

# PHYSICAL THERAPY BOARD OF CALIFORNIA

## INITIAL STATEMENT OF REASONS

### **Subject Matter of Proposed Regulations: Clinical Service Requirements for Foreign Educated Applicants**

**Section(s) Affected:** California Code of Regulations, Title 16, Division 13, Article 2, section 1398.26.5

#### **Introduction:**

The Physical Therapy Board of California (PTBC or Board) protects the public from the incompetent, unprofessional, and fraudulent practice of physical therapy. The Board licenses and regulates physical therapists (PTs) and physical therapy assistants (PTAs). PTs and PTAs may be educated in California, in other states, or in other countries. The PTBC's mission is "to advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act."

To meet this mission, the PTBC ensures that:

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

To further its mission of public protection, the Board is one of the jurisdictions of the 53 member-driven Federation of State Boards of Physical Therapy (FSBPT), a non-profit organization of regulatory bodies which supports member boards by providing service and leadership that promotes safe and competent physical therapy practice.

The American Physical Therapy Association (APTA) is a US-based non-profit member organization dating from 1921 whose mission is, "Building a community that advances the profession of physical therapy to improve the health of society." APTA represents more than 100,000-member PTs, PTAs, and students of physical therapy.

The Commission on Accreditation in Physical Therapy Education (CAPTE) is an accrediting agency that has been a program within the APTA for 42 years. CAPTE grants specialized accreditation status to qualified entry-level education programs for physical therapists and physical therapist assistants and is the only accreditation agency recognized by the US Department of Education and the Council for Higher

Education Accreditation to accredit entry-level physical therapist and physical therapist assistant education programs.

In 2005, the Board added regulation section 1398.26.5 to require the clinical service of foreign-educated applicants that did not graduate from a CAPTE accredited program be evaluated and certified by a supervising physical therapist in a report to the board documenting that the foreign-educated applicant<sup>1</sup> possesses the skills necessary to perform physical therapy evaluations and any physical therapy procedure of patient care within the California healthcare system. The regulation also required the evaluation of the foreign-educated applicant's period of clinical service be prepared utilizing the *Physical Therapist Clinical Performance Instrument (CPI)*, issued by the APTA in December of 1997, and required the certification be by at least one supervising physical therapist who is credentialed by the APTA, as a clinical instructor. It should be noted that while the CPI has a copyright, the APTA has given the Board permission to copy it for its use.

The Board received 172 foreign physical therapist applications in FY 2020/21, which is approximately nine percent of the total applications received. Of these, 53 applicants have completed a supervised clinical service period and were evaluated during that time utilizing the CPI by their supervising clinical instructor.

### **Specific Purpose of Each Adoption, Amendment, or Repeal**

#### **Background:**

The purpose of supervised clinical practice (SCP) for a physical therapist that did not graduate from a CAPTE-accredited program is to promote public protection by evaluating the physical therapist's ability to practice competently within the United States' healthcare system. Completion of a supervised clinical practice, under the direction of a licensed physical therapist, better prepares a foreign-educated physical therapist for successful entry into the workforce, promotes clinical competence and the delivery of safe and effective care, assists in addressing cultural competence, and ensures a necessary level of protection to the consumers of physical therapy.

Successfully completing a supervised clinical practice is a high stakes endeavor with a critical need for a valid evaluation tool. For this reason, the Federation of State Boards of Physical Therapy (FSBPT) developed the Performance Evaluation Tool (PET) to meet the need for a tool that is valid, defensible, and can be consistently applied by supervisors and licensing jurisdictions, including California. There is currently no other evaluation tool geared specifically to foreign-educated applicants for a physical therapy license. The PTBC has determined during multiple Board discussions and presentations (see Underlying Data) that the PET is the most applicable tool to assess the competency of foreign-educated applicants for California licensure.

According to an article documenting a presentation at the Fall 2014 Federation Forum, the FSBPT created a Foreign Educated Standards Committee (FES) who developed the PET. It was stated that the purpose of a supervised clinical practice is to promote public

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<sup>1</sup> Also known as a "physical therapist license applicant" pursuant to Business and Professions Code section 2653(c).

protection by evaluating the Foreign Educated Physical Therapist's (FEPT) ability to practice competently within the U.S. healthcare system. Below are some of the key points of the presentation:

The committee's rationale for developing the FSBPT SCP Model:

- There is no international or universal accreditation standard.
- Levels of English language proficiency vary.
- Characteristics of the U.S. healthcare system are unique.
- U.S. billing, coding and documentation requirements are unique.
- Expectations for independent clinical judgment are high in the U.S.
- Direct access varies across jurisdictions and internationally.
- Current credentialing processes are limited.

A generic model for supervised clinical practice includes:

- Length: Recommendation is 1,000 hours.
- Supervisor: Currently in practice with at least three years' experience.
- Onsite Supervision: Supervisor is continuously onsite and is immediately available, if needed.
- Disclosures: Employment, financial arrangements, personal relationships within the setting.
- Written Agreement: Rights and responsibilities of each party.
- Performance Evaluation: Midterm and final evaluations, at a minimum; assessment and feedback needed throughout.

And, in developing an evaluation of an FEPT's clinical performance, the committee considered the following:

- Content – What knowledge, skills and attitudes should the evaluation be paying attention to?
- Consistency – How many instances of competent (or incompetent) behavior is necessary for judgment?
- Critical Incidents – What are the consequences?
- Intention – Is it to provide feedback or render judgment?
- Frequency – Formative process vs. summative evaluation.

The FSBPT PET was demonstrated to have the following strengths:

- It offers greater public protection because it is a valid, legally defensible tool that can be consistently applied by supervisors and licensing jurisdictions.
- It was developed to standardize assessment across jurisdictions.
- Other tools being used have not been developed or validated for use with FEPTs.
- The committee considered input from FSBPT annual meeting attendees and stakeholder surveys.
- The validation process is ongoing.

The content of PET is based on:

- An analysis of many resources including other performance evaluation tools, documents relating to professional standards and educational standards.
- Knowledge, skills and attitudes necessary for safe and effective practice stated in behavioral terms
- An intention to create the minimum burden possible but still achieve valid evaluation of performance.

Categories of clinical behaviors included in PET:

- Professional behaviors
- Communication and documentation
- Examination
- Evaluation, diagnosis and plan of care
- Intervention
- U.S. healthcare system PET Structure

PET structure:

- Category
  - Categories were used to divide up the knowledge, skills and attitudes that are required for safe and effective practice in the U.S.
  - For each category, behavioral criteria were identified.
- Essential Criteria
  - An Essential Criteria refers to areas of performance that must be demonstrated competently.
  - Candidate does not have to demonstrate all anchor behaviors to meet criterion.
- Evaluative Criteria - refers to areas of performance which are not expected to be observed in all settings or with all populations OR in which behavior may be inconsistent.

Note: The majority of the fourteen states that require supervised clinical practice now use the PET for clinical service performance evaluation thereby eliminating barriers to license and affording mobility to the licensee which in turns benefits consumers by increasing access to physical therapy.

### **Problem being addressed:**

The CPI, which is currently required by the Board's regulation, is designed to evaluate CAPTE accredited *students* of physical therapy, not foreign-educated applicants who have already graduated from a physical therapy program in their respective country and have already passed the National Physical Therapy Examination (that demonstrates basic entry-level competence after graduation). However, the CPI was the only tool available to the Board at the time when the regulation was enacted in 2004/2005 and the CPI does evaluate clinical competence, even though it was not specifically designed for foreign-educated applicants.

### **Amendments to 1398.26.5:**

In subsections (a) and (c) the term “credentialed” is being added to be consistent with the term used by the APTA to eliminate confusion.

In subsection (c), the Center Coordinator of Clinical Education and Clinical Instructor are both being capitalized because those are titles.

Additionally, in subsection (d), “elevations” is being corrected to “evaluations” as the correct term and as used in the remainder of the subsection.

As the regulation exists, the Board currently accepts the APTA’s CPI for evaluation of a foreign educated applicant’s clinical competence. The CPI was not originally incorporated by reference into the Board’s regulation due to the principle of “status conferred” which is no longer being accepted by the Office of Administrative Law. Therefore, although the requirements on licensees completing the form have not changed, the Board now incorporates the form itself into the regulation in subsection (d).

The PET, described above, is also being added in subsection (d), as a tool better tailored to evaluate foreign trained physical therapists’ clinical performance. The PET provides for enhanced public protection by evaluating the foreign trained applicant’s ability to practice competently in the US healthcare system; ensuring clinical compliance; evaluating cultural competence; and verifying competence to communicate in English in clinical settings. To access the PET, a supervisor will need to use a computer to go to FSBPT’s website, create an account with an email and name, and choose the California option. These requirements are listed in new subsection (g). Choosing California satisfies jurisdictional issues, while the name and email of the supervisor provides authentication. These requirements are minimally intrusive and should not be onerous to any health care provider who is supervising a PT or student.

The Board realizes that clinical service sites are already in demand for the US student and since these sites are so impacted it is sometimes difficult for the foreign educated applicant to locate a site who will accept them. Requiring a clinical site to use a separate instrument of evaluation (such as the PET) may chill a site’s willingness to accept a foreign-educated applicant and thus create a barrier to licensure. Therefore, the Board has determined it is in the best interest of consumers for the foreign educated applicant to allow foreign-education applicants to continue to be evaluated on the CPI, especially if the clinical service supervisor is already supervising a student of physical therapy and prefers to use the same instrument of evaluation for all supervisees. Allowing for choice between the CPI and the PET will also provide continuity and give time for supervisors to become familiar with the PET.

The amendments proposed are necessary to ensure consumers of physical therapy are receiving treatment from those licensees who are clinically equivalent to a domestic trained licensee.

The purpose of this regulatory amendment is to promote clinical competence and the delivery of safe and effective health care, while ensuring a necessary level of protection.

Allowing for the use of the most current versions of the APTA CPI or the FSBPT PET gives supervised clinical instructors an option in evaluation tools, which may in turn provide qualified foreign trained applicants a smoother pathway to licensure. Adoption and incorporation of each form as published by APTA and FSBPT allows the Board to maintain parity with other jurisdictions and ensure the Board is consistent with APTA and FSBPT standards across multiple jurisdictions.

**Anticipated benefits from this regulatory action:** Adding the FSBPT's PET as another means of reporting clinical proficiency affords a foreign-educated applicant the opportunity to be evaluated on a level of performance consistent with their performance and skill set that is more extensive than that of a student who is a student in a physical therapy program, as done by the CPI, which is discussed above.

Incorporating both the CPI and the PET by reference provides the public a way to access these forms either in hardcopy or electronic form and therefore provides transparency.

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

- Approved minutes for the September 13, 2018 Board Meeting (Agenda Item 17(D)).
- Approved minutes for the August 23, 2017 Board Meeting and Power Point Presentation by the FSBPT (Agenda Item 7)
- FSBPT 2014 Fall Forum Article, titled "*Using FSBPT's Supervised Clinical Practice Performance Evaluation Tool*"
- APTA's Clinical Performance Instrument, December 1997
- FSBPT's Performance Evaluation Tool, September 2013

### **Business Impact**

The Board has 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 operate (as legally allowed) in other states. This initial determination is based on the fact that these proposed amendments are simply reflective of changes that have occurred in the educational environment since the last regulatory revision.

### **Economic Impact Assessment**

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

- It is not likely to create or eliminate jobs within the State of California. This initial determination is based on the fact that these proposed amendments are simply adding another tool for evaluation of clinical performance of a foreign educated physical therapist.

- It is not likely to create new businesses or eliminate existing businesses within the State of California. This initial determination is based on the fact that these proposed amendments are simply adding another tool for evaluation of clinical performance of a foreign educated physical therapist.
- It will not likely affect the expansion of businesses currently doing business within the State of California. This initial determination is based on the fact that these proposed amendments are simply adding another tool for evaluation of clinical performance of a foreign educated physical therapist.
- It will benefit the health and welfare of California residents because it ensures new licenses are evaluated to determine clinical competence.
- It will not have a significant impact on worker safety because these proposed amendments are simply adding another tool for the evaluation of clinical performance of a foreign educated physical therapist.
- It will not have an impact on the state's environment because these proposed amendments are simply adding another tool for the evaluation of clinical performance of a foreign educated physical therapist.

### **Specific Technologies or Equipment**

This regulation requires access to a personal computer and the internet. This requirement is a reasonable expectation since healthcare professionals are required to report electronically to federal programs, insurance companies, and within the healthcare system in general. In addition, free access to the internet is available at public libraries and email addresses can be created and maintained for free through many institutions, organizations, or companies.

### **Consideration of Alternatives**

The Board has initially determined 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 would 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 reasons each alternative was rejected:

1. Do not seek a change. This alternative was rejected because there is now a test that provides the Board with more information that is better tailored to fit the situation in which foreign trained physical therapists, who have passed licensure in their own country, are not students, so taking an examination tailored to students is not reasonable for the applicant's situation; and

2. Because the addition of the Federation of State Boards of Physical Therapy's Performance Evaluation Tool meets the need for a tool that is valid, defensible, and can be consistently applied by supervising physical therapists, who have passed their own country's physical therapy tests and are no longer students, which would be tested under the current regulation, this alternative better meets the needs of the Board and those members of the public whose services the applicants will provide physical therapy services to upon successful completion of the test and licensure by the Board.