

**TITLE 16.**  
**PHYSICAL THERAPY BOARD OF CALIFORNIA**  
**NOTICE OF PROPOSED RULEMAKING CONCERNING**

Substantial Relationship Criteria §1399.20  
Rehabilitation Criteria for Denial and Reinstatement of Licensure §1399.21  
Rehabilitation Criteria for Suspensions or Revocations §1399.22  
of the California Code of Regulations

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 his or her 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 his/her 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 [brooke.arneson@dca.ca.gov](mailto:brooke.arneson@dca.ca.gov). The written comment period closes at **11:59 p.m. on August 11, 2020**. The Board will consider only comments received at the Board’s office by that time. Submit comments to:

Brooke Arneson, Administrative Analyst  
Physical Therapy Board of California  
2005 Evergreen Street, Suite 1350  
Sacramento, CA 95815

Or: Via email to: [brooke.arneson@dca.ca.gov](mailto:brooke.arneson@dca.ca.gov)

Or: By facsimile (FAX) at: 916 263-2560

**AUTHORITY AND REFERENCE**

Business and Professions Code (BPC) sections 141, 480, 481, 482, 490, 493, and 2615 authorize the Board to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific sections 141, 480, 481, 482, 488, 490, 493, 2660 and 2661 of the BPC.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Board licenses physical therapists (PT), who are licensed health care practitioners that provide physical therapy services, and physical therapy assistants (PTA), who are licensed health care practitioners that provide physical therapy services under the supervision of a

licensed physical therapist (BPC section 2630.3). Existing law (BPC sections 480 and 490) authorizes the Board to deny an application for licensure or discipline a PT or PTA based on a conviction for a crime or act substantially related to the licensed business or profession. BPC section 481 authorizes the Board to develop criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of the physical therapy profession. BPC section 482 requires the Board to develop criteria to evaluate an applicant's or licensee's rehabilitation when considering the denial or discipline of a PT or PTA license. Consistent with that authority, the Board has adopted regulations that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to qualifications, functions, or duties of a PT or PTA licensee.

Effective July 1, 2020, under the provisions of Assembly Bill (AB) 2138 (Statutes 2018, Chapter 995), the Board's existing authority to deny an applicant a license, based upon a substantially related criminal conviction, will significantly change. This proposal seeks to update the Board's current regulations, consistent with this legislation, and to more accurately reflect the Board's authority to consider denials, discipline or petitions for reinstatement or modification of penalty.

Effective July 1, 2020, BPC section 481, subsection (b), will require the Board's existing substantial relationship criteria regulations to include all the following:

- the nature and gravity of the offense;
- the number of years elapsed since the date of the offense; and
- the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

Further amendments to the Board's regulations are needed to address other changes to law enacted by AB 2138. These amendments include the addition of references to "professional misconduct," as this will be considered a legal basis for denial under BPC section 480. The proposed language will also add references to discipline under BPC section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under that section. Also, the Board proposes adding new rehabilitation criteria to help the Board consider whether an applicant or licensee made a "showing of rehabilitation," as required by AB 2138 (BPC §§ 480, 482, as added by AB 2138, §§ 4, 9.) This proposal also implements changes to how the board considers rehabilitation evidence when considering denials, discipline or a petition for reinstatement of a license or modification of a disciplinary penalty (e.g., petition for early termination of probation).

*Anticipated Benefits of the Proposed Regulation:*

The proposed amendments will place applicants and licensees on notice that the Board is statutorily authorized to deny, suspend, or revoke a license because of professional misconduct and discipline taken by another licensing board or jurisdiction. The proposal also makes relevant parties (e.g., Deputy Attorneys General, Administrative Law Judges, respondents, and respondents' legal counsel) aware that, when considering denial or discipline of applicants or licensees, the Board uses the listed criteria to determine whether the crime, act, or professional misconduct is substantially related to the practice of physical therapy.

AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. These proposed amendments further that goal by adopting criteria that emphasize an applicant's or licensee's rehabilitative efforts and what is needed to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensed PTs and PTAs in the marketplace, thereby allowing more health care providers to treat the increasing numbers of California medical consumers.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

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

**DISCLOSURES REGARDING THE PROPOSED ACTION**

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: The Board anticipates minor and absorbable costs to the state as a result of amending the regulations. By defining the substantial relationship and rehabilitation criteria, Board staff may see an increased workload in researching convictions and to substantiate that rehabilitation was achieved.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None

Cost impacts on a representative private person or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Statewide adverse economic impact directly affecting businesses and individuals: None

Significant effect on housing costs: None

Business Impact:

This regulation will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

The Board currently has 40,499 licensees, including those licensees who are either inactive, retired or delinquent. During the 2016/2017 fiscal year, the Board issued 2180 licenses and denied 4, in 2017/2018, the Board issued 2454 licenses and denied 11, and in 2018/2019, the Board issued 2437 licenses and denied 2. Therefore, the Board has denied less than

1% of all applicants.

Overall, the Board has denied less than 1% of all applicants since 2016; therefore, this proposal will not have an adverse economic impact. AB 2138 was enacted to reduce licensing and employment barriers for people who have been convicted of a crime, or due to acts underlying the conviction, who have a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. These amendments will further assist that effort through the adoption of standards designed to implement new substantial relationship and rehabilitation criteria. As a result, it is anticipated that there may be fewer denials or disciplinary actions, based upon criminal convictions, and, therefore, no significant or statewide adverse economic impacts are anticipated.

*Effect on Small Business:*

The Board has determined that the proposed regulation will not affect small businesses because the proposal is not large enough to affect businesses. Historically, similar regulations, adopted by the Board, resulted in less than 1 percent (1%) of all applicants being denied. Even assuming the number of denials or discipline will decrease, as a result of these amendments, the Board believes that this data demonstrates that it will not be significant enough to expand businesses who hire PTs or PTAs.

*Business Reporting Requirements:*

The regulatory action does not require businesses to file a report with the Board.

**RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:**

The proposed amendments will not create new business or eliminate existing businesses and will not affect the expansion of businesses currently doing business within the State of California nor eliminate jobs because the proposal is not of sufficient magnitude to create or eliminate businesses. The Board has made this initial determination because few physical therapy practitioners will be impacted by these amendments. Moreover, the Board currently reviews evidence of rehabilitation in a manner consistent with the proposed regulations. Historically, similar regulations, adopted by the Board, have resulted in less than 1 percent (1%) of all applicants being denied. Even assuming the number of denials or discipline will decrease, because of these amendments, the Board believes that this data demonstrates that these amendments will not be significant enough to create or eliminate businesses who hire PTs or PTAs or eliminate jobs.

This regulatory proposal will benefit the health and welfare of California residents because by implementing criteria that emphasize rehabilitative efforts, it will create an opportunity for employment for people who have been convicted of a crime and are able to make a showing of rehabilitation. This may create new jobs. This may lead to an increase in PTs and PTAs, in the marketplace, thereby allowing more health care providers to treat an increasing number of California medical consumers.

This regulatory proposal will not affect worker safety because the proposal does not involve worker safety. The proposal will amend regulations to add substantial relationship criteria

and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts or professional misconduct.

This regulatory proposal will not affect the State's environment because it does not involve environmental issues. The proposal will amend regulations to add substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts, or professional misconduct.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to its attention, will be more effective in carrying out the purpose for which the regulation is proposed, will be as effective and less burdensome to affected private persons than the adopted regulation, or will 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 with respect to alternatives to the proposed regulation during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Brooke Arneson  
2005 Evergreen Street, Suite 1350  
Sacramento, California 95815  
Telephone: (916) 561-8260  
Fax: (916) 263-2560  
Email Address: [Brooke.Arneseon@dca.ca.gov](mailto:Brooke.Arneseon@dca.ca.gov)

The backup contact person is:

Elsa Ybarra  
2005 Evergreen Street, Suite 1350  
Sacramento, California 95815  
Telephone: (916) 561-8262  
Fax: (916) 263-2560  
Email Address: [Elsa.Ybarra@dca.ca.gov](mailto:Elsa.Ybarra@dca.ca.gov)

Website Access: Materials regarding this proposal can be found at [https://www.ptbc.ca.gov/laws/prop\\_regs/index.shtml](https://www.ptbc.ca.gov/laws/prop_regs/index.shtml).

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as

described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

### **TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the Initial Statement of Reasons (ISOR), and all of the information upon which the proposal is based, may be obtained upon request from the Board at 2005 Evergreen Street, Suite 1350, Sacramento, California 95815.

### **AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE**

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this Notice.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Brooke Arneson at the above address.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at: [https://www.ptbc.ca.gov/laws/prop\\_regs/index.shtml](https://www.ptbc.ca.gov/laws/prop_regs/index.shtml).