

BACKGROUND PAPER FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA

Joint Oversight Hearing, February 27, 2017

**Assembly Committee on Business and Professions and
Senate Committee on Business, Professions and Economic
Development**

BRIEF OVERVIEW OF THE PHYSICAL THERAPY BOARD OF CALIFORNIA

The purpose of the Physical Therapy Board of California (PTBC) is to protect consumers from incompetent, unprofessional, and fraudulent practice through regulation of practitioners. Specifically, the PTBC administers the licensing and enforcement programs for physical therapists (PTs), physical therapist assistants (PTAs), and unlicensed physical therapy aides. The PTBC also establishes and clarifies state-specific process and practice standards through administrative rulemaking.¹ The PTBC was last reviewed in 2013.

In California, regulation of the practice of physical therapy began in 1953 when the Legislature passed the Physical Therapy Practice Act.² Initially, the Practice Act established the Physical Therapy Examining Committee (PTEC) as a committee under the Medical Board of California (MBC). Between 1971 and 1996, amendments to the Practice Act shifted regulatory responsibility over physical therapy away from the MBC to the PTEC and eventually renamed and converted the PTEC into its own board, the PTBC.³

Currently, the Practice Act establishes the PTBC and its duties, physical therapy scope of practice, licensing requirements, fees, and penalties for violations of the Practice Act, including unlicensed practice.⁴ The Practice Act makes it unlawful to practice, offer to practice, physical therapy for compensation, or claim to be a physical therapist unless licensed under the Practice Act or otherwise authorized by law. The Practice Act defines the following terms for purposes of scope of practice:⁵

¹ California Code of Regulations (CCR), Title 16, §§ 1399.500-1399.623.

² AB 17, Chapter 1823, Statutes of 1953 and AB 1001, Chapter 1826, Statutes of 1953.

³ AB 3473, Chapter 829, Statutes of 1996.

⁴ BPC §§ 2600-2696.

⁵ BPC § 2620.

- “Physical therapy” is “the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise.”
- The term “physical therapy” includes “physical therapy evaluation, treatment planning, instruction and consultative services” but excludes the “use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization.”
- “Practice of physical therapy” includes “the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions.”

The Practice Act authorizes licensed PTs to practice physical therapy and licensed PTAs to assist in the provision of physical therapy under the supervision of a licensed PT. As of FY 2015/16, the PTBC regulates approximately 31,000 PTs and 6,700 PTAs. It also oversees approximately 60 certifications in electromyographical testing.

The PTBC’s mandates include⁶:

- Evaluate the qualifications of applicants for licensure.
- Provide for the examinations of PTs and PTAs and establish a passing score for each examination.
- Issue all licenses for the practice of physical therapy in California.
- Suspend and revoke licenses and otherwise enforce the provisions of the Practice Act.
- Administer a continuing competency program.
- Participate, as a member, in the Delegate Assembly, and in applicable committee meetings, of the Federation of State Boards of Physical Therapy (FSBPT).
- 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.
- Provide for the timely orientation and training of professional and public member appointees to the board directly related to board licensing and disciplinary functions and board rules, policies, and procedures.
- Adopt and administer a program of education in matters relevant to the regulation of physical therapy.

The PTBC’s mission statement, as noted in its *2014-2017 Strategic Plan* is as follows:

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

⁶ BPC § 2605.

The PTBC also interacts frequently with stakeholders, such as professional associations and consumers. Specifically, the PTBC is a member of the FSBPT. The FSBPT consists of member boards from each of the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The FSBPT develops, maintains and administers the National Physical Therapy Examinations (NPTE) for PTs and PTAs.

Board Membership

The PTBC is composed of seven members. It has a professional member majority—four professional members, including one involved in physical therapy education, and three public members. The Governor appoints five members in total, all four professional members and one of the public members. The Senate Rules Committee and the Assembly Speaker each appoint one public member each. Members receive no compensation but are provided \$100 per diem for each day spent performing official duties and reimbursement for related travel.

The PTBC is required to meet at least three times each calendar year, with at least one meeting per year in the northern California and one in southern California. The PTBC meetings are subject to the Bagley-Keene Open Meeting Act, which requires public notice and to provide an opportunity for the public to comment on agenda items.⁷

The following table lists the current members of the PTBC, including their background, when they were last appointed, their term expiration date, and their appointing authority.

Board Members	Appointment	Term Expiration	Appointing Authority
Katarina V. Eleby, M.A., President, Public Member , has been manager of operations at the African American Board Leadership Institute since 2012. She was a volunteer for Karen Bass for Congress in 2012 and executive co-chair for the International Studies Student Association at California State University, Long Beach in 2011. Ms. Eleby also served as an intern in the Office of California State Assembly Speaker Karen Bass in 2010 and was a sales assistant at Salt and Pepper Sales from 2006 to 2012.	06/16	06/20	Governor
Alicia K. Rabena-Amen-PT, MPA, Vice President, Professional Member , has been adjunct faculty at the University of the Pacific since 2014, a physical therapist at Infinity Care Services Inc. since 2011 and senior physical therapist at Kaiser Permanente South Sacramento since 1998. Rabena-Amen was a physical therapist at Global Healthcare Services from 2013 to 2014 and was a physical therapist at Lodi Memorial Hospital from 2007 to 2013. She earned a Master of Arts Degree in physical therapy from Mount St. Mary's College.	06/16	06/20	Governor

⁷ Article 9 (commencing with § 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code (GOV).

Debra J. Alviso, PT, DPT, OCS, Professional Member, In 1990, she established New Horizon Physical Therapy where she practices as a PT. She is a member of the American Academy of Orthopedic Manual Physical Therapy and has been a member of the American Physical Therapy Association since 1984. Dr. Alviso earned her Bachelor of Science degree in Physical Therapy from California State University, Fresno and a Doctorate in Physical Therapy from Rocky Mountain University in Provo, Utah. Dr. Alviso earned her designation as an Orthopedic Certified Specialist in 1994..	02/14	06/17	Governor
Jesus Dominguez, PT, PhD, Professional Member. has been an assistant professor of clinical physical therapy and Director of Admissions at the University of Southern California Division of Biokinesiology and Physical Therapy since 2004. He is a member of the American Physical Therapy Association and the California Physical Therapy Association. Dominguez earned Doctor of Philosophy in Biokinesiology and Master of Science in Physical Therapy Degrees from the University of Southern California.	09/14	06/18	Governor
Daniel Drummer, PT, DPT, Professional Member. , has been a physical therapist at the San Francisco General Hospital Department of Rehabilitation since 1995. He was a physical therapist at the Pennsylvania Hospital Department of Rehabilitation from 1994 to 1995. Drummer earned a Doctor of Physical Therapy from Temple University.	10/14	06/18	Governor
Tonia McMillian, Public Member, Ms. McMillian is the Owner/Provider of Kiddie Depot Child Care. She is a member and Co-Chair of Raising California Together Coalition and is the Treasurer of SEIU Local 99. She is also the Chair of the Local 99 African American Caucus (AFRAM)	03/16	06/19	Senate Rules
Eserick “TJ” Watkins, Public Member, Mr. Watkins is the owner of The Next Level Coaching and serves on the board of South Coast Foundation, a US-based private foundation that funds children infected and affected by HIV/AIDS in South Africa. Mr. Watkins is a published author and speaker; he holds a Master of Business Administration from Stellenbosch University.	03/16	06/19	Assembly Speaker

Committees

Because members of the licensing boards often have professional responsibilities outside of the board, they are usually only able to meet a few times a year. As a result, many use smaller committees that are able to meet more frequently to work on issues that the full boards cannot. The smaller committees make their recommendations to the full boards during public board meetings. Some committees are specified in statute, while others are established by the boards themselves.

The PTBC currently has no committees. The PTBC abolished its last two committees in May 2006 due to board vacancies and reports that it currently has no need to establish new ones.

The PTBC's prior committees included the following:

- 1) **Licensing Committee:** The licensing committee dealt with decisions on qualifications of applicants (e.g., appeals, application extensions, and credential reports).
- 2) **Practice Committee:** The practice committee worked on issues relating to the practice of physical therapy.

Fiscal and Fund Analysis

The PTBC is a special fund agency, which means it receives no general funds. It is fully funded through the revenues the PTBC deposits into the Physical Therapy Fund.⁸ The PTBC's revenues are primarily made up of licensing and administrative fees. The PTBC has some revenue from fines and enforcement cost recovery, but enforcement revenues tend to be inconsistent.

The PTBC reports that in fiscal year⁹ (FY) 2014/15 it identified a structural fund imbalance (operational costs exceeded the revenue from fees). At the time, the PTBC determined that fees charged to applicants and licensees for licensure would not sustain ongoing program operations beyond FY 2017/18.

All DCA boards are expected to maintain a reserve of operating funds to cover unexpected costs (e.g. litigation). The PTBC reported that its estimated reserve for FY 2015/16 was 3.3 months. As a result, the PTBC increased its licensing fees to the statutory maximum. The new fees took effect at the end of FY 2015/16.

To help sustain operations until the fees took effect, in FY 2015/16 the PTBC requested repayment of its General Fund (GF) loan. The last loan the PTBC made to the GF was in FY 2011/12 for \$1.5 million. The loan is now fully satisfied and the repayment included \$23,000 in interest

With the new fee increase, the PTBC projects a reserve level of 4.8 months at the end of FY 2017/18. Therefore, the PTBC does not anticipate the need to increase or reduce fees in the near future. For further discussion, see Issue #1 under the Current Sunset Issues section below, regarding increasing the maximum allowable fee in statute.

Fund Condition (dollars in thousands)						
	FY 12/13	FY 13/14	FY 14/15	FY 15/16	*FY 16/17	*FY 17/18
Beginning Balance	915	949	898	304	1,453	1,859
Revenues and Transfers	3,240	3,316	3,340	3,691	†5,635	5,649

⁸ For more information related to state funds, see Department of Finance, *Glossary of Budget Terms*, http://www.dof.ca.gov/budget/resources_for_departments/budget_analyst_guide/glossary.pdf.

⁹ A fiscal (budget) year starts on July 1 and ends on June 30 the following calendar year.

Loan Repayments	-	-	-	1,500	--	--
Loan Interest	-	-	-	‡23	--	--
Total Available Assets	4,155	4,265	4,237	5,495	7,098	7,508
Budget Authority	3,456	3,527	4,176	4,326	5,229	5,328
Potential Deficit	-216	-211	-836	-635	+406	+406
Expenditures	3,233	3,388	3,934	4,042	-	-
Actual Deficit	+7	-72	-594	-351	-	-
Fund Balance	922	877	303	1,453	1,859	2,180
Months in Reserve	3.3	2.7	0.9	3.3	4.2	4.8
<ul style="list-style-type: none"> • Includes 2% growth in authorized budget and 1% growth in income from surplus money investments (workload and revenue projections are based on FY 2015/16 DCA's Calstars Report - Fiscal Month 13). † Includes anticipated fee increase. ‡ Not included. 						

The PTBC's total program component expenditures for the last four FYs totaled an approximate annual average of \$3,686,000. The approximate averages broken out by each program component are as follows:

- The enforcement program averaged approximately \$1,981,000, which was 53.7% of the total expenditures.
- The examination program averaged approximately \$38,000, which was 1.0% of the total expenditures.
- The licensing program averaged approximately \$503,000, which was 13.6% of the total expenditures.
- The administrative program averaged approximately \$618,000, which was 16.8% of the total expenditures.
- DCA Pro Rata averaged \$545,000, which was approximately 14.8% of the total expenditures.

Most of the PTBC's expenditures result from its enforcement program. The PTBC states that this is in part due to overspending its Attorney General (AG) budget for three consecutive FYs (an average of \$149,000 for FYs 2012/13, 2013/14, and 2014/15). Whenever the PTBC unexpectedly goes over its AG or OAH budget, it is provided a one-time budget augmentation under to meet the costs. The AG budget is based on the previous three years of data.

According to the PTBC, this is in part due to the PTBC reprioritizing enforcement cases and resources. As a result, the cases sent to the AG's office increased in complexity and increased the cost of the cases.

In FY 2015/16, the PTBC completed an organization restructure to improve its licensing business process and redirected its Continuing Competency Services Program (CCS) from Enforcement to its Licensing Services Program. The resulting shift in cost is noted in the table below.

Expenditures by Program Component (dollars in thousands)								
	FY 2012/13		FY 2013/14		FY 2014/15		FY 2015/16†	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	\$447	\$1,168	\$631	\$1,439	\$731	\$1,543	\$664	\$1,302
Examination	\$28	\$13	\$23	\$16	\$24	\$13	\$25	\$10
Licensing	\$479	\$118	\$287	\$68	\$379	\$71	\$520	\$91
*Administration	\$479	\$120	\$400	\$121	\$508	\$144	\$558	\$143
‡DCA Pro Rata	N/A	\$363	N/A	\$423	N/A	\$594	N/A	\$802
TOTALS	\$1,433	\$1,783	\$1,341	\$2,067	\$1,643	\$2,364	\$1,767	\$2,348

*Administration includes costs for executive staff, board, administrative support, and fiscal services.
† Expenditures for the CCS are no longer reported under Enforcement and are reported in Licensing.
‡ Includes BreEZe expenditures, which are shown below.

January 19, 2016, the PTBC switched to BreEZe, the online database developed by the DCA to improve efficiency for applicants and licensees, including the ability to submit initial and renewal applications and pay fees online. The PTBC provided the following BreEZe expenditures:

BreEZe Expenditures (dollars in thousands)							
FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18*	FY 18/19*	FY 19/20*
\$40	\$81	\$156	\$333	\$321	\$317	\$306	\$188

*DCA's projected costs as provided to the PTBC as of October 2016. BreEZe costs are included in the DCA's Pro Rata costs.

Fees

Many of the PTBC's fees are provided for in statute. Specifically, the Practice Act requires the PTBC to establish the following fees relating to PT and PTA licenses¹⁰:

- An application fee that does not exceed the cost of administering the application process, up to a maximum of \$300.
- An initial license fee that does not exceed the cost of administering the process to issue the license, up to a maximum of \$150.
- An examination fee that covers the actual cost to the PTBC of the development and writing of, or purchase of the examination, and grading of each written examination, plus the actual cost of administering each examination. Alternatively, the PTBC may pass the fee through to the organization administering the examination.
- A renewal fee that does not exceed the cost of the renewal process, up to a maximum of \$300.

¹⁰ BPC § 2688.

- A late renewal (delinquency) fee that is 50% of the renewal fee in effect.
- A duplicate wall certificate fee that does not exceed the cost of issuing duplicates, up to a maximum of \$100.
- An endorsement or letter of good standing fee that does not exceed the cost of issuing an endorsement or letter, up to a maximum of \$100.

The PTBCs licenses are renewed on a biennial cycle. The expiration date is the last day of the licensee's birth month (BPC §2644 (a)).

Over the past 10 years, the PTBC has increased its application and license renewal fees twice, once in FY 2008/09, and again in FY 2015/16. Currently, the PTBCs licensing fees are set at the statutory limit.

The primary source of revenue for FY 2015/16 was PT and PTA license renewal fees in the amount of \$2,930,300 or 81.02% of the total revenue, followed by PT application fees in the amount of \$220,450 or 6.09% of total revenue received.

Board Staff

Per the PTBC's year-end organizational chart for FY 2015/16, the PTBC had 19.4 authorized positions as of June 30, 2016. The PTBC reports that it has struggled with staffing issues since its last sunset review. Based on the information provided, the PTBC appears to have been unable to manage its workload using its historical staff structure. For instance, the PTBC states that it has historically relied heavily on its Temporary Help budget to manage permanent workload.

Further, the PTBC continues to note staffing deficiencies and large workloads and continues to redirect existing staff. However, the PTBC reports that it has addressed its staffing deficiencies through the BCP process for FY 2016/17. Specifically, it was approved for 1.0 Associate Governmental Program Analyst (AGPA), 1.0 Staff Services Analyst (SSA), and 1.0 Office Technician (OT).

Regarding staff development, the PTBC notes that it relies heavily on its internal training efforts. The PTBC management staff added a training component to the agenda of monthly staff meetings. This training component is either delivered by management or another staff member. The PTBC notes that internal training provides management the opportunity to assess staff and provides opportunities for improvements to business processes and career development.

The PTBC also utilizes training services provided by the DCA's Strategic Organization, Leadership and Individual Development (SOLID) Training Solutions. SOLID training provides a wide variety of courses, such as training with Microsoft Office products, budget process, effective writing, customer service, and BreZE processes.

The PTBC states that it will continue to explore avenues to enhance staff's training and development in support of its efforts to achieve the best business practices to better serve its applicants, licensees, and consumers.

Licensing

In general, licensing programs serve to protect the consumers of professional services and the public from undue risk of harm. The programs require anyone who wishes to practice a licensed profession to demonstrate a minimum level of competency. Requirements vary by profession, but usually include specific education, examination, and experience.

For PTs and PTAs, the Practice Act outlines specific qualifications that applicants must meet.¹¹ In addition to fees, it requires applicants to meet the following competency requirements:

- Applicant must successfully complete education and training as established by the PTBC.
- Applicant must complete an examination or be licensed in another state.
- Applicant must successfully complete an examination of the laws and regulations related to the practice of physical therapy in California.

Applicants must also meet the following "fitness to practice" requirements:

- Be over 18 years of age.
- Not have committed acts or crimes constituting grounds for denial of licensure under BPC § 480.
- Possess and provide a valid Social Security Number (SSN) or Individual Tax Identification Number (ITIN).
- Not be addicted to alcohol or any controlled substance.

An out-of-state applicant is also required to submit the following:

- License verifications for any jurisdiction the applicant held a license.
- A résumé of work experience.
- An examination score transfer.

In addition to meeting the general application requirements, a PT applicant who graduated from a non-accredited physical therapist education program not located in the United States is required to perform the following:

- Submit proof of completion of education equivalent to that issued by an accredited program at the time of graduation.
- Demonstrate English proficiency on the Test of English as a Foreign Language (TOEFL).

¹¹ BPC §§ 2635-2639.1.

- Complete a period of clinical service under the supervision of a licensee of the PTBC.

Applicants are required to certify: whether they have ever been convicted of, pled guilty to, or pled no contest to any misdemeanor or felony; whether they have been denied a professional license or had license privileges suspended, revoked or disciplined; and whether they have ever voluntarily surrendered a professional license in California or any other jurisdiction.

According to the PTBC, the declarations are checked against the applicants' Criminal Offender Record Information (CORI) reports from the Department of Justice (DOJ), Identity History Summary Checks (IdHSC) from the Federal Bureau of Investigation (FBI), the Megan's Law website, the National Practitioner Data Bank (NPDB), and license verifications from other licensing jurisdictions.

Alternate Approval Pathway

During BreEZe implementation, the PTBC identified examination and licensure inefficiencies. Currently, an applicant must first register with the Federation of State Boards of Physical Therapy (FSBPT). The FSBPT administers the two examinations required by the PTBC, the National Physical Therapy Exam (NPTE) and the California Law Examination (CLE).

However, the FSBPT requires that applicants be approved by the licensing authority in the state or jurisdiction where they intend to be licensed. As a result, the applicant must apply with the PTBC for examination and license eligibility. Once the applicant applies, the PTBC determines examination eligibility and communicates eligibility status to the FSBPT electronically.

The PTBC discussed this issue with the FSBPT. Since then, the FSBPT began developing the Alternate Approval Pathway through which applicants will be able to sit for the NPTE and CLE examinations prior to applying to the PTBC for licensure. The Alternate Approval Pathway will separate the examination process from the licensure process, making the national examination process closer to other professions that utilize a national examination.

License Processing Times

In the last three FYs, the PTBC issued an average of 1,302 PT licenses and 449 PTA licenses per FY, for an overall average of 1751 licenses per FY. The raw total provided for all three FYs was 3,906 new PT licenses and 1,346 new PTA licenses.

The PTBC also issued an average of 11,468 PT renewals and 2,840 PTA licenses per FY, for an overall average of 13,899 renewals per FY. The raw total for all three FYs was 34,405 PT renewals and 8,521 PTA renewals.

Once the PTBC switched to BreEZe, it was required to update its performance targets. According to the PTBC, a license renewal submitted using Breeze can be processed

instantaneously, rather than the 6-8 weeks under the legacy system. So far, the PTBC has the following performance target for processing applications that arrive complete:

- For a PT or PTA applying for examination, the target is 45 days.
- For a PT or PTA applying for a license, the target is 45 days.
- For a PT from a non-accredited PT program applying for a license, the target is 90 days.

However, the PTBC has used the BreEZe system since the end of FY 2015/16. The PTBC reports that a method to collect the data in BreEZe was not available at the time of transition, therefore no data is available to report. The data provided regarding the old processing times appear within the performance targets established in regulations.¹²

On the legacy system, the PTBC's average time to fully process an application was 542 days. This included complete, incomplete, accredited, and non-accredited applications.

During the transition to BreEZe, the PTBC reports that it recognized structural weaknesses in its Application and Licensing Services program. Historically, the PTBC used the program to provide both application and license maintenance services, which required cross-training of staff and stretched the oversight of managers.

To allow greater subject matter expertise and more efficient management, the PTBC has split the Application and Licensing Services into two separate programs, 1) Application Services and 2) License Services. The PTBC also established a dedicated manager position to oversee the two programs.

School Approvals

The Practice Act provides that PT and PTA programs that are accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) or the Physiotherapy Education Accreditation Canada (PEAC) are deemed approved by the PTBC.¹³ Additionally, the PTBC has the authority to approve unaccredited schools, but it states that it has not needed to exercise this authority yet. Currently, all PTBC-recognized schools are CAPTE accredited. The PTBC has not approved any international schools.

In addition, educational programs must be approved by the BPPE unless exempt from the under Education Code §§ 94874, 94874.1. The PTBC notes that Physical Therapy programs are offered at both exempt and non-exempt institutions.

Currently, there are 233 PT and 340 PTA CAPTE-accredited programs nationwide. Of those, there are 15 PT and 15 PTA programs in California.

¹² CCR, tit. 16, §§ 1398.24, 1398.27.

¹³ BPC §§ 2650, 2651.

Examination

As noted above, the PTBC utilizes a national examination, the NPTE. The NPTE consists of 250 multiple choice questions for PTs and 200 multiple choice questions for PTAs. The NPTE is offered four times per year at Prometric testing centers nationwide.

Both NPTE exams are developed and administered by the FSBPT. According to the FSBPT, the PT and PTA exams are designed to assess basic entry-level competence after graduation from an accredited program or from an equivalent non-accredited program.¹⁴ The FSBPT charges \$400 for each examination.¹⁵ There are also various processing fees and fees charged by Prometric.

The average pass rate for U.S. graduate PTs and PTAs taking the NPTE was 83.9% for PTs and 81.8% for PTAs. California's NPTE pass rates are consistent with the national average pass rates.

California Law Examination (CLE)

The PTBC also utilizes the FSBPT to administer the CLE, the California specific jurisprudence exam. While the FSBPT administers the CLE, the PTBC, in conjunction with DCA's Office of Professional Examination Services (OPES), develops and maintains the CLE.

The examination tests candidates' knowledge of the laws and regulations governing the practice of physical therapy in California. The CLE is a one-hour examination with 50 multiple choice questions. The CLE is offered continuously at Prometric testing centers nationwide. The FSBPT charges a fee of \$65 for the CLE.

Test of English as a Foreign Language (TOEFL)

The Practice Act requires applicants who have graduated from a non-accredited school located outside the United States to demonstrate English proficiency by achieving a passing score on the TOEFL.¹⁶ The TOEFL measures an applicant's ability to use and understand English at the university level. The TOEFL is developed, administered, scored, and maintained by the Educational Testing Service (ETS). The PTBC does not currently offer examinations in any other language than English.

Continuing Education/Competency

Professions and practices can change over time. For instance, new technology, research, or ethical requirements may increase the level of minimum competence needed to protect

¹⁴ [https://www.fsbpt.org/ExamCandidates/NationalExam\(NPTE\).aspx](https://www.fsbpt.org/ExamCandidates/NationalExam(NPTE).aspx).

¹⁵ <https://www.fsbpt.org/OurServices/CandidateServices/ExamRegistrationPayment.aspx>.

¹⁶ BPC § 2653.

consumers. Therefore, some licensing boards require licensees to complete additional training or classes to maintain minimum competence post-licensure. This is usually accomplished through continuing education or continuing competence requirements at the time of renewal. Continuing competence requirements may require a combination of continuing education and professional development activities.

Both PTs and PTAs renewing their licenses are required to complete 30 hours of continuing competency activity.¹⁷ Of the 30 hours, two hours must be in ethics, laws and regulations, and four hours in life support for health care professionals.

At the time of renewal, licensees are required to certify that they have complied with the PTBCs continuing competency requirements. The PTBC also conducts random continuing competency audits. Licensees must maintain proof of each continuing competency activity for five years and agree to supply supporting documents upon the PTBCs request.

The percentage of the licensee population chosen for audit is dependent upon the pass rate of the completed audits. The PTBC determines the percentage to ensure sufficient compliance. If a large number of audited licensees fail, the PTBC will increase the percentage of licensees audited. As the number of licensees that demonstrate compliance increases, the PTBC decreases the percentage of licensees audited.

If a licensee demonstrates sufficient compliance with the continuing competency requirement, the licensee passes the audit. If a licensee is unable to demonstrate compliance with the continuing competency requirement, the licensee fails the audit. Reasons licensees may fail an audit include failure to provide proof of hours completed in compliance.

The PTBC reports that in the past four FYs, the PTBC conducted 595 continuing competency audits and there was an 18% audit failure rate. Due to resource constraints, staff was redirected from license maintenance program to the Application Services program to sustain application operations. Therefore, continuing competency audits were temporarily suspended in the early part of 2014. With additional staffing authority granted July 1, 2016, the PTBC is now fully staffed for FY 2016/17 and has resumed continuing competency audits.

The PTBC does not approve individual continuing competency courses or providers. Continuing competency courses must be offered by an approved provider or by a PTBC Recognized Approval Agency. As of the last Continuing Competency program records update, the PTBC logged 143 recognized approval agencies, 301 providers and 3,951 courses.

¹⁷ BPC § 2649, CCR, tit. 16, §§1399.90-99.

Recognized approval agencies are required to audit at least 10% of the providers and courses they approve. Since initiating audits of the agencies, the PTBC has removed recognition of two approval agencies for lack of compliance.

Enforcement

The Practice Act requires the PTBC to enforce the laws relating to the practice of physical therapy. The PTBC has the authority to investigate violations of the Practice Act, issue citations, deny or take disciplinary action against a license (e.g. probation, suspension, or revocation), and refer cases for criminal prosecution.

As with other licensing boards, the PTBC relies on information it receives to initiate investigations, mainly complaints and information drawn from documents submitted by licensees or other agencies. Complaints also include cases which are opened internally on initiative of enforcement staff (rather than a complaint it has received).

The PTBC reports that the number of complaints have decreased in the past three FYs. The PTBC reports that the decrease is partially a result of the PTBC reassessing its priorities and redirecting its resources to cases of a higher level of concern.

For instance, the total number of complaints filed in FY 2013/14 included actions initiated by the PTBC against licensees who had failed to alert the PTBC of changes in the licensees' addresses. Although a licensee's current address is vital for record management and is a critical part of the PTBCs mission of consumer protection, it required a considerable amount of staff time to investigate each potential address violation. Instead, the PTBC states that it has found other ways to communicate and locate its licensees through the required email address regulation and social media. However, the PTBC notes that violations that require additional action will be addressed appropriately.

The PTBC also reports that it redirected its investigative resources to its high volume of convictions of licensees. The PTBC's conviction cases make up approximately 42% of the total complaints initiated.

In response, the PTBC continues to evaluate workload data and internal procedures to improve the enforcement program. For instance, cases at DOI and the AG's office are monitored closely by the PTBC staff to ensure cases do not remain stagnant. Also, settlement terms are provided to the Deputy AG at the time a case is referred to the AG.

Since the last Sunset Review, the overall statistics show a 55% increase in the total number of final disciplinary actions. The increase in disciplinary actions is a result of improved case management, allowing staff to ensure that cases do not stall during investigation. Specifically, and as noted above, the PTBC has reprioritized the resources used on cases based on case

urgency. The PTBC has emphasized that lesser violations are handled at the lowest level possible, allowing more resources to be directed more egregious cases.

Case Resolution

The primary purpose of enforcement is to protect consumers. Timely resolution of complaints and enforcement actions decreases the risk to consumer safety. While there are options for immediately suspending a licensee's ability to practice, they are reserved for egregious cases. At the same time, due process requires that licensees are not punished before being provided the opportunity for a fair hearing.

To help ensure the timely resolution of enforcement cases for all healing arts boards, the DCA has established the Consumer Protection Enforcement Initiative (CPEI).¹⁸ The CPEI is a set of enforcement guidelines and administrative improvements meant to help boards maintain enforcement timelines between 12 to 18 months (365 to 540 days).

In addition, PTBC cases are prioritized in accordance with the DCA's Complaint Prioritization Guidelines for Health Care Agencies (August 31, 2009). There are three levels of prioritization: "Urgent" (requiring the most immediate resources); "High" (the next highest priority); and "Routine" (minimal/no risk to the consumer). Each case is evaluated at the time of receipt to determine its initial priority. Cases may be reprioritized during the course of the investigation, if warranted.

Cases alleging sexual misconduct, patient death, patient injury and other urgent matters are immediately assigned to an analyst to review for an Interim Suspension Order, Penal Code § 23, or other interim action as warranted. All other cases are opened in the order received, assigned, and distributed to the designated analyst. Analysts review the case and continue the investigative process with respect to case priority and CPEI targets.

As part of the DCA's CPEI, the enforcement performance measures (PM) of the PTBC were developed to monitor and assist in determining the effectiveness of efforts to streamline enforcement processes, reduce backlogs, and achieve the overall goal to process complaints within 12-18 months.

The enforcement process is comprised of several phases: complaints received (PM 1); intake (PM 2); intake and investigations (PM 3); formal discipline (PM 4); probation intake (PM 7); and probation violation response (PM 8).

¹⁸ http://www.dca.ca.gov/about_dca/cpei/overview.pdf

The PTBC is currently meeting its performance targets with the exception of PM 3 (Cycle Time for cases not resulting in formal discipline) and PM 4 (Cycle Time for cases resulting in formal discipline).

PM 3 is the average time from complaint receipt to closure of the investigation process. The investigative process includes desk investigations conducted by the PTBC analysts, and formal investigations conducted by the DCA, Division of Investigation (DOI). PTBC set the performance target for PM 3 at 90 days.

Intake and Investigation measures were not met with the exception of two quarters in FY 2013/14. The PTBC notes that the target of 90 days became more difficult to meet for cases that required formal investigation from DOI.

The PTBC reports that, since 2013, it has implemented changes to its internal procedures that will assist in meeting its performance measures. Specifically, the PTBC revised its procedures related to arrest notifications and implemented periodic reviews of case aging to identify any barriers to complete the case.

PM 4 is the average number of days to complete the entire enforcement process for cases resulting in formal discipline. This includes intake, investigation by the PTBC analysts and DOI, and prosecution by the AG. The DCA sets the performance target for PM 4 at 540 days (18 months)

The PTBC, like other boards, does not meet this measure often. This measure is dependent upon the workload of outside agencies, such as the AG and the Office of Administrative Hearings (OAH). Although the PTBC points out that the AG has persistently worked cases, there continue to be delays on cases when scheduling settlement conferences and administrative hearings with OAH.

According to the PTBC, these cases can become sedentary for six months to one year before a settlement conference or hearing is scheduled. The PTBC notes that, although the AG is not currently required to participate in the CPEI, it has made improvements in processing older cases while keeping up with new case performance timeframes.

The PTBC also reports that it experiences delays in enforcement delays when other agencies are involved. For example, when determining if a violation exists when receiving a conviction record, the PTBC obtains various documents related to each case, such as court documents, arrest records and written responses from the licensee. The PTBC notes that response times of outside agencies can vary greatly, especially out of state criminal conviction documents. In many cases, multiple documents are needed from other agencies and repeated requests are required. Further delays can be caused when processing fees are required by courts and arresting agencies.

Cite and Fine

The general provisions of the BPC authorize the entities within the DCA to establish a system for issuing citations.¹⁹ The PTBC uses its cite and fine authority to address violations that warrant some action but do not rise to the level of formal discipline.

The PTBC's established fines range from \$100 to \$5,000.²⁰ It reports that a large number of citations and fines are issued for minor criminal convictions. These citations are typically issued for failure to disclose a conviction to the PTBC, recent minor convictions, and first offense convictions. Fines assessed for these violations usually range from \$200 to \$500. Factors considered when determining a fine amount are the nature and severity of a crime, evidence that the violation was willful, extent to which the licensee has cooperated with the PTBC, and whether the licensee is remorseful.

Larger fines are reserved for more substantial violations. These include unlicensed practice for over one year, fraudulent billing, and violations that carry a risk of patient harm.

In the last three FYs, the PTBC issued an average of 142 citations (427 total). Consistent with the decision to deprioritize minor offenses, FYs 2014/15 and 2015/16 the PTBC issued a total of 178 citations, lower than the total number issued in FY 2013/14 (249).

The five most common violations for which the PTBC issues citations are as follows:

- 1) Criminal Convictions - First offense conviction of a crime that is substantially related to the practice of physical therapy that may not have a direct effect on public protection or patient care.
- 2) Practice Issues - Related violations, such as a single violation of documentation, regulations, supervision violations, and aiding & abetting of unlicensed activity or violations of the Practice Act.
- 3) Continuing Competency (CC) Violations - Failure to accumulate the required CC hours, and/or a false statement on renewal form signed under penalty of perjury that the completed CC requirements were met.
- 4) Discipline by Another State Board – Discipline taken in another State and the violation offense is a citable violation in California.
- 5) Address Change Reporting Requirement – Failure to report a change of mailing and/or residence address.

¹⁹ BPC §§125.9, 148.

²⁰ CCR, tit. 16, §§ 1399.25-29

As an administrative agency, the PTBC’s disciplinary authority is tied to the licenses it issues. Therefore, the PTBC may collect fines by withholding the offending licensee’s renewal until the fine is paid.

However, against licensees who choose not to renew or unlicensed individuals, the PTBC’s authority is limited. Therefore, the PTBC may utilize the Franchise Tax Board’s (FTB) Intercept Program to attempt collection of any outstanding fines. Under this program, the FTB will seize tax refunds, lottery winnings, and cash claims for unclaimed property on the PTBC’s behalf until the fines are paid.²¹

Upon failure to pay a citation fine within the time required, the licensee’s information is submitted to the FTB for inclusion in the FTB Offset Program. Prior to submitting the licensee’s information to the FTB for intercept, the PTBC is required to send a series of three notices of failure to pay in an attempt to collect the fine amount due. Since July 1, 2012, the PTBC has collected \$917 in outstanding fines through the FTB Offset Program, and currently has 46 cases on file with the FTB, totaling \$7,462 in administrative fines due. A case remains on the Offset Program list until the funds due are intercepted.

Cost Recovery

The PTBC reports that it requests cost recovery in cases in which it is authorized to seek cost recovery. Potential cases for recovery are cases in which disciplinary action has been taken based on violation of the license practice act.²²

Cost Recovery (list dollars in thousands)				
	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16
*Total Enforcement Expenditures	\$1,083,960	\$1,252,027	\$1,411,903	\$1,200,239
†Potential Cases for Recovery	58	52	60	25
Cases Recovery Ordered	19	21	34	36
Amount of Cost Recovery Ordered	\$70,323	\$151,013	\$204,912	\$234,156
Amount Collected	\$39,502	\$78,424	\$115,188	\$151,810
* Figure represents the PTBC Enforcement budget and does not include staff expenditures. †“Potential Cases for Recovery” are those cases in which disciplinary action has been taken based on violation of the Practice Act.				

As part of the negotiation for settlement purposes, cost recovery is determined on a case-by-case basis between the Executive Officer and the licensee. The PTBC will consider the licensee’s financial hardship and may reduce the total costs to be paid within a certain timeframe. If the

²¹ GOV §12419.5 authorizes the State Controller to offset fines owed to a state agency by a person or entity against any amount owed to the person or entity by the state (i.e. tax refunds from the Franchise Tax Board, winnings in the California State Lottery, or a claim for unclaimed property).

²² BPC §125.3, BPC § 2661.5.

reduced cost recovery is not paid on time, the full amount becomes due immediately. Regardless of whether the case is settled by stipulation or proceeds to an administrative hearing, the PTBC will seek cost recovery.

Public Information and Consumer Outreach

As a public agency, the PTBC is required to keep the public informed of board activities and provide the opportunity for engagement and input. The PTBC reports that it has also recently shifted its resources to enhance its outreach program in an effort to meet the objectives in the PTBC 2014 Strategic Plan. The following are the outreach and education resources:

- **Website:** The PTBC uses the standard State of California website design. The website includes a page designated for consumers, which provides information about general practice protocols, the complaint process, privacy rights of a patient, and/or verify a license status. To supplement the information that is available on the website, the PTBC also responds to requests for information in writing.
- **Newsletter:** To reduce printing expenses and lessen the impact on the environment, in 2011, the PTBC discontinued the printed version of its newsletter. Instead, the PTBC offers an electronic version on the website (since 2004). The PTBC also provides the newsletter to interested parties through email.
- **Public Speaking Engagements:** PTBC staff attended the California Physical Therapy Association's 2015 Student Conclave at California State University, Sacramento and gave a presentation on the application process, as well as the laws and regulations that govern the practice of physical therapy in California. The PTBC notes that it used to participate in public speaking engagements that require travel when asked. However, it is limited by travel restrictions.
- **Multimedia:** The PTBC is exploring the possibility of offering webinars and video logs. The PTBC notes that they could provide information on the application process, complaint process, and general updates.
- **Facebook/Twitter:** The homepage features links to social networking pages, such as Facebook and Twitter. Having accounts with these social networks allows the PTBC to disseminate information directly and immediately to all interested parties.
- **BreEZe:** The homepage also features a link to direct users to the DCA's license look-up function provided through BreEZe.
- **Complaints:** The PTBC posts complaints consistent with the DCA's Recommended Minimum Standards for Consumer Complaint Disclosure (generally nothing pending).
- **Discipline:** Accusations and final disciplinary action documents are posted on the license lookup function provided through BreEZe, and final disciplinary actions are provided quarterly in the board meeting materials.

Additional Background Information

For additional information regarding the PTBC's responsibilities, operations, and functions, please see the PTBC's *2016 Sunset Review Report*. The report is available on the PTBC's website: <http://www.ptbc.ca.gov/>.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The PTBC was last reviewed in 2012. A total of three issues were raised by the Committees at that time. Below are actions which the PTBC has taken over the last four years to address the issues (for the full response, see the PTBC's *2016 Sunset Review Report*). Outstanding issues that merit discussion are located in the Current Sunset Review Issues section.

Recommendation 1: Since, as indicated by the PTBC, the reduction in its staffing levels will prevent it from meeting its ongoing workload and will result in continuous backlogs within its CPS program, the limited term positions granted under CPEI, which ended on 9/30/12, should be restored. Also, because of the PTBC's increasing enforcement costs including those of the AG's office and the impending decrease in reserves to unsafe levels in FY 2013/2014, repayment of the General Fund loan of \$1.5 million from the PTBC fund should begin in FY 2013/2014 and the PTBC should not have to wait until it's fund becomes insolvent before repayment begins. In the future, a budget augmentation should be considered for its AG costs since the PTBC has over-expended its AG budget line for the past three years.

PTBC Response: In addition to budget issues, the PTBC identified staffing deficiencies within all its program areas: Administrative, Application and Licensing, Continuing Competency and Consumer Protection that had resulted in operational deficiencies. Particularly, the CPS program suffered significant backlogs in processing consumer complaints, administrative citations, and disciplinary enforcement cases. The PTBC reports that it has and continues to deal with these issues through the BCP process and making changes to enforcement priorities.

Recommendation 2: There does not appear to be any reason why the PTBC should not be authorized to require a fictitious name permit.

PTBC Response: The PTBC recommended that authority be granted to require a fictitious name permit for physical therapists similar to that which is required by the Medical Board for the Committee's consideration. Particularly, the PTBC was seeking direction from the Committee as to whether the concept was reasonable for the PTBC to pursue. In response, the Committee determined there did not appear to be any reason why the PTBC should not be authorized to require a fictitious name permit. As a result, the PTBC conducted an in-depth analysis of the implementation of the concept and concluded that a fictitious name permit was unnecessary.

Recommendation 3: The revisions to the Physical Therapy Practice Act should be included in a separate bill so that the continuation of the PTBC in a sunset bill will not be jeopardized if there is any controversy surrounding changes to the Practice Act. The PTBC should assure the Committee that all concerned individuals and interested parties have had an opportunity to express any concerns regarding the changes proposed to the Act and have been addressed, to the extent possible, by the PTBC.

PTBC Response: In the 2012 Sunset Review the PTBC recommended revising the Practice Act in its entirety to provide an Act that was consistent with the current role of the physical therapy profession. At the recommendation of the Committee, the Practice Act was repealed, revised, and recast under the last PTBC Sunset bill, SB 198, effective January 1, 2014. SB 198 represented the PTBC's 10-year efforts of working with stakeholders to make the Practice Act less complex and easier to use.

Major Changes Since Last Review:

- In December 2012 the PTBC's Executive Officer (EO) retired. The EO had been with the PTBC for 30 years in various capacities. The PTBC appointed Jason Kaiser as the interim executive officer. In May 2013, the PTBC appointed Jason as the EO.
- The PTBC had three new public members appointed; one appointed by the Governor in 2013; one appointed by the Senate Rules Committee; one appointed by the Assembly Speaker in 2016. The PTBC also gained three new professional members appointed by the Governor in 2014.
- In 2015, the PTBC nominated and elected a public member as board president.
- In 2014, the PTBC established and adopted a multi-year strategic plan identifying goals and objectives to address issues and trends impacting physical therapy and business practices. It anticipates revisiting its Strategic Plan no later than 2018.

CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA BOARD OF PHYSICAL THERAPY

The following are unresolved issues pertaining to the PTBC and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The PTBC and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

BUDGET ISSUES

ISSUE #1: *Should the PTBC's statutory fee caps under the Practice Act increase?*

Background: As noted above under the Fees section, the PTBC recently increased its fees to the maximum amount allowed under the Practice Act to cover its operating costs. However, the PTBC notes that, should it need to increase its fees again to sustain ongoing operational costs, it will not have the authority to do so.

Specifically, the PTBC wrote in its *2016 Sunset Review Report*:

In an effort to avoid an operational deficiency within the next 5 years or prior to PTBCs next Sunset Review (FY 2022/23), the PTBC suggests amending the licensing caps under [BPC] § 2688 to appropriate amounts that would sustain the ongoing operations of the PTBC. It should be noted, should this action be approved through the Sunset Review process, the outcome will increase the licensing fee caps *only*. Should the PTBC require the need to increase its licensing fees to sustain ongoing operations, the PTBC would require a regulatory change through the rulemaking process which includes various approvals, including board members.

While the PTBC does not currently anticipate needing a fee increase, its fund reserve is still relatively low. As noted above, fund reserves help cover unanticipated costs like litigation (including restitution actions), increases in Pro Rata, and ongoing BreEZe implementation.

Further, the PTBC report that it is still seeking three additional permanent positions, a cashier, a receptionist, and an outreach position. It has also required dedicated BreEZe staff on occasion. In the event the positions are approved, the PTBC may not have the funds to fill them.

Staff Recommendation: *The PTBC should discuss with the Committees its fund projections, fee audits, and fee structure that went into effect. Further, the PTBC should complete the Committees' "Fee Bill Worksheet" for the statutory fee increase.*

ISSUE #2: *Should the requirement that the PTBC submit a report to the Legislature whenever the PTBC increases a fee be deleted?*

Background: The PTBC has an atypical reporting requirement under the Practice Act. BPC § 2688.5 specifies that the PTBC must submit a report to the fiscal and appropriate policy committees of the Legislature whenever the PTBC increases any fee.

The section also requires that the report specifies the justification for the increase and the percentage of the fee increase to be used for enforcement purposes. This appears to be a mechanism to ensure compliance with the fee limitation raised in the previous issue.

Staff Recommendation: *The PTBC should discuss the history of this requirement and whether the PTBC treats the report differently than the Initial Statement of Reasons published when promulgating regulations. If the report is duplicative, the Committees may wish to remove the requirement.*

ISSUE #3: *Should the PTBC's Practice Act be amended to remove the requirement that the PTBC may only charge fees sufficient to cover the costs of the specific service provided?*

Background: Another atypical requirement the Practice Act imposes on the PTBC is a limit on the way it can use fees. Specifically, the PTBC is only allowed to charge a fee that covers the actual cost of performing the specific service the fee is charged for. For instance, BPC §2688(a)(3) states "the [PTBC] may decrease or increase the amount of an application fee... to an amount that does not exceed the cost of administering the application process, but in no event shall the application fee amount exceed three hundred dollars (\$300)."

However, this seems difficult to comply with. As noted earlier, enforcement programs are not sustainable through cost-recovery alone. Further, the PTBC (like all boards) must pay for DCA Pro Rata, which is variable and accounted for and charged separately.

Staff Recommendation: *The PTBC should explain whether this requirement has constrained in the past and discuss whether the requirement should be removed.*

ADMINISTRATIVE ISSUES

ISSUE #4: *Should the PTBC establish committees to address any ongoing issues?*

Background: The PTBC has reported that it struggles with staffing, workload, and budget issues. One approach that boards take when dealing with administrative and operational issues is to establish a committee to investigate potential problems, work with staff, and make recommendations to the full board. Committees are more flexible, can meet more often, and can parse out details the full board may not have time to explore.

A committee can also be useful for boards that suffer from information bottlenecks, which can result in a lack of innovation or structural issues that remain unresolved. While daily administration is usually delegated to the EO, a committee can provide board members access to other staff and receive additional input and suggestions.

On the other hand, smaller boards that meet frequently may not benefit as much from committees. Requiring committee recommendations before the full board takes action could hinder efficiency when the board is well informed. Further, boards may have other ways to address these issues, negating the need for committees.

Staff Recommendation: *The PTBC should discuss whether it has considered establishing a committee to explore ongoing issues and whether it uses any other methods to improve board processes and promote the flow of information to and from the board members.*

LICENSING ISSUES

ISSUE #5: *Treatment plan of care for children covered under the Individuals with Disabilities Education Act (IDEA)*

Background: The California Physical Therapy Association (CPTA) has suggested that BPC § 2620.1 should contain an exemption to the current 45-day/12 visit requirement. Under BPC § 2620.1, PTs are prohibited from providing direct treatment beyond 45 calendar days or 12 visits, whichever occurs first without receiving a documented medical diagnosis or a dated physician's signature on the PT's plan of care.

However, a child covered by IDEA is eligible for appropriate services to meet the child's educational needs, and the CPTA argues that the medical diagnosis requirement in some cases delays the child's ability to receive proper medical treatment or medical equipment.

The CPTA presented this issue to the PTBC at the end of its Sunset Review Report process. Therefore the PTBC has not had enough time to consider this issue. The PTBC reports that it recognizes that children with disabilities are one of the most vulnerable populations. Further, the PTBC recognizes the overlay of federal law on this complex issue and respects the statutory safeguards that currently exist. While the PTBC voted to include this issue in the Sunset Review Report, the PTBC does not have a position on this issue yet.

Staff Recommendation: *The PTBC should continue to work with the Committee and stakeholders to clarify this issue going forward.*

ISSUE #6: *Does the PTBC need statutory authority to collect workforce and demographic data?*

Background: The PTBC states that it does not have the statutory authority to collect data on workforce status. However, this data is helpful in determining trends in the profession and providing evidence for future decision-making.

Staff Recommendation: *The PTBC should discuss statutory and regulatory barriers regarding the collection of voluntary workforce and demographic data.*

ISSUE #7: *Should the Practice Act be amended to exempt applicants from other countries that speak English from the TOEFL requirement?*

Background: BPC § 2653 requires all applicants who graduated from a non-accredited physical therapy program outside the United States to demonstrate English proficiency. This is accomplished by passing the TOEFL examination or any other exam the PTBC specifies.

However, there is no exemption for applicants who graduated from a physical therapy education program in a country where English is the primary language. The PTBC identified this requirement as a potential barrier to licensure because the requirement can delay application processing. While the PTBC has tried to exempt applicants through the regulatory process, the Office of Administrative Law determined that it is outside the PTBC's authority.

Therefore, the PTBC recommends adding an initial exemption for foreign educated applicants that is consistent with the exemption for healthcare worker visas established by the United States Citizenship and Immigration Service (Title 8, Code of Federal Regulations, §212.15(i)(3)). Currently, there are seven countries: Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, or the United States. The PTBC believes that providing this exemption maintains the balance between consumer protection and reducing unnecessary barriers to licensure.

Staff Recommendation: *The Committees may wish to exempt the identified applicants and authorize the PTBC to waive the condition to account for other circumstances on a case-by-case basis.*

ISSUE #8: *Does the PTBC need the authority to order restitution for harmed consumers?*

Background: The PTBC reports that it does not seek restitution for harmed consumers because it does not have the statutory authority to do so. While there is no authority to order restitution in administrative actions, BPC § 125.5(b) provides that:

The superior court for the county in which any person has engaged in any act which constitutes a violation of a chapter of [the BPC] administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, order such person to make restitution to persons injured as a result of such violation.

Restitution is a tool used to remedy crimes of fraud and theft against consumers by “disgorging” an unjustly enriched defendant (transferring fraudulently obtained property to the rightful owner). However, restitution actions can be costly and, when used inappropriately, can be seen as punitive.

Staff Recommendation: *The PTBC should explain whether it has had the opportunity to utilize § 125.5 and whether it needs additional statutory authority to do so. The Committees may wish to recommend that the PTBC order restitution for harmed consumers when equitable and appropriate.*

ISSUE #9: *What can be done to improve compliance with mandatory reporting requirements?*

Background: According to the PTBC, it has difficulty receiving various reports from outside agencies. For instance, although the DOJ reports notices received from arresting agencies and court jurisdictions to the PTBC, not all agencies report to the DOJ. This means some reports do not enter the DOJ system to be reported to the PTBC. The PTBC receives Subsequent Arrest Reports and Subsequent Conviction Reports from DOJ that provide important information in order to pursue disciplinary action if necessary. The PTBC also works with DOI to obtain the missing information at additional cost to and resource use by the PTBC.

Staff Recommendation: *The PTBC should update the Committees on this issue and discuss any solutions the PTBC has explored.*

TECHNOLOGY ISSUES

ISSUE #10: *Is the PTBC concerned about ongoing costs and staff redirection for BreEZe implementation?*

Background: The PTBC was part of the DCA Release 2.0 for the new BreEZe data system. As reported in the last Sunset Review, the PTBC dedicated a number of staff to serve as subject matter experts (SME) in the development, implementation and launch of the BreEZe project to ensure the PTBC's business requirements were met. To prepare for the implementation of the BreEZe system, PTBC staff attended in-house training and DCA's SOLID training.

The PTBC reports that the SMEs continue to work with the DCA BreEZe project as needed, working on a number of system enhancements to further efficiency for both PTBC stakeholders and staff. Due to the new implementation and resource availability, a schedule of maintenance releases was established to implement system enhancements. Unscheduled emergency system enhancements may be implemented if requested.

Some boards, such as the Medical Board, utilize dedicated IT/BreEZe staff. This prevents the need for redirecting specialized staff for atypical tasks, prevents disruption of workflow, and helps improve individual expertise in BreEZe coding and querying. Other boards have shared services agreements with the Medical Board to utilize their dedicated BreEZe staff (e.g. the Board of Podiatric Medicine and the Physician Assistant Board).

Staff Recommendation: *The PTBC should discuss the benefits of utilizing staff dedicated to BreEZe, whether it could be helpful going forward, and any other potential issues related to the ongoing implementation of BreEZe.*

ISSUE #11: *Is there a way to disaggregate enforcement data to make it more useful?*

Background: While the PTBC has taken steps to try to meet its PM4 targets, it is limited to communication with the outside agencies and diligently monitoring cases. Therefore, additional data may prove useful.

Because of the way PM4 data is aggregated, it is not useful for distinguishing how long a case is at a board before it is sent to the AG for further action and how long the AG’s office takes to complete cases. It would be helpful if the PTBC could query BreEZe to pull timelines that distinguish the average length of time the case spends at the desk investigation stage, the DOI, the AG, and the OAH. Knowing this may assist in tailoring solutions to the specific agency.

Staff Recommendation: *The PTBC should discuss whether it is currently possible to disaggregate enforcement data and, if not, whether the PTBC can work with the DCA to develop methods to do so.*

ISSUE #12: *Should the PTBC use other technologies the DCA might have to improve submission compliance and processing times for primary source documentation?*

Background: Many boards have issues obtaining primary source documentation from outside organizations, such as certifying entities, schools submitting transcripts, and CE providers. One solution may be to utilize new tools for submitting documents to the board.

For instance, the DCA has had an online storage system, or “cloud” storage, that boards can use for document submission and distribution. Currently, a board can use the DCA cloud to provide board members lengthy meeting materials to save on postage and time. The new Executive Officer of the Board of Registered Nursing recently proposed an innovative solution to ease the receipt of information from third-party sources by allowing them to directly upload materials directly into a cloud that the DCA manages.

Staff Recommendation: *The PTBC should discuss whether it has considered using the DCA's cloud or other technology tools for primary source document submissions.*

ISSUE #13: *Should the PTBC utilize additional survey types to improve its survey responses?*

Background: As noted in the PTBC’s 2016 *Sunset Review Report*, its consumer satisfaction survey has a very low response rate (38 in the last three FYs). A low response rate makes it difficult to make an accurate determination of consumer satisfaction. Currently, the PTBC sends postcards and a link to an online survey to consumers involved in the complaint process. In response to the low rates, the PTBC has revised and shortened its survey.

While the surveys are currently linked to the complaint process, there may be other avenues to utilize. The PTBC states that it uses Twitter, Facebook, and a robust webpage. These platforms

might be useful tools to host additional types of surveys. The PTBC has considered this issue and potential solutions.

Staff Recommendation: *The PTBC should discuss any contemplated solutions to the low consumer satisfaction survey response rates.*

ISSUE #14: *What impediments, if any, impact the PTBC’s ability to webcast its meetings?*

Background: Webcasting is a commonly used and helpful tool for licensees, consumers, and other stakeholders to monitor boards in real-time and better participate when unable to physically attend meetings. While meetings are split between northern and southern California, there are only a few meetings per year and travel to and from meetings can be difficult. As a result, webcasting provides greater access. It also improves transparency and can provide a level of detail that cannot be expressed in the board-approved minutes.

Staff Recommendation: *The PTBC should advise the Committees on any difficulties it has had webcasting its meetings, whether due to DCA’s limited resources, poor connectivity, or otherwise.*

EDITS TO THE PRACTICE ACT

ISSUE #15: *Should the Practice Act be amended to change the PTBC’s ratio of public members to professional members?*

Background: In February 2015, the U.S. Supreme Court’s decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* (FTC), and the FTC’s subsequent guidance on the issues, opened discussions on the issue of the potential for anti-competitive decisions by state licensing boards. In the case, the Court ruled that the dentist-controlled Board of Dental Examiners violated the Sherman Antitrust Act²³ and that the Board was not actively supervised by the state and therefore was not protected by state-action immunity.

As a result, there has been a lot of discussion surrounding board composition. However, California DCA boards are structured differently and have more inherent protections than the NC Board. Many DCA boards also appreciate the expertise and passion for consumer protection that professional members can bring. Further, subsequent FTC guidance suggests that a single professional member can still be a “controlling majority.”

Still, given the findings from the Little Hoover Commission on potential barriers to entry into a profession and potential for protectionism, there may be ways to further balance the boards. Rebalancing licensing boards so that they have a public member majority could do this by

²³ 26 Stat. 209, 15 U.S.C. §§ 1–7.

increasing the weight of the consumer perspective. While every board is different, it is not uncommon for public members to defer to professional members on issues outside practice issues, such as administration of the board.

However, smaller boards or boards of lesser-known professions may have a difficult time recruiting public members. To deal with this, boards can establish practice committees (some already do) that can be used to fill the gaps in subject matter expertise. Alternatively, some boards might utilize panels of experts during hearings if immediate assistance is necessary.

Further, improvements to the appointments process might assist with potential recruitment or training issues. A robust training or helpful documentation by the appointing body or the DCA might help prepare, attract, and improve the retention of public members.

Staff Recommendation: *The PTBC should discuss the pros and cons of rebalancing the ratio of board members and discuss any other potential areas that might need to be addressed, such as recruitment and appointments.*

ISSUE #16: *Are there technical changes to the Practice Act that may improve the PTBC's operations?*

Background: The PTBC has indicated in its *2016 Sunset Review Report* that there are a number of changes to its Practice Act that it would like to request. It states that it has identified several statutory changes that would enhance or clarify the Practice Act assist or assist with consumer protection, including clarifications regarding retired licenses and old cross-references.

Staff Recommendation: *The PTBC should continue to work with the Committees on the submitted proposals.*

CONTINUED REGULATION OF THE PROFESSION

ISSUE #17: *Should the State continue to license and regulate PTs and PTAs? If so, should the Legislature continue to delegate this authority to the PTBC and its current membership?*

Background: The PTBC has shown a commitment to its mission and a willingness to work with the Legislature to improve consumer protection. Given the recent switch to BreEZe and restructuring of staff, the PTBC will need time to implement and produce workable data. However, there is always room for improvement. Specifically, the PTBC should continue to work on its budget, staff, and workload issues. The PTBC should also utilize available tools to improve efficiency, including utilizing the DCA's other technology services and disaggregating enforcement data.

Staff Recommendation: *The PTBC should continue to regulate PTs and PTAs in order to protect the interests of the public for another four years and should update the Committees on its progress at that time.*