program Statistics
- (B) Statistical Reports

Mr. Kaiser reported that the Consumer Protection Services report has remained static when comparing previous year to current year except for a few items regarding performance measures, which are affected by the pandemic in 3rd and 4th quarter. Mr. Kaiser stated that some of the cases, such as petitions, have been delayed since they could not be heard by the Board and had to be redirected to the Office of Administrative Hearings. Mr. Kaiser added that there have also been delays due to the pandemic with the Division of Investigations and Attorney General's Office as well.

17. Probation Monitoring Services Quarterly Update

- (A) Program Updates
- (B) Statistical Reports

Mr. Kaiser reported that the reports show the Board's probation numbers as static from year to year and as probationers exit probation, there is a steady stream of attrition and succession with the number of probationers in the high 80's to low 90's. Mr. Kaiser added that the Board will be recruiting soon for a second probation monitor, which will be a huge benefit. Mr. Kaiser stated that due to the pandemic the Board has relied on electronic means of communication with probationers such as zoom calls etc.

18. 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).]

Dr. James Syms stated that the FSBPT Changing Hats training that was provided during this meeting is available on FSBPT's website as well.

Dr. James Syms asked how to get the continuing education credit for participating at the WebEx Board meeting. Mr. Kaiser responded to please request a card electronically through pt@ptbc.ca.gov and participants will receive credit for attending the Board meeting via WebEx.

Dr. James Syms thanked the Board for their hard work and dedication.

19. Agenda Items for Future Meeting –

December 10-11, 2020
Department of Consumer Affairs
2005 Evergreen Street, Hearing Room
Sacramento, CA 95815

Dr. Drummer received a request from a licensee for a Board opinion on whether PT's are permitted to deliver or manage oxygen titration under a physician's orders since oxygen is considered a drug and PT's are not allowed to deliver medications. Mr. Kaiser responded that the Board is familiar with this request and a response to this request will be provided shortly.

Mr. Kaiser added that a public comment was made earlier in the meeting by Dr. Michael Infantino to have dry needling considered for a future board meeting.

20. 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
- (C) Pursuant to Government Code section 11126(e)(1) and (2)(A), the Board will convene to confer with, or receive legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

The Board entered closed session at 3:09 p.m. and reconvened into open session to adjourn at 4:04 p.m. on September 17, 2020.

21. Reconvene Open Session

The Board reconvened from closed session into open session to adjourn at 4:04 p.m. on September 17, 2020.

22. Adjournment

The meeting adjourned at 4:04 p.m. on September 17, 2020.

Uniform Standards
Regarding
Substance-Abusing
Healing Arts
Licensees (dated
April 2011)

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Brian J. Stiger, Director
April 2011



Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

Elinore F. McCance-Katz, M.D., Ph. D.
CA Department of Alcohol & Drug Programs

Janelle Wedge
Acupuncture Board

Kim Madsen
California Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

Lori Hubble
Dental Hygiene Committee of California

Richard De Cuir
Dental Board of California

Linda Whitney
Medical Board of California

Heather Martin
California Board of Occupational Therapy

Mona Maggio
California State Board of Optometry

Teresa Bello-Jones
**Board of Vocational Nursing and
Psychiatric Technicians**

Donald Krpan, D.O.
Osteopathic Medical Board of California

Francine Davies
Naturopathic Medicine Committee

Virginia Herold
California State Board of Pharmacy

Steve Hartzell
Physical Therapy Board of California

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board of California

Annemarie Del Mugnaio
**Speech-Language Pathology & Audiology &
Hearing Aid Dispenser Board**

Susan Geranen
Veterinary Medical Board

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#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing

frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to

appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier
License Type
Probation/Diversion Effective Date
General Range of Testing Frequency by/for Each Probationer/Diversion Participant
Dates Testing Requested
Dates Tested
Identify the Entity that Performed Each Test
Dates Tested Positive
Dates Contractor (if applicable) was informed of Positive Test
Dates Board was informed of Positive Test
Dates of Questionable Tests (e.g. dilute, high levels)
Date Contractor Notified Board of Questionable Test
Identify Substances Detected or Questionably Detected
Dates Failed to Appear
Date Contractor Notified Board of Failed to Appear
Dates Failed to Call In for Testing
Date Contractor Notified Board of Failed to Call In for Testing
Dates Failed to Pay for Testing
Date(s) Removed/Suspended from Practice (identify which)
Final Outcome and Effective Date (if applicable)

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

- (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- (2) must be licensed or certified by the state or other nationally certified organization;
- (3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- (4) shall report any unexcused absence within 24 hours to the board, and,
- (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

- (1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no

monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

- (3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
 - (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.
 3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
 4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

AB 2138

**(Chiu,
Chapter 995,
Statutes 2018)**

Assembly Bill No. 2138

CHAPTER 995

An act to amend, repeal, and add Sections 7.5, 480, 481, 482, 488, 493, and 11345.2 of, and to add Section 480.2 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 30, 2018. Filed with
Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, 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 subject to formal discipline, as specified, or convicted of a crime only if the applicant or licensee has been convicted of a crime within the preceding 7 years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding 7 years, except as specified. 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, as defined, for a crime, if the conviction has been dismissed or expunged, if the person has provided evidence 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 require the board to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession. The bill would require a board to consider whether 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, after a specified hearing requested by an applicant for licensure to take various actions in relation to denying or granting the applicant the license.

This bill would revise and recast those provisions to eliminate some of the more specific options that the board may take in these circumstances.

This bill would clarify that the existing above-described provisions continue to apply to the State Athletic Commission, the Bureau for Private Postsecondary Education, and the California Horse Racing Board.

This bill would also make necessary conforming changes.

This bill would make these provisions operative on July 1, 2020.

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

SECTION 1. Section 7.5 of the Business and Professions Code is amended to read:

7.5. (a) A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when 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, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

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

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2. Section 7.5 is added to the Business and Professions Code, to read:

7.5. (a) A conviction within the meaning of this code means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Any action which a board is permitted to take following the establishment of a conviction may be taken when 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. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) or (c) of Section 480.

(b) (1) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(2) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(A) The State Athletic Commission.

(B) The Bureau for Private Postsecondary Education.

(C) The California Horse Racing Board.

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

(d) This section shall become operative on July 1, 2020.

SEC. 3. Section 480 of the Business and Professions Code is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when 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, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(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) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 4. Section 480 is added to the Business and Professions Code, to read:

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

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

- (i) Chapter 1 (commencing with Section 5000) of Division 3.
- (ii) Chapter 6 (commencing with Section 6500) of Division 3.

- (iii) Chapter 9 (commencing with Section 7000) of Division 3.
- (iv) Chapter 11.3 (commencing with Section 7512) of Division 3.
- (v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.
- (vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code or a comparable dismissal or expungement.

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

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

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

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. 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.

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

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing

with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

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

(A) The denial or disqualification of licensure.

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

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

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

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

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

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

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

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

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

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

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

(h) “Conviction” as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (1) The State Athletic Commission.
- (2) The Bureau for Private Postsecondary Education.
- (3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

SEC. 5. Section 480.2 is added to the Business and Professions Code, to read:

480.2. (a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime.
- (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) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board to evaluate the rehabilitation of a person when considering the denial of a license under paragraph (1) of subdivision (f).

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the ground that the applicant knowingly made a false

statement of fact that is required to be revealed in the application for the license.

(e) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(f) (1) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to evaluate the rehabilitation of a person either when:

(A) Considering the denial of a license under this section.

(B) Considering suspension or revocation of a license under Section 490.

(2) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(g) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board, in its discretion, may deem proper.

(h) Notwithstanding any other law, in a proceeding conducted by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board 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 substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(i) Notwithstanding Section 7.5, a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the Bureau for Private Postsecondary

Education, the State Athletic Commission, or the California Horse Racing Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(j) This section shall become operative on July 1, 2020.

SEC. 6. Section 481 of the Business and Professions Code is amended to read:

481. (a) Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 7. Section 481 is added to the Business and Professions Code, to read:

481. (a) Each board under this code shall 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 it regulates.

(b) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates shall include all of the following:

- (1) The nature and gravity of the offense.
- (2) The number of years elapsed since the date of the offense.
- (3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

(c) A board shall not deny a license based in whole or in part on a conviction without considering evidence of rehabilitation submitted by an applicant pursuant to any process established in the practice act or regulations of the particular board and as directed by Section 482.

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

(e) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (1) The State Athletic Commission.
- (2) The Bureau for Private Postsecondary Education.
- (3) The California Horse Racing Board.

(f) This section shall become operative on July 1, 2020.

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

482. (a) Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(1) Considering the denial of a license by the board under Section 480;
or

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

(b) Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 9. Section 482 is added to the Business and Professions Code, to read:

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

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

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

(b) Each board shall consider whether an applicant or licensee has made a showing of rehabilitation if either of the following are met:

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

(2) The board, applying its criteria for rehabilitation, finds that the applicant is rehabilitated.

(c) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(d) This section shall become operative on July 1, 2020.

SEC. 10. Section 488 of the Business and Professions Code is amended to read:

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

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

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

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 11. Section 488 is added to the Business and Professions Code, to read:

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

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

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

(b) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(c) This section shall become operative on July 1, 2020.

SEC. 12. 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 substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 13. Section 493 is added to the Business and Professions Code, to read:

493. (a) Notwithstanding any other 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 substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

- (B) The number of years elapsed since the date of the offense.
- (C) The nature and duties of the profession.
- (2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.
- (c) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”
- (d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:
 - (1) The State Athletic Commission.
 - (2) The Bureau for Private Postsecondary Education.
 - (3) The California Horse Racing Board.
- (e) This section shall become operative on July 1, 2020.

SEC. 14. Section 11345.2 of the Business and Professions Code is amended to read:

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

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. Notwithstanding subdivision (c) of Section 480, if the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.

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

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 15. Section 11345.2 is added to the Business and Professions Code, to read:

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

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. If the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, the bureau may allow the individual to act as a controlling person.

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

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

refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become operative on July 1, 2020.

O

SB 198

**(Lieu,
Chapter 389,
Statutes 2014).**

Senate Bill No. 198

CHAPTER 389

An act to amend Sections 2071, 2602, 2603, 2604, 2607, 2607.5, 2608, 2608.5, 2611, 2612, 2614, 2615, 2620.7, 2630, 2636, 2636.5, 2638, 2651, 2660, 2660.2, 2660.3, 2660.5, 2661, 2661.7, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2672, and 2682 of, to amend the headings of Article 1 (commencing with Section 2600) of, and Article 2 (commencing with Section 2620) of, Chapter 5.7 of Division 2 of, to amend and renumber Section 2676 of, to amend and renumber the headings of Article 4 (commencing with Section 2650) of, Article 5 (commencing with Section 2660) of, Article 5.5 (commencing with Section 2662) of, Article 6 (commencing with Section 2670) of, Article 7 (commencing with Section 2680) of, and Article 8 (commencing with Section 2690) of, Chapter 5.7 of Division 2 of, to add Sections 2603.5, 2605, 2623, 2630.3, 2630.4, 2630.5, 2633.5, 2633.7, 2639.1, 2654, 2660.4, and 2660.8 to, to add the heading of Article 3 (commencing with Section 2635) to, and to add Article 4 (commencing with Section 2644) to, Chapter 5.7 of Division 2 of, to repeal Sections 2604.5, 2609, 2632, 2640, 2650.1, 2650.2, 2652, 2683, 2684, and 2685 of, to repeal the headings of Article 3 (commencing with Section 2630) of, and Article 6.5 (commencing with Section 2676) of, and to repeal Article 4.5 (commencing with Section 2655) of, Chapter 5.7 of Division 2 of, and to repeal and add Sections 2601, 2622, 2639, 2650, and 2653 of, the Business and Professions Code, and to amend Sections 12529 and 12529.5 of the Government Code, relating to physical therapy, and making an appropriation therefor.

[Approved by Governor September 27, 2013. Filed with
Secretary of State September 27, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 198, Lieu. Physical Therapy Board of California.

(1) Existing law, the Physical Therapy Practice Act, provides for the licensure, approval, and regulation of physical therapists and physical therapist assistants by the Physical Therapy Board of California within the Department of Consumer Affairs. Existing law, until January 1, 2014, requires the board to enforce and administer the act and authorizes the board to appoint an executive officer. A violation of the act is a crime.

This bill would revise and recast those provisions. Among other things, the bill would extend, until January 1, 2018, the board's authority to enforce and administer the act and to appoint an executive officer. The bill would provide for the licensure of physical therapist assistants and impose additional requirements and authority on the board, including to enter into contracts for services necessary for enforcement of the act. The bill would revise the composition of the board and prescribe the duties of the board.

The bill would authorize the board, by regulation, to prescribe, amend, or repeal any rules contained within a code of professional conduct appropriate to the establishment and maintenance of integrity and dignity in the profession of physical therapy. The bill would provide exemptions from the licensure requirements for students and physical therapists licensed in other jurisdictions, as specified. The bill would also make related, technical changes.

This bill would also expand the acts that constitute unprofessional conduct to include, among other things, practicing or offering to practice beyond the scope of practice of physical therapy and unlawful possession, use, or conviction of a criminal offense involving a controlled substance. The bill would impose a civil penalty upon a licensee who fails to, or refuses to, comply with a request from the board for the medical records of a patient, as specified. By revising the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law establishes in the Department of Justice the Health Quality Enforcement Section, the primary responsibility of which is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California, and to provide ongoing review of the investigative activities conducted in support of those prosecutions. Existing law requires that the funding of the Section be from the special funds financing the operations of those boards and the committees under the jurisdiction of the Medical Board of California, with the intent that the expenses be proportionally shared as to services rendered.

This bill would additionally include within the primary responsibility of the Section prosecution of proceedings against those licensees and applicants within the jurisdiction of the Physical Therapy Board of California. The bill would also require a proportional share of the funding for the Section to be budgeted from the special funds financing the operation of the Physical Therapy Board of California, which are continuously appropriated, thereby making an appropriation.

(3) The bill would incorporate additional changes to Section 2660 of the Business and Professions Code proposed by AB 1000 that would become operative if this bill and AB 1000 are enacted and this bill is chaptered last.

(4) 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.

Appropriation: yes.

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

SECTION 1. Section 2071 of the Business and Professions Code is amended to read:

2071. The board shall adopt and administer regulations that establish standards for technical supportive services that may be performed by a medical assistant. Nothing in this section shall prohibit the board from amending or repealing regulations covering medical assistants. The board shall, prior to the adoption of any regulations, request recommendations regarding these standards from appropriate public agencies, including, but not limited to, the State Board of Optometry, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the Laboratory Field Services division of the State Department of Public Health, those divisions of the State Department of Education that pertain to private postsecondary education and career and vocational preparation, the Chancellor of the California Community Colleges, the California Board of Podiatric Medicine, the Physician Assistant Examining Committee, and the Physical Therapy Board of California. The board shall also request recommendations regarding these standards from associations of medical assistants, physicians and surgeons, nurses, doctors of podiatric medicine, physician assistants, physical therapists, laboratory technologists, optometrists, and others as the board finds appropriate, including, but not limited to, the California Optometric Association, the California Nurses Association, the California Medical Association, the California Society of Medical Assistants, the California Medical Assistants Association, and the California Physical Therapy Association. Nothing in this section shall be construed to supersede or modify that portion of the Administrative Procedure Act that relates to the procedure for the adoption of regulations and which is set forth in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. The heading of Article 1 (commencing with Section 2600) of Chapter 5.7 of Division 2 of the Business and Professions Code is amended to read:

Article 1. Administration and General Provisions

SEC. 3. Section 2601 of the Business and Professions Code is repealed.

SEC. 4. Section 2601 is added to the Business and Professions Code, to read:

2601. For the purpose of this chapter, the following terms shall have the following meanings, unless otherwise specified:

- (a) "Board" means the Physical Therapy Board of California.
- (b) "Physical therapist" means a person who is licensed pursuant to this chapter to practice physical therapy.
- (c) "Physical therapist assistant" means a person who is licensed pursuant to this chapter to assist in the provision of physical therapy under the

supervision of a licensed physical therapist. “Physical therapy assistant” and “physical therapist assistant” shall be deemed identical and interchangeable terms.

(d) “Physical therapist technician” and “physical therapy aide,” as described in Section 2630.4, shall be deemed identical and interchangeable terms.

(e) “Physiotherapy” shall be synonymous with “physical therapy.”

SEC. 5. Section 2602 of the Business and Professions Code is amended to read:

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, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 6. Section 2603 of the Business and Professions Code is amended to read:

2603. The members of the board shall consist of four physical therapists, only one of whom shall be involved in physical therapy education, and three public members.

SEC. 7. Section 2603.5 is added to the Business and Professions Code, to read:

2603.5. (a) The physical therapist members of the board shall be appointed from persons having all of the following qualifications:

(1) Be a resident of California.

(2) Possess a valid and unrestricted license in California issued pursuant to this chapter.

(3) Have been licensed pursuant to this chapter and practicing in California for at least five years prior to appointment to the board.

(b) (1) The public members of the board shall have both of the following qualifications:

(A) Be appointed from persons having all of the qualifications as set forth in Chapter 6 (commencing with Section 450) of Division 1.

(B) Be a resident of California.

(2) No public member of the board shall be, nor have been, any of the following:

(A) An officer or faculty member of any college, school, or institution involved in physical therapy education.

(B) A licentiate of the Medical Board of California or of any board under this division or of any board referred to in Section 1000 or 3600.

SEC. 8. Section 2604 of the Business and Professions Code is amended to read:

2604. The members of the board shall be appointed for a term of four years, expiring on the first day of June of each year.

The Governor shall appoint one of the public members and the four physical therapist members of the board qualified as provided in Sections 2603 and 2603.5. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member qualified as provided in Section 2603.5.

No person may serve as a member of the board for more than two consecutive terms. Vacancies shall be filled by appointment for the unexpired term. Annually, the board shall elect one of its members as president and one of its members as vice president.

The appointing power shall have the power to remove any member of the board from office for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

SEC. 9. Section 2604.5 of the Business and Professions Code is repealed.

SEC. 10. Section 2605 is added to the Business and Professions Code, to read:

2605. The board shall do all of the following:

- (a) Evaluate the qualifications of applicants for licensure.
- (b) Provide for the examinations of physical therapists and physical therapist assistants and establish a passing score for each examination.
- (c) Issue all licenses for the practice of physical therapy in California. Except as otherwise required by the director pursuant to Section 164, the license issued by the board shall describe the licensee as a “physical therapist” or “physical therapist assistant” licensed by the Physical Therapy Board of California.
- (d) Suspend and revoke licenses and otherwise enforce the provisions of this chapter.
- (e) Administer a continuing competency program.
- (f) Participate, as a member, in the Delegate Assembly, and in applicable committee meetings, of the Federation of State Boards of Physical Therapy.
- (g) Publish, at least annually, a newsletter that includes, but is not limited to, actions taken by the board, disciplinary actions, and relevant statutory and regulatory changes.
- (h) Provide for the timely orientation and training of new professional and public member appointees to the board directly related to board licensing and disciplinary functions and board rules, policies, and procedures.
- (i) Adopt and administer a program of education in matters relevant to the regulation of physical therapy.

SEC. 11. Section 2607 of the Business and Professions Code is amended to read:

2607. The board may employ, subject to law, such clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

The board may enter into contracts for services necessary for enforcement of this chapter and may as necessary select and contract with physical therapy consultants who are licensed physical therapists to assist it in its programs on an intermittent basis. Notwithstanding any other provision of law, the board may contract with these consultants on a sole source basis. For the

purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any consultant under contract with the board shall be considered a public employee.

SEC. 12. Section 2607.5 of the Business and Professions Code is amended to read:

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, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 13. Section 2608 of the Business and Professions Code is amended to read:

2608. The procedure in all matters and proceedings relating to the denial, suspension, revocation, or probationary restriction of licenses issued by the board under this chapter shall be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 14. Section 2608.5 of the Business and Professions Code is amended to read:

2608.5. Each member of the board, or any licensed physical therapist appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility providing physical therapy care, treatment or services and the physical therapy staff thereof, with respect to the physical therapy care, treatment, services, or facilities provided therein, and may inspect physical therapy patient records with respect to the care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section shall not be delegated by a member of the board to any person other than a physical therapist and shall be subject to the restrictions against disclosure described in subdivision (u) of Section 2660.

SEC. 15. Section 2609 of the Business and Professions Code is repealed.

SEC. 16. Section 2611 of the Business and Professions Code is amended to read:

2611. The board shall meet at least three times each calendar year, meeting at least once each calendar year in northern California and once each calendar year in southern California. The board may convene from time to time until its business is concluded. Special meetings of the board

may be held at any time and place as the board may designate. Four members of the board shall constitute a quorum for the transaction of business.

SEC. 17. Section 2612 of the Business and Professions Code is amended to read:

2612. The board shall comply with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 18. Section 2614 of the Business and Professions Code is amended to read:

2614. The board shall hear all matters, including, but not limited to, any contested case or any petition for reinstatement, restoration, or modification of probation. Except as otherwise provided in this chapter, all hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. If a contested case is heard by the board the hearing officer who presided at the hearing shall be present during the board's consideration of the case and, if requested, shall assist and advise the board. The board shall issue its decision pursuant to Section 11517 of the Government Code.

SEC. 19. Section 2615 of the Business and Professions Code is amended to read:

2615. The board shall adopt those regulations as may be necessary to effectuate this chapter. In adopting regulations the board shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 20. The heading of Article 2 (commencing with Section 2620) of Chapter 5.7 of Division 2 of the Business and Professions Code is amended to read:

Article 2. Scope of Regulation and Exemptions

SEC. 21. Section 2620.7 of the Business and Professions Code is amended to read:

2620.7. (a) Patient records shall be documented as required in regulations promulgated by the board.

(b) Patient records shall be maintained for a period of no less than seven years following the discharge of the patient, except that the records of unemancipated minors shall be maintained at least one year after the minor has reached 18 years of age, and not in any case less than seven years.

SEC. 22. Section 2622 of the Business and Professions Code is repealed.

SEC. 23. Section 2622 is added to the Business and Professions Code, to read:

2622. (a) A physical therapist shall be responsible for managing all aspects of the care of each patient as set forth in regulations promulgated by the board.

(b) A physical therapist shall not supervise more than two physical therapist assistants at one time to assist the physical therapist in his or her practice of physical therapy.

(c) A physical therapist may utilize the services of one aide engaged in patient-related tasks to aid the physical therapist in his or her practice of physical therapy.

SEC. 24. Section 2623 is added to the Business and Professions Code, to read:

2623. The board may, by regulation, prescribe, amend, or repeal any rules contained within a code of professional conduct appropriate to the establishment and maintenance of integrity and dignity in the profession of physical therapy. Every licensee of the board shall be governed and controlled by the rules and standards adopted by the board.

SEC. 25. The heading of Article 3 (commencing with Section 2630) of Chapter 5.7 of Division 2 of the Business and Professions Code is repealed.

SEC. 26. Section 2630 of the Business and Professions Code is amended to read:

2630. It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked physical therapist license issued under this chapter, except as authorized by subdivisions (c), (d), (e), and (g) of Section 2630.5.

SEC. 27. Section 2630.3 is added to the Business and Professions Code, to read:

2630.3. (a) A licensed physical therapist assistant holding a valid, unexpired, and unrevoked physical therapist assistant license may assist in the provision of physical therapy services only under the supervision of a physical therapist licensed by the board. A licensed physical therapist shall at all times be responsible for the extent, kind, quality, and documentation of all physical therapy services provided by the physical therapist assistant.

(b) It is unlawful for any person or persons to hold himself or herself out as a physical therapist assistant, unless at the time of so doing the person holds a valid, unexpired, and unrevoked physical therapist assistant license issued under this chapter, except as authorized in subdivisions (f) and (g) of Section 2630.5.

(c) Physical therapist assistants shall not be independently supervised by a physical therapist license applicant, as defined in Section 2639, or a physical therapist student, as defined in Section 2633.7.

(d) A physical therapist assistant shall not perform any evaluation of a patient or prepare a discharge summary. The supervising physical therapist shall determine which elements of the treatment plan, if any, shall be assigned to the physical therapist assistant. Assignment of patient care shall be commensurate with the competence of the physical therapist assistant.

SEC. 28. Section 2630.4 is added to the Business and Professions Code, to read:

2630.4. (a) A “physical therapy aide” is an unlicensed person, at least 18 years of age, who aids a licensed physical therapist consistent with subdivision (b).

(b) The aide shall at all times be under the supervision of the physical therapist. An aide shall not independently perform physical therapy or any physical therapy procedure. The board shall adopt regulations that set forth the standards and requirements for the supervision of an aide by a physical therapist.

(c) Physical therapy aides shall not be independently supervised by a physical therapist license applicant, as defined in Section 2639, or a physical therapist student, as defined in Section 2633.7.

(d) This section does not prohibit the administration by a physical therapy aide of massage, external baths, or normal exercise not a part of a physical therapy treatment.

SEC. 29. Section 2630.5 is added to the Business and Professions Code, to read:

2630.5. The following persons are exempt from the licensure requirements of this chapter when engaged in the following activities:

(a) A regularly matriculated physical therapist student undertaking a course of professional instruction in an approved entry-level physical therapy education program or enrolled in a program of supervised clinical education under the direction of an approved physical therapy education program as described in Section 2651. These physical therapist students may perform physical therapy as a part of their course of study.

(b) A regularly matriculated physical therapist assistant student undertaking a course of instruction in an approved physical therapy education program or enrolled in a program of supervised clinical education under the direction of an approved physical therapy education program as described in Section 2651. These physical therapist assistant students may perform physical therapy techniques as a part of their course of study.

(c) A physical therapist who holds a valid and unrestricted license in another jurisdiction of the United States or who is credentialed to practice physical therapy in another country if that person is researching, demonstrating, or providing physical therapy in connection with teaching or participating in an educational seminar of no more than 60 days in a calendar year.

(d) A physical therapist located outside this state, when in actual consultation, whether within this state or across state lines, with a licensed physical therapist of this state, or when he or she is an invited guest of the American Physical Therapy Association or one of its components, or an invited guest of an approved physical therapy school or college for the sole purpose of engaging in professional education through lectures, clinics, or demonstrations, if, at the time of the consultation, lecture, or demonstration, he or she holds a valid and unrestricted physical therapist license in the state or country in which he or she resides. The physical therapist shall not open an office, appoint a place to meet patients, receive calls from patients within

the limits of this state, give orders, or have ultimate authority over the care of a physical therapy patient who is located within this state.

(e) A physical therapist who holds a valid and unrestricted license in another jurisdiction of the United States or credentialed to practice physical therapy in another country if that person, by contract or employment, is providing physical therapy to individuals affiliated with or employed by established athletic teams, athletic organizations, or performing arts companies temporarily practicing, competing, or performing in the state for no more than 60 days in a calendar year.

(f) A physical therapist assistant who holds a valid and unrestricted license in another jurisdiction of the United States and is assisting a physical therapist engaged in activities described in subdivision (c), (d), or (e).

(g) A physical therapist or physical therapist assistant who has a valid and unrestricted license in a jurisdiction of the United States who is forced to leave his or her residence in a state other than California due to a governmentally declared emergency. This exemption applies for no more than 60 days following the declaration of the emergency. In order to be eligible for this exemption, the physical therapist or physical therapist assistant shall notify the board of his or her intent to practice in this state and provide a valid mailing address, telephone number, and email address.

SEC. 30. Section 2632 of the Business and Professions Code is repealed.

SEC. 31. Section 2633.5 is added to the Business and Professions Code, to read:

2633.5. (a) Only a person licensed as a physical therapist assistant by the board may use the title “physical therapist assistant” or “physical therapy assistant” or the letters “PTA” or any other words, letters, or figures that indicate that the person is a physical therapist assistant licensed pursuant to this chapter.

(b) The license of a physical therapist assistant shall not authorize the use of the prefix “LPT,” “RPT,” “PT,” or “Dr.,” or the title “physical therapist,” “therapist,” “doctor,” or any affix indicating or implying that the physical therapist assistant is a physical therapist or doctor.

SEC. 32. Section 2633.7 is added to the Business and Professions Code, to read:

2633.7. During a period of clinical practice described in Section 2650 or in any similar period of observation of related educational experience involving recipients of physical therapy, a person so engaged shall be identified only as a “physical therapist student” or a “physical therapist assistant student,” as authorized by the board in its regulations.

SEC. 33. The heading of Article 3 (commencing with Section 2635) is added to Chapter 5.7 of Division 2 of the Business and Professions Code, to read:

Article 3. Qualifications and Requirements for Licensure

SEC. 34. Section 2636 of the Business and Professions Code is amended to read:

2636. (a) Except as otherwise provided in this chapter, no person shall receive a license under this chapter without first successfully passing the following examinations, where success is determined based on the examination passing standard set by the board:

(1) An examination under the direction of the board to demonstrate the applicant's knowledge of the laws and regulations related to the practice of physical therapy in California. The examination shall reasonably test the applicant's knowledge of these laws and regulations.

(2) The physical therapy examination for the applicant's licensure category. The examination for licensure as a physical therapist shall test entry-level competence to practice physical therapy. The examination for licensure as a physical therapist assistant shall test entry-level competence to practice as a physical therapist assistant in the technical application of physical therapy services.

(b) An applicant may take the examinations for licensure as a physical therapist or for licensure as a physical therapist assistant after the applicant has met the educational requirements for that particular category of licensure.

(c) The examinations required by the board for a license under this chapter may be conducted by the board or by a public or private organization specified by the board. The examinations may be conducted under a uniform examination system and, for that purpose, the board may make arrangements with organizations furnishing examination materials as may, in its discretion, be desirable.

SEC. 35. Section 2636.5 of the Business and Professions Code is amended to read:

2636.5. (a) An applicant may be issued a license without a written examination if he or she meets all of the following:

(1) He or she is at the time of application licensed as a physical therapist or physical therapist assistant in a state, district, or territory of the United States having, in the opinion of the board, requirements for licensing equal to or higher than those in California, and he or she has passed, to the satisfaction of the board, an examination for licensing that is, in the opinion of the board, comparable to the examination used in this state.

(2) He or she is a graduate of a physical therapist or physical therapist assistant education program approved by the board, or has met the requirements of Section 2653.

(3) He or she files an application with the board and meets the requirements prescribed by Sections 2635 and 2650.

(b) An applicant for licensure under subdivision (a), whose application is based on a certificate issued by a physical therapy licensing authority of another state may be required to file a statement of past work activity.

(c) An applicant who has filed a physical therapy application under this section with the board for the first time may, between the date of receipt of notice that his or her application is on file and the date of receipt of his or her license, perform as a physical therapist or physical therapist assistant,

as appropriate, under the supervision of a physical therapist licensed in this state.

During this period the applicant shall identify himself or herself only as a “physical therapist license applicant” or “physical therapist assistant license applicant,” as appropriate.

If the applicant under this section does not qualify and receive a license as provided in this section and does not qualify under Section 2639, all privileges under this section shall terminate upon notice by the board. An applicant may only qualify once to perform as a physical therapist license applicant or physical therapist assistant license applicant.

SEC. 36. Section 2638 of the Business and Professions Code is amended to read:

2638. Any applicant for licensure as a physical therapist or physical therapist assistant who fails to pass the examination required by the board may retake the licensing examination and shall pay the reexamination fee.

SEC. 37. Section 2639 of the Business and Professions Code is repealed.

SEC. 38. Section 2639 is added to the Business and Professions Code, to read:

2639. (a) (1) Every graduate of an approved physical therapy education program who has filed a complete application, as defined in regulation, for licensure with the board and has been awarded either physical therapist license applicant status or physical therapist assistant license applicant status shall practice under the supervision of a licensed physical therapist pursuant to this chapter for no more than 120 days pending the results of the first licensing examination administered. If the applicant passes the examination, the physical therapist license applicant status or physical therapist assistant license applicant status shall remain in effect until a regular renewable license is issued, or licensure is denied, by the board. A supervising physical therapist shall document receipt of the letter authorizing the physical therapist license applicant status or physical therapist assistant license applicant status and record the expiration date of that status in the employee record. A supervising physical therapist shall require the applicant to provide documentation of the license issued at the conclusion of the physical therapist license applicant status or physical therapist assistant license applicant status. During this period the applicant shall identify himself or herself only as “physical therapist license applicant” or “physical therapist assistant license applicant,” as appropriate.

(2) A person shall not be considered a graduate unless he or she has successfully completed all the clinical training and internship required for graduation from the education program.

(b) A physical therapist license applicant who has been awarded license applicant status may perform as a physical therapist if he or she is under the supervision of a physical therapist licensed by the board. A physical therapist assistant license applicant who has been awarded license applicant status may perform as a physical therapist assistant if he or she is under the supervision of a physical therapist licensed by the board. The applicant shall comply with any requirements applicable to the license for which he or she

applied. An applicant may not perform in those capacities if he or she fails the first examination attempt.

SEC. 39. Section 2639.1 is added to the Business and Professions Code, to read:

2639.1. A person having, in the opinion of the board, training or experience, or a combination of training and experience, equivalent to that obtained in an approved physical therapist assistant education program and who meets the requirements of Section 2635 may apply for licensure as a physical therapist assistant.

SEC. 40. Section 2640 of the Business and Professions Code is repealed.

SEC. 41. Article 4 (commencing with Section 2644) is added to Chapter 5.7 of Division 2 of the Business and Professions Code, to read:

Article 4. Renewal of Licenses

2644. (a) Every license issued under this chapter shall expire at 12 a.m. on the last day of the birth month of the licensee during the second year of a two-year term, if not renewed.

(b) To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board, pay the prescribed renewal fee, and submit proof of the completion of continuing competency required by the board pursuant to Section 2649. The licensee shall disclose on his or her license renewal application any misdemeanor or other criminal offense for which he or she has been found guilty or to which he or she has pleaded guilty or no contest.

2645. At least 60 days before the expiration of any license, the board shall mail to each licensee under this chapter, at the latest address furnished by the licensee to the board, a notice stating the amount of the renewal fee and the date on which it is due, and that failure to pay it on or before the due date shall result in expiration of the license.

2646. A license that has expired may be renewed at any time within five years after its expiration by applying for renewal as set forth in Section 2644. Renewal under this section shall be effective on the date on which the renewal application is filed, on the date on which the renewal fee or accrued renewal fees are paid, or on the date on which the delinquency fee and penalty fee, if any, are paid, whichever last occurs. A renewed license shall continue in effect through the expiration date set forth in Section 2644 that next occurs after the effective date of the renewal, at which time it shall expire and become invalid if it is not so renewed.

2647. A person who fails to renew his or her license within five years after its expiration may not renew it, and it shall not be reissued, reinstated, or restored thereafter. However, the person may apply for a new license if he or she satisfies the requirements set forth in Article 3 (commencing with Section 2635).

2648. (a) A licensee is exempt from the payment of the renewal fee while engaged in full-time training or active service in the United States

Army, Navy, Air Force, Marines, or Coast Guard, or in the United States Public Health Service.

(b) A person exempted from the payment of the renewal fee by this section shall not engage in any practice of, or assistance in the provision of, physical therapy not related to his or her military service and shall become liable for payment of the fee for the current renewal period upon his or her discharge from full-time active service and shall have a period of 60 days after becoming liable within which to pay the renewal fee before the delinquency fee is required. Any person who is discharged from active service within 60 days of the end of the renewal period is exempt from the payment of the renewal fee for that period.

(c) The time spent in full-time active service or training shall not be included in the computation of the five-year period for renewal and reinstatement of licensure provided in Section 2646.

(d) A person exempt from renewal fees under this section shall not be exempt from meeting the requirements of Section 2649.

2648.3. A licensee who demonstrates to the satisfaction of the board that he or she is unable to practice, or assist in the provision of, physical therapy due to a disability may request a waiver of the license renewal fee. The granting of a waiver shall be at the discretion of the board and may be terminated at any time. Waivers shall be based on the inability of a licensee to practice, or assist in the provision of, physical therapy. A licensee whose renewal fee has been waived pursuant to this section shall not engage in the practice of, or assist in the provision of, physical therapy unless and until the licensee pays the current renewal fee and does either of the following:

(a) Establishes to the satisfaction of the board, on a form prescribed by the board and signed under penalty of perjury, that the licensee's disability either no longer exists or does not affect his or her ability to practice, or assist in the provision of, physical therapy safely.

(b) Signs an agreement, on a form prescribed by the board and signed under penalty of perjury, to limit his or her practice of, or assistance in the provision of, physical therapy in the manner prescribed by his or her reviewing physician.

(c) A person exempt from renewal fees under this section shall not be exempt from meeting the requirements of Section 2649.

2648.5. (a) The renewal fee shall be waived for licensees residing in California who certify to the board that license renewal is for the sole purpose of providing voluntary, unpaid physical therapy services.

(b) A person exempt from renewal fees under this section shall not be exempt from meeting the requirements of Section 2649.

2648.7. A licensee is exempt from the payment of the renewal fee and from meeting the requirements set forth in Section 2649 if he or she has applied to the board for retired license status. A holder of a license in retired status pursuant to this section shall not engage in the practice of, or assist in the provision of, physical therapy unless the licensee applies for renewal and meets all of the requirements as set forth in Section 2644.

SEC. 42. The heading of Article 4 (commencing with Section 2650) of Chapter 5.7 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 5. Educational Standards

SEC. 43. Section 2650 of the Business and Professions Code is repealed.

SEC. 44. Section 2650 is added to the Business and Professions Code, to read:

2650. (a) The physical therapist education requirements are as follows:

(1) Except as otherwise provided in this chapter, each applicant for a license as a physical therapist shall be a graduate of a professional degree program of an accredited postsecondary institution or institutions approved by the board and shall have completed a professional education program including academic course work and clinical internship in physical therapy.

(2) Unless otherwise specified by the board by regulation, the educational requirements shall include instruction in the subjects prescribed by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association or Physiotherapy Education Accreditation Canada and shall include a combination of didactic and clinical experiences. The clinical experience shall include at least 18 weeks of full-time experience with a variety of patients.

(b) The physical therapist assistant educational requirements are as follows:

(1) Except as otherwise provided in this chapter, each applicant for a license as a physical therapist assistant shall be a graduate of a physical therapist assistant program of an accredited postsecondary institution or institutions approved by the board, and shall have completed both the academic and clinical experience required by the physical therapist assistant program, and have been awarded an associate degree.

(2) Unless otherwise specified by the board by regulation, the educational requirements shall include instruction in the subjects prescribed by the CAPTE of the American Physical Therapy Association or Physiotherapy Education Accreditation Canada or such other body as may be approved by the board by regulation and shall include a combination of didactic and clinical experiences. The clinical experience shall include at least 18 weeks of full-time experience with a variety of patients.

SEC. 45. Section 2650.1 of the Business and Professions Code is repealed.

SEC. 46. Section 2650.2 of the Business and Professions Code is repealed.

SEC. 47. Section 2651 of the Business and Professions Code is amended to read:

2651. The board shall approve only those physical therapist and physical therapist assistant education programs that prove to the satisfaction of the board that they comply with the minimum physical therapist or physical

therapist assistant educational requirements set forth in this chapter and adopted by the board pursuant to this chapter. Physical therapist and physical therapist assistant education programs that are accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association, Physiotherapy Education Accreditation Canada, or such other body as may be approved by the board by regulation shall be deemed approved by the board unless the board determines otherwise. This chapter shall not prohibit the board from disapproving any foreign physical therapist or physical therapist assistant educational program or from denying an applicant if, in the opinion of the board, the instruction received by the applicant or the courses offered by the program were not equivalent to that which is required by this chapter.

SEC. 48. Section 2652 of the Business and Professions Code is repealed.

SEC. 49. Section 2653 of the Business and Professions Code is repealed.

SEC. 50. Section 2653 is added to the Business and Professions Code, to read:

2653. An applicant for a license as a physical therapist who has graduated from a physical therapist education program that is not approved by the board and is not located in the United States shall do all of the following:

(a) Furnish documentary evidence satisfactory to the board, that he or she has completed a professional degree in a physical therapist educational program substantially equivalent at the time of his or her graduation to that issued by a board approved physical therapist education program. The professional degree must entitle the applicant to practice as a physical therapist in the country where the diploma was issued. The applicant shall meet the educational requirements set forth in paragraph (2) of subdivision (a) of Section 2650. The board may require an applicant to submit documentation of his or her education to a credentials evaluation service for review and a report to the board.

(b) Demonstrate proficiency in English by achieving a score specified by the board on the Test of English as a Foreign Language administered by the Educational Testing Services or such other examination as may be specified by the board by regulation.

(c) Complete nine months of clinical service in a location approved by the board under the supervision of a physical therapist licensed by a United States jurisdiction, in a manner satisfactory to the board. The applicant shall have passed the written examination required in Section 2636 prior to commencing the period of clinical service. The board shall require the supervising physical therapist to evaluate the applicant and report his or her findings to the board. The board may in its discretion waive all or part of the required clinical service pursuant to guidelines set forth in its regulations. During the period of clinical service, the applicant shall be identified as a physical therapist license applicant. If an applicant fails to complete the required period of clinical service, the board may, for good cause shown, allow the applicant to complete another period of clinical service.

SEC. 51. Section 2654 is added to the Business and Professions Code, to read:

2654. If an applicant who has graduated from a physical therapist education program that is not approved by the board and is not located in the United States does not qualify to take the physical therapist examination, his or her education may be evaluated by the board and the applicant may be eligible to take the physical therapist assistant examination.

SEC. 52. Article 4.5 (commencing with Section 2655) of Chapter 5.7 of Division 2 of the Business and Professions Code is repealed.

SEC. 53. The heading of Article 5 (commencing with Section 2660) of Chapter 5.7 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 6. Enforcement

SEC. 54. Section 2660 of the Business and Professions Code is amended to read:

2660. Unprofessional conduct constitutes grounds for citation, discipline, denial of a license, or issuance of a probationary license. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code), issue a citation, impose discipline, deny a license, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license issued under this chapter for unprofessional conduct that includes, in addition to other provisions of this chapter, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter, any regulations duly adopted under this chapter, or the Medical Practice Act (Chapter 5 (commencing with Section 2000)).

(b) Advertising in violation of Section 17500.

(c) Obtaining or attempting to obtain a license by fraud or misrepresentation.

(d) Practicing or offering to practice beyond the scope of practice of physical therapy.

(e) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(f) Unlawful possession or use of, or conviction of a criminal offense involving, a controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9, as follows:

(1) Obtaining or possessing in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist, administering to himself or herself, or furnishing or administering to another, any controlled substances or any dangerous drug.

- (2) Using any controlled substance or any dangerous drug.
- (3) Conviction of a criminal offense involving the consumption or self-administration of, or the possession of, or falsification of a record pertaining to, any controlled substance or any dangerous drug, in which event the record of the conviction is conclusive evidence thereof.
- (g) Failure to maintain adequate and accurate records relating to the provision of services to his or her patients.
- (h) Gross negligence or repeated acts of negligence in practice or in the delivery of physical therapy care.
- (i) Aiding or abetting any person to engage in the unlawful practice of physical therapy.
- (j) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.
- (k) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California, to encourage appropriate consistency in the implementation of this subdivision.
- (l) The commission of verbal abuse or sexual harassment.
- (m) Engaging in sexual misconduct or violating Section 726.
- (n) Permitting a physical therapist assistant or physical therapy aide under one's supervision or control to perform, or permitting the physical therapist assistant or physical therapy aide to hold himself or herself out as competent to perform, professional services beyond the level of education, training, and experience of the physical therapist assistant or aide.
- (o) The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice physical therapy issued by that state, or the revocation, suspension, or restriction of the authority to practice physical therapy by any agency of the federal government.
- (p) Viewing a completely or partially disrobed patient in the course of treatment if the viewing is not necessary to patient evaluation or treatment under current standards.
- (q) Engaging in any act in violation of Section 650, 651, or 654.2.
- (r) Charging a fee for services not performed.

(s) Misrepresenting documentation of patient care or deliberate falsifying of patient records.

(t) Except as otherwise allowed by law, the employment of runners, cappers, steerers, or other persons to procure patients.

(u) The willful, unauthorized violation of professional confidence.

(v) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a patient in confidence during the course of treatment and all information about the patient that is obtained from tests or other means.

(w) Habitual intemperance.

SEC. 54.5. Section 2660 of the Business and Professions Code is amended to read:

2660. Unprofessional conduct constitutes grounds for citation, discipline, denial of a license, or issuance of a probationary license. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code), issue a citation, impose discipline, deny a license, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license issued under this chapter for unprofessional conduct that includes, in addition to other provisions of this chapter, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter, any regulations duly adopted under this chapter, or the Medical Practice Act (Chapter 5 (commencing with Section 2000)).

(b) Advertising in violation of Section 17500.

(c) Obtaining or attempting to obtain a license by fraud or misrepresentation.

(d) Practicing or offering to practice beyond the scope of practice of physical therapy.

(e) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(f) Unlawful possession or use of, or conviction of a criminal offense involving, a controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9, as follows:

(1) Obtaining or possessing in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist, administering to himself or herself, or furnishing or administering to another, any controlled substances or any dangerous drug.

(2) Using any controlled substance or any dangerous drug.

(3) Conviction of a criminal offense involving the consumption or self-administration of, or the possession of, or falsification of a record

pertaining to, any controlled substance or any dangerous drug, in which event the record of the conviction is conclusive evidence thereof.

(g) Failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

(h) Gross negligence or repeated acts of negligence in practice or in the delivery of physical therapy care.

(i) Aiding or abetting any person to engage in the unlawful practice of physical therapy.

(j) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.

(k) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of bloodborne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California, to encourage appropriate consistency in the implementation of this subdivision.

(l) The commission of verbal abuse or sexual harassment.

(m) Engaging in sexual misconduct or violating Section 726.

(n) Permitting a physical therapist assistant or physical therapy aide under one's supervision or control to perform, or permitting the physical therapist assistant or physical therapy aide to hold himself or herself out as competent to perform, professional services beyond the level of education, training, and experience of the physical therapist assistant or aide.

(o) The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice physical therapy issued by that state, or the revocation, suspension, or restriction of the authority to practice physical therapy by any agency of the federal government.

(p) Viewing a completely or partially disrobed patient in the course of treatment if the viewing is not necessary to patient evaluation or treatment under current standards.

(q) Engaging in any act in violation of Section 650, 651, or 654.2.

(r) Charging a fee for services not performed.

(s) Misrepresenting documentation of patient care or deliberate falsifying of patient records.

(t) Except as otherwise allowed by law, the employment of runners, cappers, steerers, or other persons to procure patients.

(u) The willful, unauthorized violation of professional confidence.

(v) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a patient in confidence during the course of treatment and all information about the patient that is obtained from tests or other means.

(w) Habitual intemperance.

(x) Failure to comply with the provisions of Section 2620.1.

SEC. 55. Section 2660.2 of the Business and Professions Code is amended to read:

2660.2. (a) The board may refuse a license to any applicant guilty of unprofessional conduct or sexual activity referred to in Section 2660.1. The board may, in its sole discretion, issue a public letter of reprimand or may issue a probationary license to any applicant for a license who is guilty of unprofessional conduct but who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of the type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of physical therapy.

(b) The applicant shall have the right to appeal the denial, or the issuance with terms and conditions, of any license in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

(c) In lieu of refusing a license, the board may, upon stipulation or agreement by the licensee, issue a public letter of reprimand after it has conducted an investigation or inspection as provided for in this chapter. The public letter of reprimand may include a requirement for specified training or education, and cost recovery for investigative costs. The board shall notify the licensee of its intention to issue the letter 30 days before the intended issuance date of the letter. The licensee shall indicate in writing at least 15 days prior to the letter's intended issuance date whether he or she agrees to the issuance of the letter. The board, at its option, may extend the time within which the licensee may respond to its notification. If the licensee does not agree to the issuance of the letter, the board shall not issue the letter and may proceed to file the accusation. The board may use a public letter of reprimand only for minor violations, as defined by the board, committed by the applicant. A public letter of reprimand issued pursuant

to this section shall be disclosed by the board to an inquiring member of the public and shall be posted on the board's Internet Web site.

SEC. 56. Section 2660.3 of the Business and Professions Code is amended to read:

2660.3. In lieu of filing or prosecuting a formal accusation against a licensee, the board may, upon stipulation or agreement by the licensee, issue a public letter of reprimand after it has conducted an investigation or inspection as provided for in this chapter. The public letter of reprimand may include a requirement for specified training or education, and cost recovery for investigative costs. The board shall notify the licensee of its intention to issue the letter 30 days before the intended issuance date of the letter. The licensee shall indicate in writing at least 15 days prior to the letter's intended issuance date whether he or she agrees to the issuance of the letter. The board, at its option, may extend the time within which the licensee may respond to its notification. If the licensee does not agree to the issuance of the letter, the board shall not issue the letter and may proceed to file the accusation. The board may use a public letter of reprimand only for minor violations, as defined by the board, committed by the licensee. A public letter of reprimand issued pursuant to this section shall be disclosed by the board to an inquiring member of the public and shall be posted on the board's Internet Web site.

SEC. 57. Section 2660.4 is added to the Business and Professions Code, to read:

2660.4. A licensee who fails or refuses to comply with a request from the board for the medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization shall pay to the board a civil penalty of one thousand dollars (\$1,000) per day for each day that the records have not been produced after the 15th day, unless the licensee is unable to provide the records within this time period for good cause.

SEC. 58. Section 2660.5 of the Business and Professions Code is amended to read:

2660.5. The board shall deny a physical therapist license or physical therapist assistant license to an applicant who is required to register pursuant to Section 290 of the Penal Code. This section does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

SEC. 59. Section 2660.8 is added to the Business and Professions Code, to read:

2660.8. A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

- (a) Have his or her license revoked upon order of the board.

- (b) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
- (c) Be placed on probation and required to pay the costs of probation monitoring upon order of the board.
- (d) Be publicly reprimanded by the board.
- (e) Be required to surrender his or her license based on an order of the board.
- (f) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

SEC. 60. Section 2661 of the Business and Professions Code is amended to read:

2661. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The board may order discipline of the licensee in accordance with Section 2660 or the board may take action as authorized in Section 2660.2 on an application when 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, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 61. Section 2661.7 of the Business and Professions Code is amended to read:

2661.7. (a) A person whose license has been revoked or suspended, or who has been placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license or approval revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination or one year for modification of a condition of probation of three years or more.

(3) At least one year for reinstatement of a license revoked for mental or physical illness, or for modification of a condition, or termination of probation of less than three years.

(b) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physical therapists licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law

judge shall provide a proposed decision to the board that shall be acted upon in accordance with the Administrative Procedure Act.

(d) The board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued, as the board or the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(e) The administrative law judge designated in Section 11371 of the Government Code when hearing a petition for reinstating a license, or modifying a penalty, may recommend the imposition of any terms and conditions deemed necessary.

(f) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner. The board may deny, without a hearing or argument, any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter Sections 822 and 823.

SEC. 62. The heading of Article 5.5 (commencing with Section 2662) of Chapter 5.7 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 7. Substance Abuse Rehabilitation Program

SEC. 63. Section 2663 of the Business and Professions Code is amended to read:

2663. The board shall establish and administer a substance abuse rehabilitation program, hereafter referred to as the rehabilitation program, for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more rehabilitation evaluation committees to assist it in carrying out its duties under this article. Any rehabilitation evaluation committee established by the board shall operate under the direction of the rehabilitation program manager, as designated by the executive officer of the board. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 64. Section 2664 of the Business and Professions Code is amended to read:

2664. (a) Any rehabilitation evaluation committee established by the board shall have at least three members. In making appointments to a

rehabilitation evaluation committee, the board shall consider the appointment of persons who are either recovering from substance abuse and have been free from substance abuse for at least three years immediately prior to their appointment or who are knowledgeable in the treatment and recovery of substance abuse. The board also shall consider the appointment of a physician and surgeon who is board certified in psychiatry.

(b) Appointments to a rehabilitation evaluation committee shall be by the affirmative vote of a majority of members appointed to the board. Each appointment shall be at the pleasure of the board for a term not to exceed four years. In its discretion, the board may stagger the terms of the initial members so appointed.

(c) A majority of the members of a rehabilitation evaluation committee shall constitute a quorum for the transaction of business. Any action requires an affirmative vote of a majority of those members present at a meeting constituting at least a quorum. Each rehabilitation evaluation committee shall elect from its membership a chairperson and a vice chairperson. Notwithstanding the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), relating to public meetings, a rehabilitation evaluation committee may convene in closed session to consider matters relating to any physical therapist or physical therapist assistant applying for or participating in a rehabilitation program, and a meeting which will be convened entirely in closed session need not comply with Section 11125 of the Government Code. A rehabilitation evaluation committee shall only convene in closed session to the extent it is necessary to protect the privacy of an applicant or participant. Each member of a rehabilitation evaluation committee shall receive a per diem and shall be reimbursed for expenses as provided in Section 103.

SEC. 65. Section 2665 of the Business and Professions Code is amended to read:

2665. Each rehabilitation evaluation committee has the following duties and responsibilities:

(a) To evaluate physical therapists and physical therapist assistants who request participation in the rehabilitation program and to make recommendations. In making recommendations, the committee shall consider any recommendations from professional consultants on the admission of applicants to the rehabilitation program.

(b) To review and designate treatment facilities to which physical therapists and physical therapist assistants in the rehabilitation program may be referred.

(c) To receive and review information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the rehabilitation program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

(e) To consider whether each participant in the rehabilitation program may with safety continue or resume the practice of physical therapy.

(f) To set forth in writing the terms and conditions of the rehabilitation agreement that is approved by the program manager for each physical therapist and physical therapist assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the rehabilitation program's progress, to prepare reports to be submitted to the board, and to suggest proposals for changes in the rehabilitation program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a rehabilitation evaluation committee shall be considered a public employee. No board or rehabilitation evaluation committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 66. Section 2666 of the Business and Professions Code is amended to read:

2666. (a) Criteria for acceptance into the rehabilitation program shall include all of the following:

(1) The applicant shall be licensed as a physical therapist or as a physical therapist assistant by the board and shall be a resident of California.

(2) The applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner that may affect his or her ability to practice physical therapy safely or competently.

(3) The applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action.

(4) The applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program.

(5) The applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program.

(6) The applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

Any applicant may be denied participation in the program if the board, the program manager, or a rehabilitation evaluation committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

(1) The participant has successfully completed the treatment program.

(2) The participant has failed to comply with the treatment program designated for him or her.

(3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).

(4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physical therapist or physical therapy assistant who requests participation in a rehabilitation program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The rehabilitation evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

SEC. 67. Section 2667 of the Business and Professions Code is amended to read:

2667. All board and rehabilitation evaluation committee records and records of proceedings and participation of a physical therapist or physical therapist assistant in a program shall be confidential and are not subject to discovery or subpoena.

SEC. 68. Section 2668 of the Business and Professions Code is amended to read:

2668. (a) A fee to cover the actual cost of administering the program shall be charged for participation in the program. If the board contracts with any other entity to carry out this article, at the discretion of the board, the fee may be collected and retained by that entity.

(b) If the board contracts with any other entity to carry out this section, the executive officer of the board, or his or her designee, shall review the activities and performance of the contractor on a biennial basis. As part of this review, the board shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

(c) Subdivision (a) shall apply to all new participants entering into the board's rehabilitation program on or after January 1, 2007. Subdivision (a) shall apply on and after January 1, 2008, to participants currently enrolled as of December 31, 2007.

SEC. 69. Section 2669 of the Business and Professions Code is amended to read:

2669. Participation in a rehabilitation program shall not be a defense to any disciplinary action that may be taken by the board. This section does not preclude the board from commencing disciplinary action against a physical therapist or physical therapist assistant who is terminated unsuccessfully from the program. That disciplinary action may not include as evidence any confidential information.

SEC. 70. The heading of Article 6 (commencing with Section 2670) of Chapter 5.7 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 8. Offenses Against this Chapter

SEC. 71. Section 2672 of the Business and Professions Code is amended to read:

2672. Whenever any person has engaged or is about to engage in any acts or practices that constitute or will constitute an offense against this chapter, the superior court of any county, on application of the board, or 10 or more persons holding physical therapist licenses issued under this chapter, may issue an injunction or other appropriate order restraining the conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

SEC. 72. The heading of Article 6.5 (commencing with Section 2676) of Chapter 5.7 of Division 2 of the Business and Professions Code is repealed.

SEC. 73. Section 2676 of the Business and Professions Code is amended and renumbered to read:

2649. (a) A person renewing his or her license shall submit proof satisfactory to the board that, during the preceding two years, he or she has completed the required number of continuing education hours established by regulation by the board, or such other proof of continuing competency as the board may establish by regulation. Required continuing education shall not exceed 30 hours every two years.

(b) The board shall adopt and administer regulations including, but not limited to, continuing education intended to ensure the continuing competency of persons licensed pursuant to this chapter. The board may establish different requirements for physical therapists and physical therapist assistants. The board may not require the completion of an additional postsecondary degree or successful completion of an examination as a condition of renewal, but may recognize these as demonstrative of continuing competency. This program shall include provisions requiring random audits of licensees in order to ensure compliance.

(c) The administration of this section may be funded through professional license fees, continuing education provider fees, and recognized approval

agency fees. The fees shall not exceed the amounts necessary to cover the actual costs of administering this section.

SEC. 74. The heading of Article 7 (commencing with Section 2680) of Chapter 5.7 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 9. Fiscal Administration

SEC. 75. Section 2682 of the Business and Professions Code is amended to read:

2682. There is in the State Treasury the Physical Therapy Fund. All collections from persons licensed or seeking to be licensed shall be paid by the board into the fund after reporting to the Controller at the beginning of each month the amount and source of the collections. All money in the Physical Therapy Fund is appropriated for the exclusive purpose of executing this chapter.

SEC. 76. Section 2683 of the Business and Professions Code is repealed.

SEC. 77. Section 2684 of the Business and Professions Code is repealed.

SEC. 78. Section 2685 of the Business and Professions Code is repealed.

SEC. 79. The heading of Article 8 (commencing with Section 2690) of Chapter 5.7 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 10. Physical Therapy Corporations

SEC. 80. Section 12529 of the Government Code, as amended by Section 113 of Chapter 332 of the Statutes of 2012, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the Physical Therapy Board of California, or any committee under the jurisdiction of the Medical Board of California, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able

employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the boards.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the Physical Therapy Board of California, and the committees under the jurisdiction of the Medical Board of California, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative on January 1, 2014.

SEC. 81. Section 12529.5 of the Government Code, as amended by Section 115 of Chapter 332 of the Statutes of 2012, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or the Physical Therapy Board of California, shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition, and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and his or her deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards in designing and providing initial and in-service training programs for staff of the boards, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the boards shall be made by the executive officer of the boards as appropriate in consultation with the senior assistant.

(e) This section shall become operative on January 1, 2014.

SEC. 82. Section 54.5 of this bill incorporates amendments to Section 2660 of the Business and Professions Code proposed by both this bill and Assembly Bill 1000. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 2660 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 1000, in which case Section 54 of this bill shall not become operative.

SEC. 83. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Statement re Mailing

STATEMENT OF SERVICE BY MAIL

I certify that the Physical Therapy Board of California of the Department of Consumer Affairs has complied with the requirements of Government Code Section 11346.4(a)(1) through (4) and that the notice was mailed, and pursuant to Government Code Section 11340.85, sent by electronic communication, on July 16, 2021.

Dated: September 10, 2021

Rebecca Marco

Rebecca Marco
Physical Therapy Board of California

Updated
Informative
Digest

PHYSICAL THERAPY BOARD OF CALIFORNIA

UPDATED INFORMATIVE DIGEST

No changes have been made which would warrant a change to the informative digest contained in the original notice for sections 1399.15.

Final Statement Of Reasons

PHYSICAL THERAPY BOARD OF CALIFORNIA

FINAL STATEMENT OF REASONS

Hearing Date: The Board did not schedule a public hearing, nor was one requested.

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Section(s) Affected: California Code of Regulations, Title 16, Division 13.2, Section 1399.15

Updated Information:

The Initial Statement of Reasons is included in the rulemaking file and is incorporated as if set forth herein and is updated as follows:

In the Board's 45-day comment period, there were no comments received.

During the review by the Office of Administrative Law, the Disciplinary Guidelines' reference to the Uniform Standards on page 10 was updated to show the current date as a non-substantive change. Pages 11-12 of the Guidelines were updated to remove the website references regarding current fees, also a non-substantive change.

Local Mandate: A mandate is not imposed on local agencies or school districts.

Small Business Impact: The Physical Therapy Board of California (Board) has determined that the proposed regulations would have no significant statewide adverse economic impact directly affecting small businesses, including the ability of California businesses to compete with businesses in other states.

Benefits:

This regulatory action will update the Board's Guidelines for Issuing Citations and Imposing Discipline (Guidelines) used in its enforcement decisions and will amend 16 CCR 1399.15 to incorporate these updated Guidelines by reference as the Revised September 2020, 6th Edition. The proposed amendments will benefit the Board, licensees, and consumers by making the Guidelines consistent with current law, along with the current educational and probationary environment, clarifying the terms and conditions of probation (to reduce the likelihood of misinterpretation to licensees and others), and strengthening consumer protection. Because the Department of Consumer Affairs updated the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees ("Uniform Standards") in 2019, the Board is similarly updating the regulation with the revised 2019 version to make the regulation consistent with the current Uniform Standards pursuant to the Legislative Mandate of Senate Bill 796 (Hill, Chapter 600, Statutes of 2017) ("SB 796").

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal that was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation, would be as effective and less burdensome to affected private persons than the regulatory proposal or would be more cost effective to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

Option 1: Do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because the last edition of the Guidelines was adopted in December 2013. As a result, the Board has identified areas in the past seven years that need non-substantive and technical amendments to improve clarity in the conditions of probation reflected in the changing probationary environment. The amendments proposed are necessary to enhance consumer protection.

Objections or Recommendations/Responses:

There were no objections or recommendations regarding the proposed action received during the comment period.

Incorporation by Reference – 1 CCR 20

The incorporation by reference method was used because it would be impractical and cumbersome to publish the Guidelines for Issuing Citations and Imposing Discipline in the California Code of Regulations (CCR). The Guidelines are intended to assist administrative law judges, attorneys, licensees, and others involved in the disciplinary process. The Guidelines were developed to establish consistency and impose the most appropriate penalty in administrative disciplinary actions for similar offenses on a statewide basis. They are extensive and have been printed as a booklet. If the Guidelines were incorporated in the CCR, it would increase the size of Division 13.2 and may cause confusion to the user. The Guidelines were made available to the public and were posted on the board's website.

Similarly, it would be cumbersome and duplicative to reprint the Uniform Standards into the CCR and so it is incorporated by reference. The Uniform Standards were also made available to the public and have been posted on the board's website.

Written Comments

PHYSICAL THERAPY BOARD OF CALIFORNIA

WRITTEN COMMENTS

There were no written comments received on the proposed language or the Guidelines for Imposing Discipline and Issuing Citations, incorporated by reference into section 1399.15.

Std. Form 399
*Economic
And Fiscal
Impact
Statement
Attached*

(see e-paper clip at left)

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME Consumer Affairs	CONTACT PERSON Becky Marco	EMAIL ADDRESS becky.marco@dca.ca.gov	TELEPHONE NUMBER TBD
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Guidelines for Issuing Citations and Imposing Discipline (Guidelines)			NOTICE FILE NUMBER Z

ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input checked="" type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input checked="" type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input checked="" type="checkbox"/> c. Impacts jobs or occupations | <input checked="" type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below): |

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*

2. The Physical Therapy Board of CA estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- Below \$10 million
 Between \$10 and \$25 million
 Between \$25 and \$50 million
 Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: Unknown

Describe the types of businesses (Include nonprofits): Physical therapy practices

Enter the number or percentage of total businesses impacted that are small businesses: Unknown

4. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: N/A

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____

6. Enter the number of jobs created: 0 and eliminated: 0

Describe the types of jobs or occupations impacted: Physical Therapists and Physical Therapist Assistants

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ 0
- a. Initial costs for a small business: \$ N/A Annual ongoing costs: \$ N/A Years: N/A
- b. Initial costs for a typical business: \$ N/A Annual ongoing costs: \$ N/A Years: N/A
- c. Initial costs for an individual: \$ N/A Annual ongoing costs: \$ N/A Years: N/A
- d. Describe other economic costs that may occur: This proposal revises the Board's existing disciplinary guidelines, but does not change fine amounts. Only those licensees under disciplinary action may be impacted, but fine amounts are unchanged.
2. If multiple industries are impacted, enter the share of total costs for each industry: N/A
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ 0
4. Will this regulation directly impact housing costs? YES NO
If YES, enter the annual dollar cost per housing unit: \$ _____
Number of units: _____
5. Are there comparable Federal regulations? YES NO
Explain the need for State regulation given the existence or absence of Federal regulations: Licensees are regulated by the state. There are no comparable federal regulations.
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ 0

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: The proposed regulation would benefit the health and welfare of California residents because it updates and clarifies the terms and conditions for licensees subject to discipline.
2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
Explain: BPC sections 315, 315.2, 315.4, 2615, 2660-2660.2, 2661, 2661, and GC sections 11400.20, 11425.50
3. What are the total statewide benefits from this regulation over its lifetime? \$ Unknown
4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: N/A

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the regulation is proposed or would be as effective or less burdensome to affected private persons than the proposed regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ Unknown Cost: \$ 0
Alternative 1: Benefit: \$ N/A Cost: \$ N/A
Alternative 2: Benefit: \$ N/A Cost: \$ N/A

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: The proposed regulations help to improve the health and safety of Californians and the benefits are difficult to quantify.

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: The regulation does not mandate the use of specific technologies or equipment, or prescribe specific actions or procedures.

MAJ
E. MAJOR REGULATIONS Include calculations and assumptions in the rulemaking record.

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES NO

*If YES, complete E2. and E3
If NO, skip to E4*

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____
Alternative 2: _____
(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____
Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____
Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: N/A

The incentive for innovation in products, materials or processes: N/A

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: N/A

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

- b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- a. Implements the Federal mandate contained in _____

- b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Annual Savings. (approximate)

\$ _____

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE



DATE

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY


Lourdes Castro Ramirez (Jun 29, 2021 20:00 PDT)

DATE

Jun 29, 2021

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

DATE



DCA PT DGs std 399

Final Audit Report

2021-06-30

Created:	2021-06-30
By:	Patricia Ochoa (patricia.ochoa@bcsh.ca.gov)
Status:	Signed
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