

**MAY 18 & 19,
2016**
BOARD MEETING

College of the Sequoias
915 South Mooney Blvd., Sequoia 1
Visalia, CA 93277



Physical Therapy Board of California

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

THE PHYSICAL THERAPY BOARD OF CALIFORNIA

2005 Evergreen St. Suite 1350, Sacramento, California 95815

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

www.ptbc.ca.gov

PHYSICAL THERAPY BOARD OF CALIFORNIA NOTICE OF PUBLIC MEETING

May 18, 2016 9:00 a.m.
May 19, 2016 9:00 a.m.

College of the Sequoias
915 South Mooney Blvd., Sequoia 1
Visalia, CA 93277

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

Unless otherwise indicated, all agenda items
will be held in **OPEN SESSION**. **THE PUBLIC
IS ENCOURAGED TO ATTEND**. Please refer
to the informational notes at the end of
the agenda.

BOARD MEMBERS

Katarina Eleby, M.A., *President*
Alicia K. Rabena-Amen, PT, MPT, *Vice President*
Debra Alviso, PT, DPT, *Member*
Jesus Dominguez, PT, Ph.D., *Member*
Daniel Drummer, PT, DPT, *Member*
TJ Watkins, *Member*
Tonia McMillian, *Member*

BOARD STAFF

Jason Kaiser, *Executive Officer*
Liz Constancio, *Manager*
Elsa Ybarra, *Manager*
Brooke Arneson, *Associate Analyst*



Physical Therapy Board of California



Agenda

1. **Call to Order**
2. **Board Member Changes**
 - (A) Welcome to Tonia McMillian and TJ Watkins
 - (B) Thanks to James Turner and Carol Wallisch
3. **Roll Call and Establishment of Quorum**
4. **Special Order of Business – May 18, 2016 9:00 a.m.**
 - (A) Hearing on Petition for Termination of Probation – Mia Hiroko Sugi, PT
After submission of the matters, the Board will convene in CLOSED SESSION to deliberate pursuant to Government Code section 11126(c)(3).
5. **Closed Session**
 - (A) Pursuant to Government Code section 11126(c)(3)
Deliberation on Disciplinary Actions And Decisions to be Reached in
Administrative Procedure Act Proceedings
 - (B) Pursuant to Government Code section 11126(a)(1)
Evaluation of Executive Officer
 - (C) Adjourn Closed Session
6. **Reconvene Open Session**
7. **Discuss Increase in Board Level and Exempt Status of the Executive Officer**
– *Ricardo DeLaCruz, DCA Personnel Officer*
8. **Review and Approval of Meeting Minutes – Brooke Arneson**
 - (A) [November 4th & 5th 2015 Meeting Minutes](#)
 - (B) [February 10th & 11th 2016 Meeting Minutes](#)
9. **Consumer and Professional Associations and Intergovernmental Relations Reports**
 - (A) Federation of State Boards of Physical Therapy (FSBPT)
 - (B) Department of Consumer Affairs (DCA) – *Executive Office*
 - (C) California Physical Therapy Association (CPTA)
10. **President’s Report – Katarina Eleby**
 - (A) [2016 Adopted Meeting Calendar](#)
 - (B) [2017 Proposed Meeting Calendar](#)
11. **Executive Officer’s Report – Jason Kaiser**
 - (A) Budget/Personnel
 - (B) BreEZe
 - (C) Outreach
 - (D) Application and Licensing
 - (E) Consumer Protection

12. **Legislation Report** – *Brooke Arneson*
 - (A) **2015/16 Legislative Session Summary**; Possible Board Action
 - i. **AB 12** (Cooley) State Government: Administrative Regulations: Review
 - ii. **AB 507** (Olsen) DCA: BreEZe System: Annual Report
 - iii. **AB 2744** (Gordon) Healing Arts: Referrals
 - iv. **AB 2859** (Low) Professions and Vocations: Retired Category: Licenses
 - v. **SB 1155** (Morrell) Professions and Vocations: Licenses: Military Service
 - vi. **SB 1195** (Hill) Professions and Vocations: Board Actions: Competitive Impact
 - vii. **SB 1348** (Cannella) Licensure Applications: Military Experience
13. **Rulemaking Report** – *Brooke Arneson*
 - (A) **2016 Rulemaking Update**
 - i. **License Renewal Exemptions: Retired Status**
 - ii. **Requirements for Graduates from Non-Accredited Programs: Test of English as a Foreign Language (TOEFL)**
 - (B) **Regulatory Language for Board Consideration and Possible Action Regarding License Renewal Exemptions: Retired Status: Adding Section 1399.56 to Article 10, Division 13.2, Title 16 of the California Code of Regulations**
14. **Discussion Regarding Animal Rehabilitation (Informational Only)** – *Karen Atlas & James Syms*
15. **Administrative Services Report** – *Liz Constancio*
 - (A) **Budget**
 - (B) **Outreach**
16. **Application & Licensing Services Report** – *Liz Constancio*
17. **Consumer Protection Services Report** – *Elsa Ybarra*
18. **Ethical Decision Making & Bagley Keene Presentation** – *Angelique Scott, DCA Legal Affairs*
19. **Public Comment on Items Not on the Agenda**

Please note the board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. [Government Code sections 11125 and 11125.7(a)]
20. **Agenda Items for Future Meeting** – August 24 & 25, 2016
Department of Consumer Affairs
2005 Evergreen Street, Hearing Room
Sacramento, CA 95815
21. **Adjournment**

Informational Notes:

Times stated are approximate and subject to change. Agenda order is tentative and may be changed by the Board without prior notice. This meeting will conform to the Bagley-Keene Open Meeting Act. The Board provides the public the opportunity at the meetings to address each agenda item during the Board's discussion or consideration of the item. Total time allocated for public comment may be limited. The board may not discuss or take action on any matter not included on this agenda, except to decide to place the matter on the agenda of a future meeting.

The Board plans to webcast this meeting on its website at www.ptbc.ca.gov. Webcast availability cannot, however, be guaranteed due to limited resources. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Brooke Arneson at (916) 561-8260, e-mail: brooke.arneson@dca.ca.gov, or send a written request to the Physical Therapy Board of California, 2005 Evergreen Street, Suite 1350, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodations. TDD Line: (916) 322-1700.



COLLEGE OF THE SEQUOIAS

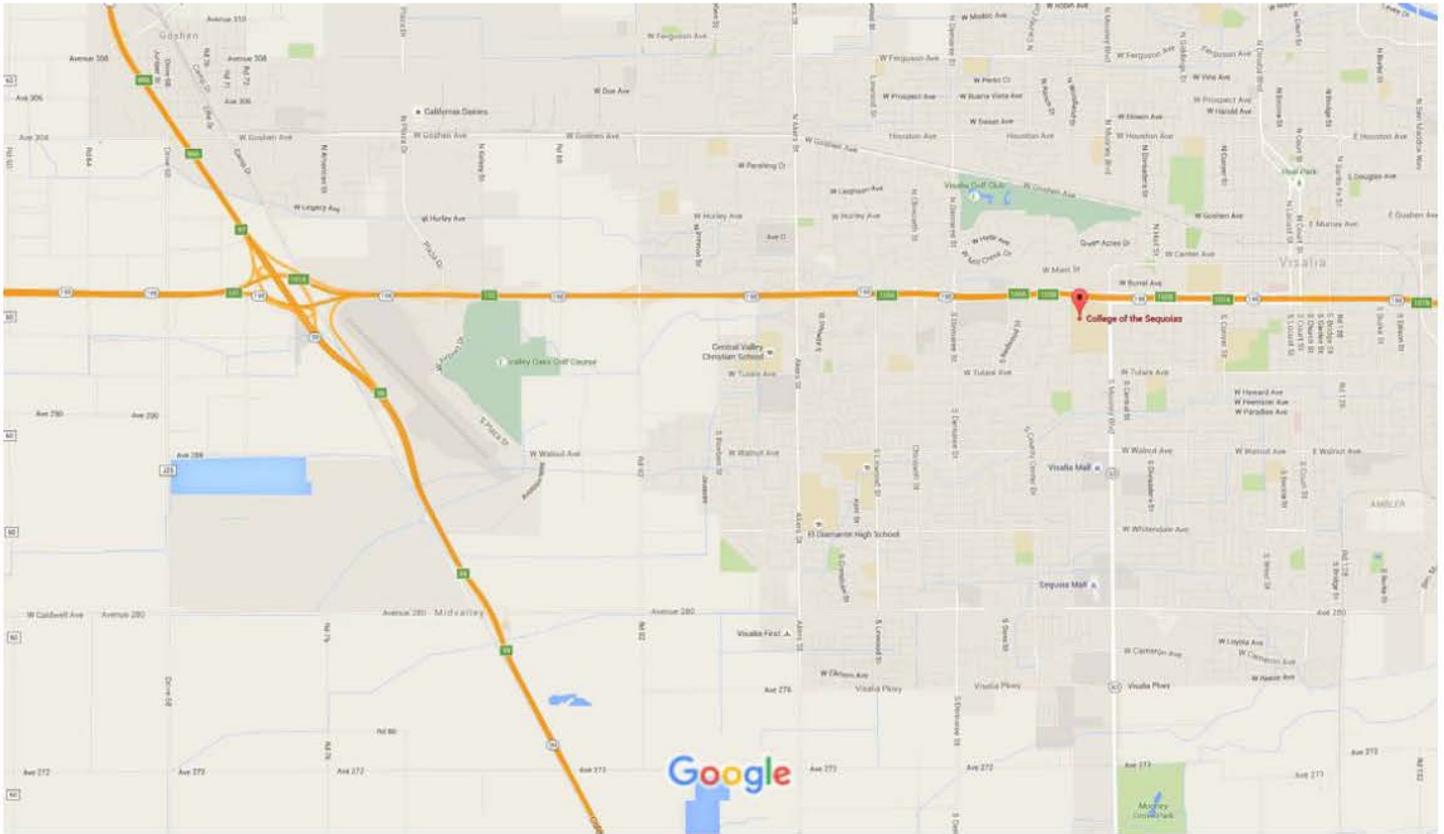
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Board Meeting Location

Please Use Parking Permits Provided

Parking 4



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College of the Sequoias
915 S Mooney Blvd
Visalia, CA 93277

Roll Call

College of the Sequoias, Visalia, CA

May 18, 2016

	Present	Absent
Katarina Eleby, President		
Alicia Rabena Amen, PT, MPT, Vice-President		
Debra J. Alviso, PT, DPT		
Jesus Dominguez, PT, Ph.D.		
Daniel Drummer, PT, DPT		
Tonia McMillian		
TJ Watkins		

May 19, 2016

	Present	Absent
Katarina Eleby, President		
Alicia Rabena-Amen, PT, MPT, Vice-President		
Debra J. Alviso, PT, DPT		
Jesus Dominguez, PT, Ph.D.		
Daniel Drummer, PT, DPT		
Tonia McMillian		
TJ Watkins		

Agenda Item 3 – Roll Call



Physical Therapy Board of California

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Physical Therapy Board of California

DRAFT Meeting Minutes

November 4, 2015 9:00 a.m.

November 5, 2015 9:00 a.m.

**Ohlone College
Newark Center for Health Sciences
and Technology
39399 Cherry Street, Room NC 1100
Newark, CA 94560**

Board Members

President

Debra Alviso, PT, DPT

Vice-President

Katarina Eleby

Members

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Alicia Rabena-Amen, PT, MPT

James Turner, MPA

Carol Wallisch, MA, MPH

Board Staff

Jason Kaiser, Executive Officer

Liz Constancio, Manager

Elsa Ybarra, Manager

Brooke Arneson, Associate

Analyst

1

2 For the sake of clarity, agenda items discussed during the meeting follow their original order on
3 the agenda in these minutes; however, some agenda items may have been taken out of order
4 during the meeting.

5

6 **1. Call to Order, Roll Call and Establishment of Quorum**

7

8 The Physical Therapy Board of California (Board) meeting was called to order by Dr.
9 Alviso at 9:02 a.m. on November 4, 2015. The Board recessed at 5:10 p.m. and
10 reconvened at 9:00 a.m. on November 5, 2015. All members were present with the
11 exception of Jesus Dominguez and Carol Wallisch and a quorum was established. Also
12 present at the meeting were Angelique Scott, Legal Counsel; Liz Constancio; Brooke
13 Arneson and Elsa Ybarra, Board staff. Jason Kaiser, Executive Officer was absent.

14

15 **2. Special Order of Business – August 19, 2015 9:00 a.m.**

16

17 **(A) Hearing on Petition for Reinstatement of License – Aaron Tsuda**

18

19 **(B) Hearing on Petition for Termination of Probation – Robert Gray, PT**

20

21 After submission of the matter(s), the Board convened in closed session to deliberate per
22 Government Code section 11126(c)(3).

23

24 Once issued, disciplinary decisions can be found on the Board's website at
25 www.ptbc.ca.gov.

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27 **3. Closed Session**

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**(A) Pursuant to Government Code section 11126(c)(3)
Deliberation on Disciplinary Actions**

Once issued, disciplinary decisions can be found on the Board’s website at www.ptbc.ca.gov.

**(B) Pursuant to Government Code section 11126(a)(1)
Appointment, Employment, Evaluation of Executive Officer**

**(C) Pursuant to Government Code section 11126(c)(1)
Prepare, approve, grade or administer examinations**

(D) Adjourn Closed Session

4. Reconvene Open Session

5. Review and Approval of August 19 & 20, 2015 Meeting Minutes

Ms. Arneson presented the August 2015 minutes for the Board’s consideration. The Board identified minor amendments to the minutes as follows:

- Page 8, line 129 – correct error “Ms.” Alviso to “Dr.” Alviso
- Page 9, line 157 – correct Director “Kadane” to “Kidane”
- Page 10, line 213 – correct “Vote: 7-0” to included “carried”

MOTION: To adopt the draft August 19 & 20, 2015 meeting minutes as amended.

M/S: Turner/Eleby

VOTE: 5-0 Motion carried

Discussion pursued regarding the depth of detail included in the minutes and the necessity. Dr. Alviso concluded she would have a discussion with the Executive Officer regarding this matter.

6. Consumer and Professional Associations and Intergovernmental Relations Reports

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

No representatives were present.

(B) Department of Consumer Affairs (DCA)

72 No representatives were present.

73
74 **(C) California Physical Therapy Association (CPTA)**

75
76 Stacy DeFoe, Executive Director, discussed the Federation of State Boards of Physical
77 Therapy's (FSBPT) Physical Therapy Licensure Compact. She asked that the Board
78 place the Licensure Compact on the February agenda to further discuss the pros and
79 cons of participating in the compact. She stated that CPTA would be interested in
80 hearing from the Board on what the implications would be. She noted that CPTA has
81 not taken a formal position on the compact.

82
83 **7. President's Report - *Dr. Debra Alviso***

84
85 **(A) 2016 Meeting Calendar**

86
87 There were discussions regarding a change to the May meeting dates; however, Dr.
88 Alviso was concerned about graduation conflicts and deferred making the change until
89 Dr. Dominguez was consulted.

90
91 **8. Executive Officer's Report - *Jason Kaiser***

92
93 Dr. Alviso referred members to the report included in the agenda materials and asked
94 Ms. Constancio and Ms. Ybarra to present in Mr. Kaiser's absence. Mr. Turner inquired
95 about staffing resources and there was discussion regarding BreEZe.

96
97 **9. Legislation Report - *Brooke Arneson***

98
99 **(A) 2015/16 Legislative Session Summary**

100
101 Ms. Arneson referred the members to the legislative summary included in the agenda
102 materials and reviewed the status of the bills.

103
104 **(B) 2015/16 Other Bills Potentially Impacting Physical Therapy Practice or
105 Regulation or Operation of the Physical Therapy Board.**

106
107 Included in above report.

108
109 **10. Rulemaking Report - *Brooke Arneson***

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111 **(A) 2015 Rulemaking Update**

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113 Ms. Arneson referred the Board to the rulemaking tracking form included in the agenda
114 materials and advised on the status.

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(B) 2016 Rulemaking Calendar

Ms. Arneson discussed the calendar included in the agenda materials. The Board voted to adopt the 2016 Rulemaking Calendar as presented.

MOTION: Ms. Eleby
M/S: Mr. Turner
VOTE: 5-0 Motion Carried

(C) Draft Regulatory Language for Board Consideration and Possible Action for the Following Sections of Division 13.2 of Title 16 of the California Code of Regulations

**i. License Renewal Exemptions: Retired Status
Regulation number(s) to be determined**

After lengthy discussion regarding issues including; but not limited to, the definition of: retired, current and valid, subject of disciplinary action, expired and cancelled, the Board determined staff revisit the language and address concerns of the Board for further consideration at a future meeting.

11. Administrative Services Report – Liz Constancio

Ms. Constancio gave a detailed report on the Board’s budget status and outreach efforts as supported by the agenda materials.

12. Application & Licensing Services Report – Liz Constancio

Ms. Constancio presented the report included in the agenda materials.

13. Consumer Protection Services Report – Elsa Ybarra

Ms. Ybarra directed members to the reports included in the agenda materials.

14. Board Member Training – Liz Constancio

(A) Mandatory Training and Reporting Requirements

Ms. Constancio presented on training and reporting requirements and advised members the requirements are a statutory requirement.

15. Board Member Elections

(A) President – Ms. Eleby was elected 2016 President.

MOTION: Dr. Alviso
M/S: Mr. Turner

162 **VOTE:** 4-0 Motion Carried. 1 Abstention

163

164 **(B) Vice President** – Ms. Rabena-Amen was elected 2016 Vice President.

165

166 **MOTION:** Ms. Eleby

167 **M/S:** Dr. Alviso

168 **VOTE:** 5-0 Motion Carried

169

170 **(C) FSBPT Delegate** –Ms. Eleby was elected FSBPT Delegate.

171

172 **MOTION:** Dr. Alviso

173 **M/S:** Ms. Rabena-Amen

174 **VOTE:** 5-0 Motion Carried

175

176 **(D) FSBPT Alternate Delegate** – Ms. Rabena-Amen was elected FSBPT Alternate Delegate.

177

178

179 **MOTION:** Dr. Drummer

180 **M/S:** Dr. Alviso

181 **VOTE:** 5-0 Motion Carried

182

183 **(E) FSBPT Back-up Alternate Delegate** – Dr. Alviso was elected FSBPT Back-up Alternate Delegate.

184

185

186 **MOTION:** Dr. Drummer

187 **M/S:** Mr. Turner

188 **VOTE:** 5-0 Motion Carried

189

190 **16. Public Comment on Items Not on the Agenda**

191

192 There were no public comments on items not on the agenda.

193

194 **17. Agenda Items for Next Meeting – February 10 & 11, 2016**

195

196 The topic of rulemaking defining retired status will be included on the agenda for the
197 February, 2016 meeting.

198

199 **18. Adjournment**

200

201 The Board concluded the meeting on Thursday, November 5, 2015 and adjourned at 2:35
202 p.m.



Physical Therapy Board of California

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Physical Therapy Board of California

DRAFT Meeting Minutes

February 10, 2016 9:00 a.m.

February 11, 2016 9:00 a.m.

Department of Consumer Affairs

2005 Evergreen Street,

Hearing Room

Sacramento, CA 95815

Board Members

President

Katarina Eleby

Vice-President

Alicia Rabena-Amen, PT, MPT

Members

Debra Alviso, PT, DPT

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

James Turner, MPA

Carol Wallisch, MA, MPH

Board Staff

Jason Kaiser, Executive Officer

Liz Constancio, Manager

Elsa Ybarra, Manager

Brooke Arneson, Associate

Analyst

1

2 For the sake of clarity, agenda items discussed during the meeting follow their original order on
3 the agenda in these minutes; however, some agenda items may have been taken out of order
4 during the meeting.

5

6 **1. Call to Order, Roll Call and Establishment of Quorum**

7

8 The Physical Therapy Board of California (Board) meeting was called to order by Katarina
9 Eleby at 9:14 a.m. on February 10, 2016. The Board recessed at approximately 3:00
10 p.m. and reconvened at 9:00 a.m. on February 11, 2016. All members were present and
11 a quorum was established. Also present at the meeting were Angelique Scott, Legal
12 Counsel; Jason Kaiser, Executive Officer; Brooke Arneson and Elsa Ybarra, Board staff.

13

14 **2. Special Order of Business –February 10, 2016 9:00 a.m.**

15

16 **(A) Hearing on Petition for Reduction of Penalty – Anthony Delzompo, PT**

17

18 After submission of the matter(s), the Board convened in closed session to deliberate per
19 Government Code section 11126(c)(3).

20

21 Once issued, disciplinary decisions can be found on the Board's website at

22 www.ptbc.ca.gov.

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24 **3. Closed Session**

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**(A) Pursuant to Government Code section 11126(c)(3)
Deliberation on Disciplinary Actions**

Once issued, disciplinary decisions can be found on the Board’s website at www.ptbc.ca.gov.

**(B) Pursuant to Government Code section 11126(a)(1)
Evaluation of Executive Officer**

(C) Adjourn Closed Session

4. Reconvene Open Session

5. Review and Approval of November 4 & 5, 2015 Meeting Minutes

Ms. Arneson presented the November 2015 minutes for the Board’s consideration. Mr. Turner questioned the move towards “briefer” minutes. Mr. Kaiser explained that based on input from the Board and discussion with the President, the minutes were drafted with minimal detail while capturing relevant discussion. Mr. Turner indicated he was in support but requested the minutes reflect complete thought. He stated the minutes make note of his question about current staffing levels [as reported within the Executive Officer’s report agenda item #5] but don’t reflect specifically his question nor the response.

The Board questioned the minutes as follows:

- Page 11, line 120 – Dr. Alviso questioned whether the reference to the 2016 Rulemaking Calendar was accurate? Ms. Arneson responded it was.
- Page 12, line 168 – Dr. Alviso noted the minutes reflect the vote was 4-0 when there were five members present. Mr. Kaiser responded he thought Ms. Rabena-Amen abstained. Dr. Alviso requested the vote be reflected accurately.
- Page 12, line 183 – Ms. Eleby expressed concern with serving as both the delegate and alternate backup as indicated in the minutes. Dr. Alviso wondered whether it was supposed to be Dr. Dominguez or Dr. Drummer serving as the backup for the Board at the Federation of State Boards of Physical Therapy’s Annual Conference.

Approval of the minutes as amended was delayed until staff researched the accuracy of the concerns expressed.

70 **6. Consumer and Professional Associations and Intergovernmental Relations**
71 **Reports**

72
73 **(A) Federation of State Boards of Physical Therapy (FSBPT)**
74

75 No representatives were present.

76 **(B) Department of Consumer Affairs (DCA)**

77 Awet Kidane, Director and Christine Lally, Deputy Director of Board and Bureau
78 Relations presented on the BreEZe release; the Little Hoover Commission hearings;
79 presentation of DCA's Enforcement Academy's new curriculum; employment of two new
80 staff, Tracy Montez, Chief of the Division of Programs and Policy Review and Veronica
81 Harms, Deputy Director of Communications; Board member training requirements and
82 the efforts to mitigate the effects on the Board resulting from the North Carolina Board
83 of Dental Examiners v. FTC.

84 **(C) California Physical Therapy Association (CPTA)**
85

86 Stacy DeFoe, Executive Director indicated the association has the upcoming events
87 scheduled, as follows: 1) Physical Therapy Legislative Day at the Capitol on March 8,
88 2016; Student Conclave at San Diego Mesa on April 9, 2016; and, Physical Therapy
89 Spring Training at Santa Barbara City College on April 23 & 24, 2016. She also gave a
90 brief history on animal rehabilitation by physical therapists acting as Veterinary
91 Assistants under the supervision of a Veterinarian. She indicated there have been
92 unsuccessful attempts in the past to address the issue by the Veterinary Medical Board
93 and as a result they are considering forming a committee of stakeholders of which it is
94 assumed would include a physical therapist. Ms. DeFoe encouraged members to seek
95 participation.
96

97 **7. President's Report – Katarina Eleby**
98

99 **(A) 2016 Meeting Calendar**

100 Dates and locations were discussed and remain as reflected on the calendar.
101

102 **MOTION: To adopt the dates as noticed.**
103

104 **M/S: Wallisch/Turner**
105

106 **VOTE: 7-0 Motion carried**
107

108 **8. Executive Officer's Report - Jason Kaiser**
109

110 Mr. Kaiser questioned whether there were any comments or concerns on either the
111

112 November 2015 due to his absence or the present Executive Officer's report. Hearing
113 no comments, Mr. Kaiser did express the release of BreEZe in January was a positive
114 experience and encouraged both public and professional members to take advantage of
115 its benefits. Mr. Kaiser further responded to questions regarding outreach efforts to
116 notify consumers and licensees of the BreEZe release. Mr. Kaiser advised it has been
117 posted on social media and the PTBC website and he is hopeful other organizations
118 such as the Association and the Physical Therapy Programs will be sharing the news as
119 well.

120
121

122 **9. Legislation Report - Brooke Arneson**

123

124 **(A) 2015/16 Legislative Session Summary**

125

126 Ms. Arneson referred the members to the legislative summary included in the agenda
127 materials and advised only AB 12 and AB 507 remain as bills of interest since the
128 remaining bills have died.

129

130 **(B) 2015/16 Other Bills Potentially Impacting Physical Therapy Practice or
131 Regulation or Operation of the Physical Therapy Board.**

132

133 There were no other bills potentially impacting physical therapy.

134

135 **10. Rulemaking Report - Brooke Arneson**

136

137 **(A) 2015/16 Rulemaking Update**

138

139 Ms. Arneson referred the Board to the rulemaking tracking form included in the agenda
140 materials and advised on the status.

141

142 **(B) Regulatory Language for Board Discussion and Possible Action Regarding Modified
143 Text on English Proficiency Requirements; Proposed Language to Amend Section
144 1398.25 and Add Section 1398.26.3 to Article 2, Division 13.2, Title 16 of the California
145 Code of Regulations**

146

147 Mr. Kaiser advised the Board this agenda item was supposed to be noticed for
148 discussion of the proposed language on retired status. Since this agenda item was
149 erroneously noticed the Board refrained from any discussion; however, Mr. Kaiser did
150 address concerns with the language expressed by the Board at the November, 2015
151 meeting. The language will be revisited at the May, 2016 meeting.

152

153 **11. DCA Distributed Costs (Pro Rata) Presentation –**

154 *Taylor Schick, DCA Budget Officer, Robert de los Reyes, DCA Budget Manager*

155

156 Mr. Schick distributed materials to support his presentation on the methodology in

157 distributing statewide and department costs to the Board.

158
159 **12. U.S. Supreme Court Case of North Carolina Board of Dental Examiners v. FTC**
160 *Angelique Scott, DCA Legal Counsel*

161
162 Ms. Scott presented on the actions of the North Carolina Board of Dental Examiners
163 which caused filing of the U.S. Supreme Court case by the Federal Trade Commission.
164 She expounded on how the North Carolina Board of Dental Examiners lacked authority
165 to substantiate their actions. Included in the agenda materials Ms. Scott referred to her
166 memo which encourages the Board to:

167 A) promote their primary mission of consumer protection in making decisions

168 B) articulate the public policy reasons for their decisions;

169 C) conduct an analysis of the procompetitive and anticompetitive aspects of that
170 decision, and

171 D) articulate in their records (minutes), how the actions taken, will further the state's
172 affirmatively stated policies.

173
174 **13. Administrative Services Report**

175
176 **(A) Budget – Carl Nelson**

177
178 Mr. Nelson referred the Board to the agenda materials representing the current status of
179 the Board's budget. Mr. Kaiser advised the Board an augmentation of the budget will
180 be requested once again since he anticipates over expending Attorney General Costs.
181 There was further discussion regarding the Board's reserve and the anticipation of the
182 impact with the fee increase.

183
184 **(B) Outreach – Jacki Maciel**

185
186 Mr. Kaiser presented the report included in the agenda book on behalf of Ms. Maciel.
187 Ms. Rabena-Amen questioned whether members could assist with outreach efforts to
188 which Mr. Kaiser responded that composition of articles or suggestions of consumer
189 interest would be well received.

190
191 **14. Application & Licensing Services Report – Sarah Conley**

192
193 In presenting her report, Ms. Conley expounded on the discrepancies in the collection of
194 data. She indicated the numbers have been and currently are collected from CalSTARs
195 and AdHoc reports which are based on dollars collected and not actual workload.
196 BreEZe data should be a more accurate reflection of actual workload; however,
197 reporting format has yet to be determined. Ms. Conley also expressed the
198 implementation of BreEZe on the actual go live date was impressively seamless.

199
200 **15. Consumer Protection Services Report – Elsa Ybarra**
201

202 Ms. Ybarra expressed appreciation to those members who were able to attend the
203 Expert Consultant training held on February 9, 2016 and reported there were 27
204 participants in attendance. Ms. Eleby and Dr. Dominguez indicated the training was
205 very informative and insightful and requested the materials be made available to all
206 members. Ms. Ybarra also reported staff are adapting well to learning the functionality
207 of BreEZe and are on target with the Performance Measures.
208

209 **16. Board Member Training – Jacki Maciel**

210
211 **(A) Form 700**

212
213 Mr. Kaiser presented a short video on Netfile, a web portal for filing the Statement of
214 Economic Interest.
215

216 **17. Public Comment on Items Not on the Agenda**

217
218 There were no public comments on items not on the agenda.
219

220 **18. Agenda Items for Next Meeting – May 18 & 19, 2016**

221
222 Ms. Wallisch requested the prohibition of physical therapist probationers to bill Blue
223 Shield for services be a topic of discussion at the May, 2016 meeting.
224

225 **19. Adjournment**

226
227 The Board concluded the meeting on Thursday, February 11, 2016 and adjourned at
228 approximately 2:00 p.m.

Physical Therapy Board of California

Adopted 2016 Meeting Calendar

January						
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January

1 New Year's Day
 13 PTA NPTE
 18 Martin Luther King Jr. Day
 27 PT NPTE

April

6 PTA NPTE
 27 PT NPTE

July

4 Independence Day
 6 PTA NPTE
 19-20 PT NPTE
 29-30 FSBPT LIF, Alexandria, VA

October

6 PTA NPTE
 27 PT NPTE
 31 Halloween

February

10-11 PTBC Meeting
 Sacramento, CA
 15 President's Day

May

8 Mother's Day
 18-19 PTBC Meeting
 Visalia, CA
 30 Memorial Day

August

24-25 PTBC Meeting
 Sacramento, CA

November

4-6 FSBPT Meeting
 Columbus, OH
 9-10 PTBC Meeting
 Los Angeles, CA
 11 Veteran's Day
 24-25 Thanksgiving Holiday

March

27 Easter
 31 César Chávez Day

June

8-11 APTA Conference
 Nashville, TN
 19 Father's Day
 24-26 FSBPT Board Member
 Training
 Alexandria, VA

September

5 Labor Day

December

25 Christmas

Physical Therapy Board of California Proposed 2017 Meeting Calendar

January						
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January

1 New Year's Day
 12 PTA NPTE
 16 Martin Luther King Jr. Day
 26 PT NPTE

April

5 PTA NPTE
 16 Easter
 26 PT NPTE

July

4 Independence Day
 6 PTA NPTE
 18-19 PT NPTE

October

3 PTA NPTE
 25 PT NPTE
 31 Halloween

February

8-9 PTBC Meeting
 Sacramento, CA
 20 President's Day

May

14 Mother's Day
 17-18 PTBC Meeting
 Southern California
 29 Memorial Day

August

23-24 PTBC Meeting
 Sacramento, CA

November

1-2 PTBC Meeting
 Bay Area
 3-5 FSBPT Meeting,
 TBD**
 11 Veteran's Day
 23 Thanksgiving

March

31 César Chávez Day

June

18 Father's Day
 21-24 APTA Conference
 Boston, MA

September

4 Labor Day

December

25 Christmas



Physical Therapy Board of California

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

Physical Therapy Board of California

2005 Evergreen St. Suite 1350, Sacramento, California 95815

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

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DATE: April 25, 2016

TO: Physical Therapy Board of California (Board)

SUBJECT: Executive Officer's Report

This report is to update you on the current status of the Board's operations.

BUDGET/PERSONNEL – The Administrative Services program has completed the recruitment process for Office Technician (OT) positions within the Licensing Services program; we would like to welcome Mr. Justin Silva. Mr. Silva will be responsible for various technical licensing maintenance functions, including, but not limited to: processing renewals, inactive, retired, name changes, address changes, duplicates, etc. This position is permanent / full time (1.0 time base) Mr. Silva previously served the Medical Board of California as an Account Clerk II and has been with the Department of Consumer Affairs since 2004. Mr. Silva has an extensive background in cashiering functions, including processing applications associated with fees, such as, renewals, name and address applications, and has over two years' of experience with the BreEZe system. His expertise will be a great asset to the Team.

The PTBC would like to congratulate Theresa Epps on her retirement from state service. Ms. Epps served the PTBC for almost two years in the Application Services Unit. We wish her all the best and hope that she enjoys the life of a retiree.

Update – May 5, 2016, the PTBC is currently recruiting for (1) Office Technician (OT) position (2) Staff Service Analyst (SSA) and (1) Associate Governmental Program Analyst (AGPA) within the Application Services Program.

Please refer to Agenda Item 15(A) for a more detailed Budget report.

BreEZe – As you know, the BreEZe project went live on January 19, 2016. BreEZe offers our stakeholders, Consumers, Applicants and Licensees a number of new services. For Applicants, all of our applications for licensure can now be submitted and paid for on-line. For Licensees, the majority of our licensing transactions can now be processed on-line (e.g.; name change, address change, duplicate request, citation payments and cost recovery). While the launch went extremely well, there is always room to improve; we will continue to work on our “tweaks” to the system to further its efficiency for both our stakeholders as well as PTBC Staff.

On May 6th, we will see the launch of BreEZe Release 2.1. This release will include a number of enhancements to the system that will improve transaction performance for both Applicants and Licensees. Most importantly, this release will include our long awaited fee increase for all applications for licensure, as well as license renewal fees.

The next major BreEZe Release, 2.11, is scheduled for June. We anticipate a number of PTBC changes to be included in this release as well.

LEGISLATION AND REGULATION – Please refer to Agenda Items 12 and 13 for a more detailed report.

OUTREACH – Since the launch of BreEZe in January, our Outreach has been focused primarily on promoting BreEZe awareness. In conjunction with DCA, we have tweeted and posted about BreEZe access, functionality, and convenience, by providing FAQ's, informational links and tutorials on how to use the system. Our number of fans to our page has again increased significantly. At the time of this report, we are 2,370 likes and counting!

A milestone worth noting; the PTBC, with the help of our Outreach coordinator Jacki Maciel, achieved quite the feat, by writing a post that had a reach of almost 200,000 people. Some may classify that as "viral"!

As always, we need topics for our Facebook Page and Twitter Accounts! Board member participation is encouraged; please don't hesitate in submitting your ideas or topics for posting.

We would like to thank Beth Chape, PT, PhD of Sacramento City College for inviting us to come out and present to their PTA program on March 29th, 2016. They were very gracious hosts and provided for a lively Q & A about PTA practice and the application process. We are looking forward to the next class!

Please refer to Agenda Item 15(B) for a more detailed report.

CONTINUING COMPETENCY – As a result of the recruitment mentioned earlier in this report, we anticipate returning the Continuing Competency (CC) program's resources, which have been on loan to the Application and Licensing Services programs, to normal day to day CC operations. As a result, we plan to start addressing the audit backlog of licensee and Recognized Approval Agencies sometime in the 2nd quarter on the next fiscal year (16/17).

APPLICATIONS & LICENSING – Please refer to Agenda Item 16 for a more detailed report.

CONSUMER PROTECTION – Please refer to Agenda Item 17 for a more detailed report.



Physical Therapy Board of California

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Briefing Paper

Date: April 8, 2016

Prepared for: PTBC Members

Prepared by: Brooke Arneson

Subject: Legislation Report

Purpose:

To provide an update on pending legislation.

- Attachments:**
1. **2016 Legislative Calendar**
 2. **Definition of the Board's Legislative Positions**
 3. **2016 Legislative Summary**
 4. **Bill Analysis and Text for all Bills Noticed on the Agenda**

Background and Update:

The 2016 Legislative calendar is included in the meeting materials for your reference, along with a copy of the Board's Legislative positions taken from the PTBC's Board member Administrative Manual.

As noted on the calendar, the Legislature reconvened on March 28th from Spring Recess. September 30th is the last day for the Governor to sign or veto bills passed by the Legislature before September 1st and in the Governor's possession on or after September 1st. All statutes will take effect January 1st 2017. Staff continues to monitor Legislation for progress.

In addition, a 2016 Legislative summary is included which notes all bills from the current Legislative session that could potentially impact Physical Therapy practice, regulation or the operation of the Physical Therapy Board. To aid in the consideration of the bills noted on the agenda, a bill analysis and text for each bill of interest is included in the meeting materials.

Action Requested:

To adopt the positions as recommended by staff on the bills presented at this meeting.

2016 TENTATIVE LEGISLATIVE CALENDAR
 COMPILED BY THE OFFICE OF THE SECRETARY OF THE SENATE
 10/7/2015

DEADLINES

JANUARY						
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- Jan. 1** Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 4** Legislature **reconvenes** (J.R. 51(a)(4)).
- Jan. 10** Budget must be submitted by Governor (Art. IV, Sec. 12 (a)).
- Jan. 15** Last day for **policy committees** to hear and report to Fiscal Committees fiscal bills introduced in their house in the odd-numbered year. (J.R. 61(b)(1)).
- Jan. 18** Martin Luther King, Jr. Day observed.
- Jan. 22** Last day for any committee to hear and report to the **Floor** bills introduced in their house in 2015 (J.R. 61(b)(2)). Last day to submit **bill requests** to the Office of Legislative Counsel.
- Jan. 31** Last day for each house to **pass bills introduced in that house in the** odd-numbered year (J.R. 61(b)(3)), (Art. IV, Sec. 10(c)).

FEBRUARY						
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- Feb. 15** Presidents' day observed.
- Feb. 19** Last day for bills to be **introduced** (J.R. 61(b)(4), (J.R. 54(a)).

MARCH						
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- Mar. 17** **Spring Recess** begins upon adjournment (J.R. 51(b)(1)).
- Mar. 28** Legislature reconvenes from **Spring Recess** (J.R. 51(b)(1)).

APRIL						
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- Apr. 1** Cesar Chavez Day Observed.
- Apr. 22** Last day for **policy committees** to hear and report to Fiscal Committees **fiscal bills** introduced in their house (J.R. 61(b)(5)).

MAY						
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- May 6** Last day for **policy committees** to hear and report to the Floor **nonfiscal** bills introduced in their house (J.R. 61(b)(6)).
- May 13** Last day for **policy committees** to meet prior to June 6 (J.R. 61(b)(7)).
- May 27** Last day for **fiscal committees** to hear and report to the Floor bills introduced in their house (J.R. 61 (b)(8)). Last day for **fiscal committees** to meet prior to June 6 (J.R. 61 (b)(9)).
- May 30** Memorial Day observed.
- May 31 - June 3** **Floor Session only.** No committee may meet for any purpose (J.R. 61(b)(10)).

*Holiday schedule subject to Senate Rules committee approval

2016 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY THE OFFICE OF THE SECRETARY OF THE SENATE
10/7/2015

JUNE						
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- June 3** Last day for each house to pass bills introduced in that house (J.R. 61(b)(11)).
- June 6** Committee meetings may resume (J.R. 61(b)(12)).
- June 15** Budget Bill must be passed by **midnight** (Art. IV, Sec. 12(c)(3)).
- June 30** Last day for a legislative measure to qualify for the Nov. 8 General election ballot (Elections Code Sec. 9040).

JULY						
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- July 1** Last day for **policy committees** to meet and report bills (J.R. 61(b)(13)). **Summer Recess** begins upon adjournment provided the Budget Bill has been passed (J.R. 51(b)(2)).
- July 4** Independence Day observed.

AUGUST						
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- Aug. 1** Legislature reconvenes from **Summer Recess** (J.R. 51(b)(2)).
- Aug. 12** Last day for **fiscal committees** to meet and report bills (J.R. 61(b)(14)).
- Aug. 15 - 31 Floor Session only.** No committees may meet for any purpose (J.R. 61(b)(15)).
- Aug. 19** Last day to **amend** on the Floor (J.R. 61(b)(16)).
- Aug. 31** Last day for **each house to pass bills**, except bills that take effect immediately or bills in Extraordinary Session (Art. IV, Sec. 10(c)), (J.R. 61(b)(17)).
Final Recess begins upon adjournment (J.R. 51(b)(3)).

IMPORTANT DATES OCCURRING DURING FINAL RECESS

2016

- Sept. 30 Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor's possession on or after Sept. 1 (Art. IV, Sec.10(b)(2)).
- Nov. 8 General Election.
- Nov. 30 Adjournment *Sine Die* at midnight (Art. IV, Sec. 3(a)).
- Dec. 5 12 Noon convening of the 2017-18 Regular Session (Art. IV, Sec. 3(a)).

2017

- Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).

*Holiday schedule subject to Senate Rules committee approval

Legislation - Definition of the Positions Taken by the Physical Therapy Board Regarding Proposed Legislation

(Board Policy)

The Board will adopt the following positions regarding pending or proposed legislation.

Oppose: The Board will actively oppose proposed legislation and demonstrate opposition through letters, testimony and other action necessary to communicate the oppose position taken by the Board.

Oppose, unless amended: The Board will take an opposed position and actively lobby the legislature to amend the proposed legislation.

Neutral: The Board neither supports nor opposes the addition/amendment/repeal of the statutory provision(s) set forth by the bill.

Watch: The watch position adopted by the Board will indicate interest regarding the proposed legislation. The Board staff and members will closely monitor the progress of the proposed legislation and amendments.

Support, if amended: The Board will take a supportive position and actively lobby the legislature to amend the proposed legislation.

Support: The Board will actively support proposed legislation and demonstrate support through letter, testimony and any other action necessary to communicate the support position taken by the Board.

PTBC 2016 Legislation Summary

Bill	Author	Summary	Board's Position	Status
AB 12 (Amended 8/19/15) Bill Analysis	Cooley	State Government: Administrative Regulations Review This bill would, require every state office, agency, department, division, board, bureau, and commission to review and revise regulations to eliminate inconsistent, overlapping, duplicative, and outdated provisions. Revisions must be adopted by January 1, 2018. This bill would also require the Business, Consumer Services, and Housing Agency to submit a report to the Governor and Legislature affirming compliance with these provisions. These provisions would be repealed January 1, 2019.	Watch	8/27/15 Senate Appropriations Committee **The Department does not anticipate this 2 year bill will be moving forward**
AB 507 (Amended 7/9/15) Bill Analysis	Olsen, Gray Chang, Dodd, Oberholte, & Waldron	Department of Consumer Affairs: BreEZe System: Annual Report Would require the Governor's Office of Business and Economic Development, in consultation with the Office of Small Business Advocate, to establish a process for the ongoing review of existing regulations. The bill would require the review to be primarily focused on regulations affecting small businesses adopted prior to January 1, 2016, to determine whether the regulations could be less administratively burdensome or costly to affected sectors.	No Position	8/17/15 In Senate Committee on Business, Professions & Economic Development.
AB 2701 (Introduced 2/19/16)	Jones	Department of Consumer Affairs: Boards: Training Requirements This bill would require all newly appointed members of programs within the Department of Consumer Affairs to complete training that includes information about the Bagley Keene Open Meeting Act, the Administrative Procedure Act, the Office of Administrative Law and the Department's Conflict of Interest Code.	No Position	4/22/16 Died – Assembly Failed deadline pursuant to Joint Rule 61(b)(5)

PTBC 2016 Legislation Summary

Bill	Author	Summary	Board's Position	Status
<p>AB 2744 (Amended 4/11/16) Bill Analysis</p>	Gordon Hill	<p>Healing Arts: Referrals Under current law, it is unlawful for licensed healing arts practitioners, except as specified, to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person. This bill would provide that the payment or receipt of consideration for advertising, wherein a licensed healing arts practitioner offers or sells services on an Internet platform, does not constitute a referral of patients.</p>	No Position	4/19/16 Assembly Appropriations Committee
<p>AB 2859 (Introduced 2/19/16) Bill Analysis</p>	Low	<p>Professions and Vocations: Retired Category: Licenses This bill authorizes any of the boards, bureaus, commissions, or programs within the Department of Consumer Affairs (DCA) to establish, by regulation, a system for a retired category of licensure for persons who are not actively engaged in the practice of their profession or vocation.</p>	No Position	4/12/16 Assembly Appropriations Committee
<p>SB 1155 (Amended 3/28/16) Bill Analysis</p>	Morrell	<p>Professions and Vocations: Licenses: Military Service This bill would require every board within the Department of Consumer Affairs to waive application and initial license fees for veterans who have been honorably discharged from the California National Guard or United States Armed Forces.</p>	No Position	4/12/16 Senate Appropriations Committee

PTBC 2016 Legislation Summary

Bill	Author	Summary	Board's Position	Status	
<p>SB 1195 (Amended 4/06/16)</p> <p>Bill Analysis</p>	<p>Hill</p>	<p>Professions and Vocations: Board Actions: Competitive Impact</p> <p>This bill would authorize the director, upon his or her own initiative, and require the director, upon the request of a consumer or licensee, to review a decision or other action, except as specified, of a board within the department to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action, as specified. The bill would require the director to post on the department's Internet Web site his or her final written decision and the reasons for the decision within 90 days from receipt of the request of a consumer or licensee. The bill would, commencing on March 1, 2017, require the director to annually report to the chairs of specified committees of the Legislature information regarding the director's disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation. The bill would authorize the director to seek, designate, employ, or contract for the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints on trade. The bill would also require the director to review and approve any regulation promulgated by a board within the department, as specified. The bill would authorize the director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect. The bill would prohibit any rule or regulation from having any force or effect if the director does not approve the regulation because it has an impermissible anticompetitive effect. This bill contains other related provisions and other existing laws.</p>	<p>No Position</p>	<p>4/19/16</p>	<p>Senate Appropriations Committee</p>

PTBC 2016 Legislation Summary

Bill	Author	Summary	Board's Position	Status
SB 1217 (Amended 4/12/16)	Stone	Healing Arts: Reporting Requirements: Professional Liability Resulting in Death or Personal Injury This bill would increase the threshold for the monetary amount of damages from \$3,000 to \$10,000 for the purpose of Department programs to maintain historical records containing any reported judgments or settlements involving a licensee.	No Position	4/22/16 Died – Senate Failed deadline pursuant to Joint Rule 61(b)(5)
SB 1348 (Introduced 2/19/16) Bill Analysis	Cannella	Licensure Applications: Military Experience This bill would require each board, with a governing law authorizing veterans to apply military experience and training towards licensure requirements, to modify their application for licensure to advise veteran applicants about their ability to apply that experience and training towards licensure requirements.	No Position	4/25/16 Senate Appropriations Committee



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Bill Analysis

Bill Number:	AB 12	Version:	Amended 8/19/15
Author:	Cooley	Sponsor:	Author
Subject:	State Government: Administrative Regulations: Review	Status:	Senate- Appropriations

Adopted Position:
Watch

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./Dead
1 st House				2 nd House								

Red: Current/completed status *Gray: Not applicable*

Existing Law

- Existing law authorizes various state entities to adopt, amend, or repeal regulations for various specified purposes. The Administrative Procedure Act requires the Office of Administrative Law and a state agency proposing to adopt, amend, or repeal a regulation to review the proposed changes for, among other things, consistency with existing state regulations.

This Bill

- This bill would require each state agency, as defined, to review all provisions of the California Code of Regulations (CCR) adopted by that agency and adopt, amend, or repeal regulations identified as duplicative, overlapping, inconsistent, or out of date. An agency acting on this requirement must hold at least one noticed public meeting to accept public comment, and notify the appropriate committees of the Legislature of the proposed revisions to regulations prior to initiating the APA process. Each state agency must also report to the Governor and Legislature on the number and content of regulations identified as duplicative, overlapping, inconsistent, or out of date, and the agency's actions to address those regulations. Each agency must complete all of these duties by January 1, 2018.
- The bill also requires each cabinet-level agency, by January 1, 2018, to notify departments, boards, or other units within the agency of any regulations it has adopted that may be duplicative, overlapping, or inconsistent with a regulation



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adopted by another department, board, or unit within the agency. A department within an agency must notify that agency of any proposed revisions to regulations at least 90 days prior to the specified noticed public hearing noted above, and the agency must review the proposal and make recommendations to the department within 30 days. Cabinet-level agencies must also notify other agencies of existing regulations that may duplicate, overlap, or be inconsistent with that agency's regulations.

3. The bill's provisions would sunset on January 1, 2019.

Background/Purpose

The Administrative Procedures Act (APA) requires the Office of Administrative Law (OAL) to ensure that state agency regulations are clear, necessary, legally valid, and available to the public. In seeking adoption of a proposed regulation, state agencies must comply with procedural requirements that include publishing the proposed regulation along with a supporting statement of reasons, mailing and publishing a notice of the proposed action 45 days before a hearing or before the close of the public comment period, and submitting a final statement to OAL that summarizes and responds to all objections, recommendations and proposed alternatives raised during the public comment period. The OAL is then required to approve or reject the proposed regulation within 30 days.

The OAL is responsible for reviewing administrative regulations proposed by over 200 state regulatory agencies for compliance with the standards set forth in the APA, for transmitting these regulations to the Secretary of State and for publishing regulations in the California Code of Regulations (CCR). On average, OAL reviews nearly 600 files that affect approximately 4,000 regulations packages per year. In 2014, 4,761 proposed regulations were submitted by state agencies for APA review. There are currently nearly 53,000 active regulations in the CCR.

Existing law requires OAL, at the request of any standing, select, or joint committee of the Legislature, to initiate a priority review of any regulation that committee believes does not meet the standards of necessity, authority, clarity, reference, and non-duplication. If OAL is made aware of an existing regulation for which statutory authority has been repealed or becomes ineffective, it must order the agency that adopted the regulation to show cause why it should not be repealed, and notify the Legislature of the order.

This bill is intended to implement a recommendation from an October, 2011 Little Hoover Commission Report entitled *Better Regulation: Improving California's Rulemaking Process*. Among the Commission's recommendations was a suggestion



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that the state establish a “look-back” mechanism to determine if regulations are effective and still necessary.

The last comprehensive review of state agency regulations occurred when OAL was established in 1980. At that time there were over 125 state agencies and over 40,000 regulations printed in the CCR, and today there are over 200 agencies and nearly 53,000 regulations. In addition, OAL had a staff of 50 employees, including 17 attorneys, while they currently have a staff of 20, half of which are attorneys. OAL anticipates it would need an additional five attorneys and two support staff on a full-time, limited-term basis to manage the significant increase in workload to ensure compliance with the APA for state agency proposals to adopt, amend, or repeal regulations over the next two years. Anticipated staff costs are noted above.

AB 12 would impose significant costs on every state office, department, board, bureau, and commission to review all regulations that each entity has in the CCR, and adopt, amend, or repeal any that are identified as duplicative, overlapping, inconsistent, or outdated. The bill would also require cabinet-level agencies to review the regulations of all of their constituent entities and notify them of any duplication, inconsistency, or overlap with the regulations of one of its other constituent entities. Costs are difficult to quantify in the aggregate since there are over 200 entities that must review regulations, and costs and staffing needs would vary for each of them. For individual agencies, costs could be relatively minor for smaller state entities that have few regulations in the CCR, but likely in the low hundreds of thousands annually for two years for many other agencies that have more, and/or more complex regulations on the books. Some state entities may have costs that exceed \$1 million for each of the next two years.

Related Legislation

SB 981 (Huff), which was held in the Senate Governmental Organization Committee in 2014, would have required state agencies to review regulations adopted in the past and report specified information on each regulation to the Legislature, including whether a regulation is duplicative, still relevant, or needs to be updated to be less burdensome or more effective.

SB 366 (Calderon), which was referred to the Senate Governmental Organization Committee in 2011 but never heard, included provisions that were nearly identical to the introduced version of this bill.

Fiscal Impact:

Office of Administrative Law (OAL) costs of approximately \$744,000 in the 2016 calendar year and approximately \$695,000 in 2017 for 7 PY of full-time, limited-term staff and



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associated costs to manage a significant increase in workload over two years. (General Fund).

Unknown, major aggregate state costs, likely in the millions and potentially over ten million annually for two years, for over 200 state agencies to review all current regulations, make necessary revisions to identified regulations through the Administrative Procedure Act (APA) process, coordinate with other agencies and departments, and report to the Governor and Legislature. (General Fund and various special funds)

Support and Opposition

Support:

- American Federation of State, County and Municipal Employees
- California Building Industry Association
- California Business Properties Association
- California Chamber of Commerce
- California Construction and Industrial Materials Association
- California Grocers Association
- California League of Food Processors
- California Manufacturers and Technology Association
- California Retailers Association
- California Taxpayers Association
- Industrial Environmental Association
- Associated Builder and Contractors of California
- Building Owners and Managers Association of California
- International Council of Shopping Centers
- Small Business California
- Western States Petroleum Association
- Consumer Specialty Products Association
- California Hotel & Lodging Association
- Commercial Real Estate Development Association
- California Business Roundtable
- California Association of Bed and Breakfast Inns
- California Asian Pacific Chamber of Commerce
- USANA Health Sciences, Inc.
- National Federation of Independent Business/CA
- Family Business Association
- American Federation of State, County and Municipal Employees
- California Apartment Association
- California Building Industry Association
- California Business Properties Association
- California Chamber of Commerce
- California Construction and Industrial Materials Association
- California League of Food Processors



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- California Manufacturers and Technology Association
- California Retailers Association
- Industrial Environmental Association
- Associated Builder and Contractors of California
- Building Owners and Managers Association of California
- International Council of Shopping Centers
- Small Business California
- Western States Petroleum Association
- Consumer Specialty Products Association
- Simi Valley Chamber of Commerce
- California Hotel & Lodging Association
- California Business Roundtable
- California Association of Bed and Breakfast Inns
- California Asian Pacific Chamber of Commerce
- USANA Health Sciences, Inc.
- National Federation of Independent Business/CA
- Central Coast Forest Association
- Commercial Real Estate Development Association, NAIOP of Calif.

Opposition:
None.

Comments
None.

Action Required
None.

AMENDED IN SENATE AUGUST 19, 2015

AMENDED IN ASSEMBLY APRIL 22, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 12

Introduced by Assembly Member Cooley
(Coauthors: Assembly Members Chang, Daly, and Wilk)
(Coauthor: Senator Huff)

December 1, 2014

An act to add and repeal Chapter 3.6 (commencing with Section 11366) of Part 1 of Division 3 of Title 2 of the Government Code, relating to state agency regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 12, as amended, Cooley. State government: administrative regulations: review.

Existing law authorizes various state entities to adopt, amend, or repeal regulations for various specified purposes. The Administrative Procedure Act requires the Office of Administrative Law and a state agency proposing to adopt, amend, or repeal a regulation to review the proposed changes for, among other things, consistency with existing state regulations.

This bill would, until January 1, 2019, require each state agency to, on or before January 1, 2018, review that agency's regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, to revise those identified regulations, as provided, and report to the Legislature and Governor, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.6 (commencing with Section 11366)
2 is added to Part 1 of Division 3 of Title 2 of the Government Code,
3 to read:

4
5 CHAPTER 3.6. REGULATORY REFORM

6
7 Article 1. Findings and Declarations

8
9 11366. The Legislature finds and declares all of the following:

10 (a) The Administrative Procedure Act (Chapter 3.5 (commencing
11 with Section 11340), Chapter 4 (commencing with Section 11370),
12 Chapter 4.5 (commencing with Section 11400), and Chapter 5
13 (commencing with Section 11500)) requires agencies and the
14 Office of Administrative Law to review regulations to ensure their
15 consistency with law and to consider impacts on the state’s
16 economy and businesses, including small businesses.

17 (b) However, the act does not require agencies to individually
18 review their regulations to identify overlapping, inconsistent,
19 duplicative, or out-of-date regulations that may exist.

20 (c) At a time when the state’s economy is slowly recovering,
21 unemployment and underemployment continue to affect all
22 Californians, especially older workers and younger workers who
23 received college degrees in the last seven years but are still awaiting
24 their first great job, and with state government improving but in
25 need of continued fiscal discipline, it is important that state
26 agencies systematically undertake to identify, publicly review, and
27 eliminate overlapping, inconsistent, duplicative, or out-of-date
28 regulations, both to ensure they more efficiently implement and
29 enforce laws and to reduce unnecessary and outdated rules and
30 regulations.

31
32 Article 2. Definitions

33
34 11366.1. For the purposes of this chapter, the following
35 definitions shall apply:

36 (a) “State agency” means a state agency, as defined in Section
37 11000, except those state agencies or activities described in Section
38 11340.9.

1 (b) “Regulation” has the same meaning as provided in Section
2 11342.600.

3
4 Article 3. State Agency Duties
5

6 11366.2. On or before January 1, 2018, each state agency shall
7 do all of the following:

8 (a) Review all provisions of the California Code of Regulations
9 ~~applicable to, or adopted by,~~ *adopted by* that state agency.

10 (b) Identify any regulations that are duplicative, overlapping,
11 inconsistent, or out of date.

12 (c) Adopt, amend, or repeal regulations to reconcile or eliminate
13 any duplication, overlap, inconsistencies, or out-of-date provisions,
14 and shall comply with the process specified in Article 5
15 (commencing with Section 11346) of Chapter 3.5, unless the
16 addition, revision, or deletion is without regulatory effect and may
17 be done pursuant to Section 100 of Title 1 of the California Code
18 of Regulations.

19 (d) Hold at least one noticed public hearing, ~~that~~ *which* shall be
20 noticed on the Internet Web site of the state agency, for the
21 purposes of accepting public comment on proposed revisions to
22 its regulations.

23 (e) Notify the appropriate policy and fiscal committees of each
24 house of the Legislature of the revisions to regulations that the
25 state agency proposes to make at least 30 days prior to initiating
26 the process under Article 5 (commencing with Section 11346) of
27 Chapter 3.5 or Section 100 of Title 1 of the California Code of
28 Regulations.

29 (g) (1) Report to the Governor and the Legislature on the state
30 agency’s compliance with this chapter, including the number and
31 content of regulations the state agency identifies as duplicative,
32 overlapping, inconsistent, or out of date, and the state agency’s
33 actions to address those regulations.

34 (2) The report shall be submitted in compliance with Section
35 9795 of the Government Code.

36 11366.3. (a) On or before January 1, 2018, each agency listed
37 in Section 12800 shall notify a department, board, or other unit
38 within that agency of any existing regulations adopted by that
39 department, board, or other unit that the agency has determined
40 may be duplicative, overlapping, or inconsistent with a regulation

1 adopted by another department, board, or other unit within that
2 agency.

3 (b) A department, board, or other unit within an agency shall
4 notify that agency of revisions to regulations that it proposes to
5 make at least 90 days prior to a noticed public hearing pursuant to
6 subdivision (d) of Section 11366.2 and at least 90 days prior to
7 adoption, amendment, or repeal of the regulations pursuant to
8 subdivision (c) of Section 11366.2. The agency shall review the
9 proposed regulations and make recommendations to the
10 department, board, or other unit within 30 days of receiving the
11 notification regarding any duplicative, overlapping, or inconsistent
12 regulation of another department, board, or other unit within the
13 agency.

14 11366.4. An agency listed in Section 12800 shall notify a state
15 agency of any existing regulations adopted by that agency that
16 may duplicate, overlap, or be inconsistent with the state agency's
17 regulations.

18 11366.45. This chapter shall not be construed to weaken or
19 undermine in any manner any human health, public or worker
20 rights, public welfare, environmental, or other protection
21 established under statute. This chapter shall not be construed to
22 affect the authority or requirement for an agency to adopt
23 regulations as provided by statute. Rather, it is the intent of the
24 Legislature to ensure that state agencies focus more efficiently and
25 directly on their duties as prescribed by law so as to use scarce
26 public dollars more efficiently to implement the law, while
27 achieving equal or improved economic and public benefits.

28
29 Article 4. Chapter Repeal
30

31 11366.5. This chapter shall remain in effect only until January
32 1, 2019, and as of that date is repealed, unless a later enacted
33 statute, that is enacted before January 1, 2019, deletes or extends
34 that date.

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3. Lists the regulatory entities in the DCA’s third phase of the implementation project as follows:
 - a. Acupuncture Board
 - b. Board for Professional Engineers, Land Surveyors, and Geologists
 - c. Bureau of Automotive Repair
 - d. Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation
 - e. Bureau for Private Postsecondary Education
 - f. California Architects Board
 - g. California Board of Accountancy
 - h. California State Board of Pharmacy
 - i. Cemetery and Funeral Bureau
 - j. Contractors’ State License Board
 - k. Court Reporters Board of California
 - l. Landscape Architects Technical Committee
 - m. Professional Fiduciaries Bureau
 - n. Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
 - o. State Athletic Commission
 - p. State Board of Chiropractic Examiners
 - q. State Board of Guide Dogs for the Blind
 - r. Structural Pest Control Board
 - s. Telephone Medical Advice Services Bureau

4. This bill would declare that it is to take effect immediately as an urgency statute.

Background/Purpose

This bill is sponsored by the author. According to the author, “In order to ensure that Californians can rely on the services they depend on in a timely and efficient manner – even after implementing new technology – the Legislature and DOF need to keep a close eye on the negotiation, planning, development and implementation processes for the Boards that we entrust with licensing professionals.”

Background: In 2009, The DCA proposed the BreEZe information technology system and the California Department of Technology (CalTech) approved the proposal. BreEZe was envisioned to be an answer to the DCA’s out of date Legacy technology system and would provide needed applicant tracking licensing, renewal, enforcement monitoring and cashiering support for 37 of the 40 boards, bureaus, committees and one commission housed within the DCA. The project began in 2011, and in 2013, BreEZe was launched for ten of the regulatory entities (release 1). In March of 2016, BreEZe is intended to be launched for another eight entities (release 2).



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State Audit- In the midst of BreEZe implementation for release 1 and 2 regulatory entities, the DCA's management of the project came under public scrutiny from a variety of sources including Assemblymember Olson and myriad nursing students and graduates. The students and graduates were having difficulty getting their applications for licensure and examination processed by the Board of Registered Nursing – one of the regulatory boards housed within the DCA. In response, on May 20, 2014, Assemblymember Olson wrote a letter to the former Chairman of the Joint Legislative Audit Committee, Assemblymember Adam Gray, requesting that the Joint Legislative Audit Committee, “approve an audit of policies and procedures on the planning, development and implementation of [BreEZe] that was used by the Board of Registered Nursing.” On February 12, 2015, the State Auditor released a report reflecting the following key findings from the audit:

- DCA did not adequately plan, staff and manage the project for developing BreEZe;
- CalTech did not ensure oversight for BreEZe until more than one year after the project's commencement, and despite being aware of the significant problems with the project, continued to approve additional funding and allowed the project to press forward without intervening to ensure DCA took corrective action; and,
- The three contracts that DCA awarded and the Department of General Services approved for the BreEZe project did not adequately protect the State- the contracts' terms and conditions transferred significant risk to the State, limited DCA's ability to terminate the contracts, and reduced the State's protections against intellectual property rights violations.”

The State Auditor also provided the following key recommendations:

- The Legislature should require DCA to submit a report annually that includes implementation plans for the project's phase 3 regulatory entities, estimated costs through implementation, and nay operation efficiencies that will result from implementation by the regulatory entities;
- CalTech should ensure that DCA promptly responds to and addresses concerns raised by independent oversight entities, require DCA to analyze the costs and benefits of moving forward with the project as planned versus suspending or terminating the projects, and document reasons for approving any future deviations from standard contract language; and,
- DCA should undertake all required oversight activities with respect to BreEZe to prevent or identify and monitor any problems that arise, complete a cost-benefit analysis of the project and any required changes, and continue to work with the phase 1 regulatory entities to ensure problems are promptly resolved.”
(California State Auditor Fact Sheet, *California Department of Consumer Affairs' BreEZe System*, February 12, 2015)



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The DCA responded to the State Auditor’s audit in a letter dated January 22, 2015. In it, the Director of the DCA, Awet Kidane, stated, “The Department appreciates your office’s review of the BreEZe System and agrees with its recommendations. The Audit findings reflect a number of areas of concern that the Department has been in the process of correcting, and in many cases, has already corrected.” The CalTech also responded to the audit in a letter dated January 22, 2015, While the recommendations made in the report are for the most part appropriate and in line with actions and initiatives that CalTech has already undertaken, we have general concerns with the report...It is important to acknowledge that the BreEZe system was successfully put into production in 2014. BreEZe is currently in daily use and is successfully processing licenses, collecting fees and handling customer service request for the Boards and Bureaus that were included in Release 1.

This is evidenced by the following production metrics for the period of October 2013 through October 2014:

- Number of Registrations processed: \$444,000
- Initial Applications Processed: \$251,000
- Revenue Collected: \$137,000,000
- 50,000 complaints filed online.

Changes to the BreEZe Contract. After negotiation with the BreEZe vendor, Accenture, the DCA decided to end the “design and development” contract at the conclusion of release 2 while maintaining the “software licensing” and “maintenance and operations” contracts for release 1 and 2 regulatory entities. This amendment to the contract was estimated to increase project costs by \$17.5 million. DCA indicated it would perform a cost-benefit analysis and reassess the plan for providing IT support to the remaining regulatory entities that had not launched BreEZe yet.

On January 27, 2015, the Department of Finance notified the Joint Legislative Budget Committee (JLBC) of a request from the DCA to enter into the aforementioned contract amendment. The response to the request, from the Chair of JLBC, Senator Mark Leno, was as follows, “I do not concur at this time...the request reflect a significant change in project costs and scope...” Instead, the Chair of the JLBC requested additional information from the DCA including:

1. DCA’s long term plan for the project. “The legislature needs the long-term plan for moving forward...including the anticipated cost and timeline for providing IT solutions for the boards and bureaus in Release 3;
2. Allocation of project costs. “Information is also needed on how project costs will be allocated across boards and bureaus and how those costs will affect license fees for each entity; and,



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3. Reassess request following oversight hearings. “By not concurring with the [request] at this time, it will provide budget and policy committees with an opportunity to more fully evaluate the options for moving forward with the project.”

Legislative Committees’ Response: On March 12, 2015, the DCA, CalTech and the State Auditor presented information about the BreEZe project and the audit before the Senate Budget and Fiscal Review Committee Subcommittee No. 4. These parties presented information again On March 23, 2015, before the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development’s Joint Sunset Review Oversight Hearing.

On March 24, 2015, the JLBC Chair wrote a letter to the Department of Finance indicating, “The hearings have provided [an] opportunity for [a] fuller evaluation of BreEZe.” As a result, the JLBC Chair noted in his letter, “DCA may proceed with the contract amendment.” He also noted, “...it is my expectation that DCA will provide the Legislature with more comprehensive and timely information regarding the implementation of the BreEZe project on an ongoing basis. This should include: Any relevant project updates related to Releases 1 and 2; A plan for Release 3, including DCA’s best current estimate of anticipated project schedule and costs, as well as the expected costs to each board and bureau and their licensees; and, copies of DCA’s mandated status reports to the State Auditor regarding implementation of the Auditor’s recommendations.”

Related Legislation

None at this time.

Fiscal Impact:

According to the Assembly Appropriations Committee, this bill will result in minor and absorbable costs to the DCA (General Fund) to complete the annual report.

Support and Opposition

None at this time.

Comments

None.

Action Required

Board staff recommend a Watch position at this time.

AMENDED IN SENATE JULY 9, 2015
AMENDED IN ASSEMBLY JUNE 1, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 507

Introduced by Assembly Member Olsen
(Principal coauthor: Assembly Member Gray)
(Coauthors: Assembly Members ~~Chang and Dodd~~ Chang, Dodd,
***Obernolte, and Waldron*)**
(Coauthor: Senator Bates)

February 23, 2015

An act to add Section 210.5 to the Business and Professions Code, relating to the Department of Consumer Affairs, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 507, as amended, Olsen. Department of Consumer Affairs: BreEZe system: annual report.

Existing law authorizes the Department of Consumer Affairs to enter into a contract with a vendor for the licensing and enforcement of the BreEZe system, which is a specified integrated, enterprisewide enforcement case management and licensing system, no sooner than 30 days after written notification to certain committees of the Legislature. Existing law requires the amount of contract funds for the system to be consistent with costs approved by the office of the State Chief Information Officer, based on information provided by the department in a specified manner.

This bill would, ~~on and after October 1, 2015,~~ *or before March 1, 2016, or thereafter when available,* require the department to submit an annual report to the Legislature and the Department of Finance that includes, among other things, the department’s plans for implementing the BreEZe system at specified regulatory entities included in the department’s 3rd phase of the BreEZe implementation project, *when available,* including, but not limited to, a timeline for the implementation. *The bill would also require the department to post on its Internet Web site the name of each regulatory entity that is utilizing the BreEZe system once the regulatory entity begins using the BreEZe system.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 210.5 is added to the Business and
- 2 Professions Code, immediately following Section 210, to read:
- 3 210.5. (a) ~~On and after October 1, 2015,~~ *or before March 1,*
- 4 *2016, or thereafter when available,* the department shall submit
- 5 an annual report to the Legislature and the Department of Finance
- 6 that includes ~~all of~~ the following:
- 7 (1) The department’s plan for implementing the BreEZe system
- 8 at the regulatory entities in the department’s third phase of the
- 9 implementation project, including, but not limited to, a timeline
- 10 for implementation.
- 11 (2) The total estimated costs of implementation of the BreEZe
- 12 system at the regulatory entities in the department’s third phase
- 13 of the implementation project and the results of any *related*
- 14 cost-benefit analysis the department ~~conducted for the third phase~~
- 15 ~~of the implementation project.~~ *conducts.*
- 16 (3) A description of ~~whether and to what extent the BreEZe~~
- 17 ~~system will achieve any operational efficiencies resulting from~~
- 18 *achieved as a result of BreEZe* implementation by the ~~boards and~~
- 19 regulatory entities within the department’s ~~jurisdiction.~~ *jurisdiction,*
- 20 *if available.*
- 21 (b) The report described in subdivision (a) shall be submitted
- 22 in compliance with Section 9795 of the Government Code.

1 (c) The department shall post on its Internet Web site the name
2 of each regulatory entity that is utilizing the BreEZe system once
3 the regulatory entity begins using the BreEZe system.

4 (e)

5 (d) For purposes of this section, “the regulatory entities in the
6 department’s third phase of the implementation project” includes
7 all of the following:

- 8 (1) Acupuncture Board.
- 9 (2) Board for Professional Engineers, Land Surveyors, and
10 Geologists.
- 11 (3) Bureau of Automotive Repair.
- 12 (4) Bureau of Electronic and Appliance Repair, Home
13 Furnishings, and Thermal Insulation.
- 14 (5) Bureau for Private Postsecondary Education.
- 15 (6) California Architects Board.
- 16 (7) California Board of Accountancy.
- 17 (8) California State Board of Pharmacy.
- 18 (9) Cemetery and Funeral Bureau.
- 19 (10) Contractors’ State License Board.
- 20 (11) Court Reporters Board of California.
- 21 (12) Landscape Architects Technical Committee.
- 22 (13) Professional Fiduciaries Bureau.
- 23 (14) Speech-Language Pathology and Audiology and Hearing
24 Aid Dispensers Board.
- 25 (15) State Athletic Commission.
- 26 (16) State Board of Chiropractic Examiners.
- 27 (17) State Board of Guide Dogs for the Blind.
- 28 (18) Structural Pest Control Board.
- 29 (19) Telephone Medical Advice Services Bureau.

30 SEC. 2. This act is an urgency statute necessary for the
31 immediate preservation of the public peace, health, or safety within
32 the meaning of Article IV of the Constitution and shall go into
33 immediate effect. The facts constituting the necessity are:

34 Because of the circumstances surrounding the implementation
35 of the BreEZe system, and in order to ensure that healing arts and
36 other professionals are licensed in a timely and efficient manner,
37 it is necessary that this act take effect immediately.

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Bill Analysis

Bill Number: AB 2744 Version: Amended 4/11/16
 Author: Gordon Sponsor: The Internet
 Coauthor: Hill Association

Subject: Healing Arts: Status: Assembly-
 Referrals Appropriations
 Committee

Adopted Position:
None.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

1. States that the offer, delivery, receipt, or acceptance by any licensed healing arts practitioner, as specified, of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful. (Business and Professions Code (BPC) Section 650(a))
2. States that the payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement is not unlawful if the consideration is commensurate with the value of any premises or equipment leased or provided by the recipient to the payer. (BPC Section 650(b))
3. States that it is unlawful for a licensee to refer a person for laboratory, diagnostic nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, or diagnostic imaging goods or services if the licensee or his or her immediate family has a financial interest with the person or in the entity that receives the referral. (BPC Section 650.01(a))



Physical Therapy Board of California

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

Physical Therapy Board of California

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This Bill

1. Specifies that the payment or receipt of consideration for advertising, wherein a licensee offers or sells services on an internet platform does not constitute a referral of patients.
2. Specifies that to the extent that the licensee determines, after consultation with the purchaser of the service, that the service is not appropriate for the purchaser, the purchaser will receive a full refund of the purchase price.
3. Specifies that 1 and 2 above do not apply to basic health care services under a health care service plan or essential health benefits under the Patient Protection and Affordable Care Act (PPACA), as specified.
4. Requires the entity providing the advertising to be able to demonstrate that the licensee consented in writing to the provisions of this bill.

Background/Purpose

Purpose: This bill seeks to clarify that the purchase of professional services from licensed healing arts professionals through an online advertising website does not constitute a referral for those services from the online advertisement originator. This bill is sponsored by the Internet Association. According to the author, "in the past, if a healthcare professional wanted to advertise for his or her services, [he or she] could take out an advertisement in the yellow pages or a newspaper, purchase space on a billboard, or run a commercial on radio or television.

In each of these instances, the advertisement could also include a coupon or special offer for readers/ listeners. Technology has now made it possible for a healthcare professional to advertise online and provide opportunities to purchase vouchers for services in online marketplaces such as Groupon, Living Social, and others.

[This bill] would recognize that online advertising involving the purchase of vouchers for services offered by a healthcare professional is just another form of advertising and clarify that it is not an impermissible referral."

Background: Under existing law, BPC Section 650(a), specifies that a licensed healing arts professional may not accept any type of compensation for referring an individual to any other person for services. This prohibition on the payment of a healthcare provider for a referral of services was intended to protect patients and consumers from providers receiving payments or "kickbacks" for sending patients to certain providers. Anti-kickback laws were enacted to help ensure that healthcare decisions are made in the



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best interest of the consumer. In California, a violation of the no-referral laws by a licensee is unprofessional conduct and cause for disciplinary action.

Internet Platform Services. There are a variety of advertised healthcare-related services that individuals may purchase through an Internet platform including, laser toenail fungus removal, nonsurgical facelifts, spider vein treatments, counseling, and integrative manual therapy sessions. A great number of healthcare related services offered through an Internet platform include elective procedures. As currently drafted, this bill clarifies that only specified healthcare services that are purchased through an internet platform will not be considered as a referral of those services. This bill specifies that "basic health care services" as defined under HSC Section 1345 and "essential health benefits" as defined in HSC Section 1367.005 and INS Section 10112.27 that are purchased through an internet platform will still be subject to current BPC Section 650(a), which prohibits payment or any other consideration for a referral of services.

Essential health benefits and basic health care services. Basic health care services are specified under the Knox-Keene Health Care Service Plan Act of 1975 (BPC § 1340), and EHBs are specified under the federal PPACA. This bill seeks to clarify that those services considered essential health benefits and basic health care services are not applicable to the authorization provided by this bill.

BPC Section 650(b) specifies that the payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual is not unlawful, unless specified conditions are met. It is the intent of the author that services offered through an Internet platform would permit those services.

Online Advertising and Sales of Service. This bill clarifies that a licensed healing arts professional, who utilizes an online service provider to offer prepaid services to the general public, does not constitute a "referral" of those services. Online sales and advertising forums will charge a fee to the service provider to display the sale of services, where an individual interested in those services will purchase those services directly from the online service provider. According to the author, "the following describes how online voucher advertising operates, the healthcare professional decides whether to advertise and what service to make available for purchase, the cost for the service, how many vouchers to offer, and for how long. The healthcare professional pays the online advertising network for making the offer available, generally a percentage of the price of the purchased service. Once a consumer purchases a voucher through this form of online advertising, the consumer contacts the healthcare professional to set an appointment, just as they would if responding to any other form of advertisement. After purchasing, the consumer decides whether a particular service is right for him or herself only after consulting with the healthcare professional. If the consumer decides not to receive the service, or if the professional decides the service is not warranted, the consumer receives a full refund and incurs no financial penalty."



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Pending Attorney General Opinion. Currently, the Attorney General’s Opinion Unit is in the process of researching and drafting a formal opinion on the question of whether a healthcare professional may offer online discounts for their services through a third-party internet marketer. The opinion request, 13-1203, is currently pending completion in the AG’s office. At this time, the completion date is unknown. This bill aims to clarify that those services offered via an internet platform, does not constitute a referral of services in violation of BPC Section 650(a). This bill does not change the existing prohibition against licensed healthcare professionals receiving a payment or any other consideration, monetary or otherwise for referring an individual to another person for professional services.

Related Legislation

None.

Fiscal Impact:

Unknown. This bill is keyed fiscal by the Legislative Counsel.

Support and Opposition

Support:

The Internet Association (Sponsor)

Groupon

The Internet Association writes in support, "The bill would clarify existing law to confirm that healing arts professionals may use Internet-based advertising platforms to market their services without running afoul of statutes designed to prohibit paid patient referrals. Current law generally prohibits a licensed healing arts professional from paying or receiving compensation for the referral of a patient. This law was designed to prevent patients referral based on financial motives—which were frequently undisclosed—rather than the patient's best interests. Internet advertising is not a patient referral, any more than traditional advertising, such as an ad in the Yellow Pages or Penny Save. Nor does internet advertising implicate the policy concerns underlying California's prohibition on paid patient referrals.

Nonetheless, questions have been raised about whether California's patient referral statute [BPC] Section 650, sweeps in Internet advertising. This potential ambiguity raises concerns for healing arts professionals, who may fear that online advertising platforms could subject them to professional discipline. [This bill] would remove this potential ambiguity and resulting uncertainty by clarifying that licensed health arts professionals may use Internet advertising services."

Opposition:

None.



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Comments

Policy Issues for Consideration:

This bill specifies that after a consultation with the purchaser of the service, if it is determined that the service is not appropriate; the purchaser will receive a full refund of the purchase price. As currently drafted, this bill does not specify who would be responsible for reimbursing the purchaser.

Action Required

Board staff recommend a Watch position at this time.

AMENDED IN ASSEMBLY APRIL 11, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2744

Introduced by Assembly Member Gordon
(Coauthor: Senator Hill)

February 19, 2016

An act to amend Section 650 of the Business and Professions Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2744, as amended, Gordon. Healing arts: referrals.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, it is unlawful for licensed healing arts practitioners, except as specified, to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person. Existing law makes a violation of this provision a public offense punishable upon a first conviction by imprisonment, as specified, or a fine not exceeding \$50,000, or by imprisonment and that fine.

This bill would provide that the payment or receipt of consideration for advertising, wherein a licensed healing arts practitioner offers or sells ~~prepaid services~~, *services on an Internet platform*, does not constitute a referral of ~~services~~ *patients*. *The bill would require the purchaser of the service to receive a refund of the full purchase price if the licensee determines, after consultation with the purchaser, that the service is not appropriate for the purchaser. The bill would specify*

that these provisions do not apply to basic health care services or essential health benefits, as defined. The bill would also provide that the entity that provides advertising is required to be able to demonstrate that the licensee consented in writing to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 650 of the Business and Professions Code
2 is amended to read:
3 650. (a) Except as provided in Chapter 2.3 (commencing with
4 Section 1400) of Division 2 of the Health and Safety Code, the
5 offer, delivery, receipt, or acceptance by any person licensed under
6 this division or the Chiropractic Initiative Act of any rebate, refund,
7 commission, preference, patronage dividend, discount, or other
8 consideration, whether in the form of money or otherwise, as
9 compensation or inducement for referring patients, clients, or
10 customers to any person, irrespective of any membership,
11 proprietary interest, or coownership in or with any person to whom
12 these patients, clients, or customers are referred is unlawful.
13 (b) The payment or receipt of consideration for services other
14 than the referral of patients which is based on a percentage of gross
15 revenue or similar type of contractual arrangement shall not be
16 unlawful if the consideration is commensurate with the value of
17 the services furnished or with the fair rental value of any premises
18 or equipment leased or provided by the recipient to the payer.
19 (c) The offer, delivery, receipt, or acceptance of any
20 consideration between a federally qualified health center, as defined
21 in Section 1396d(l)(2)(B) of Title 42 of the United States Code,
22 and any individual or entity providing goods, items, services,
23 donations, loans, or a combination thereof to the health center
24 entity pursuant to a contract, lease, grant, loan, or other agreement,
25 if that agreement contributes to the ability of the health center
26 entity to maintain or increase the availability, or enhance the
27 quality, of services provided to a medically underserved population
28 served by the health center, shall be permitted only to the extent
29 sanctioned or permitted by federal law.
30 (d) Except as provided in Chapter 2.3 (commencing with Section
31 1400) of Division 2 of the Health and Safety Code and in Sections

1 654.1 and 654.2 of this code, it shall not be unlawful for any person
2 licensed under this division to refer a person to any laboratory,
3 pharmacy, clinic (including entities exempt from licensure pursuant
4 to Section 1206 of the Health and Safety Code), or health care
5 facility solely because the licensee has a proprietary interest or
6 coownership in the laboratory, pharmacy, clinic, or health care
7 facility, provided, however, that the licensee’s return on investment
8 for that proprietary interest or coownership shall be based upon
9 the amount of the capital investment or proportional ownership of
10 the licensee which ownership interest is not based on the number
11 or value of any patients referred. Any referral excepted under this
12 section shall be unlawful if the prosecutor proves that there was
13 no valid medical need for the referral.

14 (e) Except as provided in Chapter 2.3 (commencing with Section
15 1400) of Division 2 of the Health and Safety Code and in Sections
16 654.1 and 654.2 of this code, it shall not be unlawful to provide
17 nonmonetary remuneration, in the form of hardware, software, or
18 information technology and training services, as described in
19 subsections (x) and (y) of Section 1001.952 of Title 42 of the Code
20 of Federal Regulations, as amended October 4, 2007, as published
21 in the Federal Register (72 Fed. Reg. 56632 and 56644), and
22 subsequently amended versions.

23 (f) “Health care facility” means a general acute care hospital,
24 acute psychiatric hospital, skilled nursing facility, intermediate
25 care facility, and any other health facility licensed by the State
26 Department of Public Health under Chapter 2 (commencing with
27 Section 1250) of Division 2 of the Health and Safety Code.

28 (g) The payment or receipt of consideration for advertising,
29 wherein a licensee offers or sells ~~prepaid services~~, *services on an*
30 *Internet platform*, shall not constitute a referral of patients. To the
31 extent the licensee determines, after consultation with the purchaser
32 of the ~~prepaid~~ service, that a ~~prepaid~~ *the* service is not appropriate
33 for the purchaser, the licensee shall provide the purchaser *shall*
34 *receive* a refund of the full purchase price. *This subdivision shall*
35 *not apply to basic health care services, as defined in subdivision*
36 *(b) of Section 1345 of the Health and Safety Code, or essential*
37 *health benefits, as defined in Section 1367.005 of the Health and*
38 *Safety Code and Section 10112.27 of the Insurance Code. The*
39 *entity that provides the advertising shall be able to demonstrate*

1 *that the licensee consented in writing to the requirements of this*
2 *subdivision.*

3 (h) A violation of this section is a public offense and is
4 punishable upon a first conviction by imprisonment in a county
5 jail for not more than one year, or by imprisonment pursuant to
6 subdivision (h) of Section 1170 of the Penal Code, or by a fine not
7 exceeding fifty thousand dollars (\$50,000), or by both that
8 imprisonment and fine. A second or subsequent conviction is
9 punishable by imprisonment pursuant to subdivision (h) of Section
10 1170 of the Penal Code, or by that imprisonment and a fine of fifty
11 thousand dollars (\$50,000).

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Bill Analysis

Bill Number: AB 2859 Version: Introduced 2/19/16
 Author: Low Sponsor: The Author
 Subject: Professions and Status: Assembly-
 Vocations: Retired Appropriations
 Category: Licenses Committee

Adopted Position:
None.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

- Existing law provides for numerous boards, bureaus, commissions, or programs within the Department of Consumer Affairs (DCA) that administer the licensing and regulation of various businesses and professions.
- Existing law authorizes any of the boards, bureaus, commissions, or programs within the department, except as specified, to establish by regulation a system for an inactive category of license for persons who are not actively engaged in the practice of their profession or vocation.
- Under existing law, the holder of an inactive license is prohibited from engaging in any activity for which a license is required.
- Existing law defines “board” for these purposes to include, unless expressly provided otherwise, a bureau, commission, committee, department, division, examining committee, program, and agency.

This Bill

- This bill would additionally authorize any of the boards, bureaus, commissions or programs within the Department to establish by regulation a system for a retired category of license for persons who are not actively engaged in the practice of their profession or vocation, and would prohibit the holder of a retired license



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from engaging in any activity for which a license is required, unless regulation specifies the criteria for a retired licensee to practice his or her profession.

2. The bill would authorize a board upon its own determination, and would require a board upon receipt of a complaint from any person, to investigate the actions of any licensee, including, among others, a person with a license that is retired or inactive.

Background/Purpose

Purpose:

According to the author, "An occupational license can be sent to 'inactive' for various reasons, including violations and non-renewal. The same is done for those individuals who decided to retire - a troublesome label, as an 'inactive' status holds negative connotations and does not appropriately illustrate the decades of service from the license holder. Some licensees disfavor the inactive license designation and would prefer a retired license designation." Because existing law only provides for a system of inactive licenses, many boards have sought legislation that would permit them to also create a retired license category. By allowing any of the boards, bureaus, commissions, or programs within DCA to establish a system for a retired category of licensure, this bill seeks to provide uniformity to licensing designation at the DCA.

Background:

Existing law permits the boards under the DCA to adopt regulations for issuing inactive licenses. The law requires that the regulations cover fees, renewal, restoration to active status, and practice restrictions. In addition, there are 13 boards with the authority to issue retired licenses. This bill would provide the remaining boards with the authority to establish a system for retired category of licensure.

BreEZe:

In 2009, DCA proposed the BreEZe information technology system and the California Department of Technology (CalTech) approved the proposal. BreEZe was envisioned to replace DCA's out of date Legacy technology system and would provide needed applicant tracking of licensing, renewal, enforcement monitoring and cashiering support for 37 of the 40 boards, bureaus, committees and one commission housed within DCA. The project began in 2011, and BreEZe was launched for ten of the regulatory entities (Release 1) in 2013. Release 2 of BreEZe was launched for eight additional entities on January 19, 2016. At this time there are no formal plans to expand BreEZe to the 19 boards in Release 3. Instead, DCA intends to conduct a cost-benefit analysis for Release 3 boards after Release 2 is completed this year.



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DCA indicates there is a maintenance backlog of almost 600 items for boards in Release 1 and no current timeline for completion of these system fixes. Maintenance demands are expected to double following Release 2.

DCA further indicates that the poor adaptability of BreEZe to respond to new system demands has resulted in the implementation delay of 11 new substantive policy changes passed by the Legislature as far back as 2013. These changes have not been incorporated into the current BreEZe system and are currently awaiting workarounds or new builds into the system. Some of this new legislation involves boards in Release 1 which have been waiting for Release 2 to go live before changes can be made to the system to address new requirements.

Related Legislation

None.

Prior Legislation:

1. AB 750 (Low, 2015) was substantially similar to this bill. It was held on this Committee's Suspense file.
2. AB 1253 (Steinorth) Chapter, 125, Statutes of 2015, established educational and training requirements for an optometrist seeking a license with retired volunteer service designation (volunteer license) who has not held an active license in more than three years.
3. AB 2024 (Bonilla), Chapter 336, Statutes of 2014, authorized the Professional Fiduciaries Bureau to establish, by regulation, a system for a retired category of licensure.
4. AB 404 (Eggman), Chapter 339, Statutes of 2013, clarified who qualifies for a retired license by specifying that a license must be either active or inactive, and reduces the timeline to restore a retired license from retired to active status from five to three years.
5. SB 1215 (Emmerson), Chapter 359, Statutes of 2012, established a retired license status and a retired license with a volunteer service designation for optometrists.
6. AB 431 (Ma), Chapter 395, Statutes of 2011, authorized the California Board of Accountancy to establish, by regulation, a system for a retired category of licensure.



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7. SB 2191 (Emmerson), Chapter 548, Statutes of 2010, authorized the Board of Behavioral Sciences to issue a retired license as a marriage and family therapist, educational psychologist, clinical social worker or professional clinical counselor to an applicant who holds a current license or a license eligible for renewal, and established a \$40 fee for a retired license.

Fiscal Impact:

1. Minor and absorbable costs to the DCA to update regulations, add license status designations and update applications.
2. Minor and absorbable costs to DCA for one-time workload increases associate with IT/BreEZe modifications.

Support and Opposition

Support:

California Association of Psychiatric Technicians
Contractors State License Board

Opposition:

None.

Comments

None.

Action Required

Board staff recommend a Watch position at this time.

ASSEMBLY BILL

No. 2859

Introduced by Assembly Member Low

February 19, 2016

An act to add Section 463 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2859, as introduced, Low. Professions and vocations: retired category: licenses.

Existing law provides for numerous boards, bureaus, commissions, or programs within the Department of Consumer Affairs that administer the licensing and regulation of various businesses and professions. Existing law authorizes any of the boards, bureaus, commissions, or programs within the department, except as specified, to establish by regulation a system for an inactive category of license for persons who are not actively engaged in the practice of their profession or vocation. Under existing law, the holder of an inactive license is prohibited from engaging in any activity for which a license is required. Existing law defines "board" for these purposes to include, unless expressly provided otherwise, a bureau, commission, committee, department, division, examining committee, program, and agency.

This bill would additionally authorize any of the boards, bureaus, commissions, or programs within the department to establish by regulation a system for a retired category of license for persons who are not actively engaged in the practice of their profession or vocation, and would prohibit the holder of a retired license from engaging in any activity for which a license is required, unless regulation specifies the criteria for a retired licensee to practice his or her profession. The bill

would authorize a board upon its own determination, and would require a board upon receipt of a complaint from any person, to investigate the actions of any licensee, including, among others, a person with a license that is retired or inactive.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 463 is added to the Business and
2 Professions Code, to read:

3 463. (a) Any of the boards, bureaus, commissions, or programs
4 within the department may establish, by regulation, a system for
5 a retired category of licensure for persons who are not actively
6 engaged in the practice of their profession or vocation.

7 (b) The regulation shall contain the following:

8 (1) The holder of a retired license issued pursuant to this section
9 shall not engage in any activity for which a license is required,
10 unless the board, by regulation, specifies the criteria for a retired
11 licensee to practice his or her profession or vocation.

12 (2) The holder of a retired license shall not be required to renew
13 that license.

14 (3) In order for the holder of a retired license issued pursuant
15 to this section to restore his or her license to an active status, the
16 holder of that license shall meet all the following:

17 (A) Pay a fee established by statute or regulation.

18 (B) Certify, in a manner satisfactory to the board, that he or she
19 has not committed an act or crime constituting grounds for denial
20 of licensure.

21 (C) Comply with the fingerprint submission requirements
22 established by regulation.

23 (D) If the board requires completion of continuing education
24 for renewal of an active license, complete continuing education
25 equivalent to that required for renewal of an active license, unless
26 a different requirement is specified by the board.

27 (E) Complete any other requirements as specified by the board
28 by regulation.

29 (c) A board may upon its own determination, and shall upon
30 receipt of a complaint from any person, investigate the actions of
31 any licensee, including a person with a license that either restricts

- 1 or prohibits the practice of that person in his or her profession or
- 2 vocation, including, but not limited to, a license that is retired,
- 3 inactive, canceled, revoked, or suspended.

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Bill Analysis

Bill Number: SB 1155 Version: Amended 3/28/16
 Author: Morrell Sponsor: The Author

Subject: Professions and Status: Senate-
 Vocations: Appropriations
 Licenses: Military Committee
 Service Suspense File

Adopted Position:
None.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

- Existing law provides for the licensure, registration and regulation of various professions and vocations by the boards, bureaus, committees, programs and commission (board(s)) within the Department.
- Specifies that it is the policy of this state that persons with the skills, knowledge, and experiences obtained in the armed services should be permitted to apply this learning and contribute to the employment needs of this state at the maximum level of responsibility and skill for which they are qualified, and that to this end, that the rules and regulations of boards shall provide a method of evaluating education, training and experience obtained in the armed services and determine how it may be used to meet the licensure requirements for the particular business, or occupation, or profession regulated.
- Authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard of the United States Armed Forces to reinstate his or her license without examination or penalty if certain specified requirements are met.
- Provides that every board within the Department shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if they are applicable, for any licensee or registrant



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called to active duty as a member of the United States Armed Forces or the California National Guard if certain specified requirements are met.

5. Requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military.
6. Requires after July 1, 2016, that a board within the Department expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence that the applicant has served as an active duty member of and was honorably discharged from the Armed Forces of the United States and provides that the board may adopt regulations necessary to implement this requirement.
7. Requires a board within the Department to expedite the licensure process for an applicant who is married to, or in a domestic partnership or other legal union with an active duty member of the Armed Forces or who is assigned to a duty station within this state under official active duty military orders and holds a current license from another state in the profession or vocation for which her or she seeks a license from the board.
8. Requires a board within the Department to issue, after appropriate investigation, temporary licenses for specified professions for an applicant who is married to, or is in a domestic partnership or other legal union with an active duty member of the Armed Forces or who is assigned to a duty station within this state under official active duty military orders, if specified requirements are met.
9. Authorizes the State Bar of California to waive the membership fees of any member who is good standing with the State Bar at the time the member enters into military service and for the period for which the service member is in military service.

This Bill

1. This bill would require every board within the Department to grant a fee waiver for the application for and issuance of a license to an individual who is an honorably discharged veteran who served as an active duty member of the California National Guard or the United State Armed Forces.
2. Requires under this program, that the following shall apply:
 - a) The veteran shall be granted only one fee waiver.
 - b) The fee waiver shall apply only to an application of a license issued to an individual veteran and not to an application of or a license issued to a business or other entity.



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- c) A waiver shall not be issued for a renewal license or for the application for an issuance of a license other than that one license.

Background/Purpose

Background:

Licensing Programs

The Department currently oversees 39 licensing programs that issue more than two million licenses, registrations and certifications in nearly 200 professional categories. These licensing boards are charged with regulating a particular profession through licensure and enforcement programs. Each of these entities is responsible for enforcing the minimum qualifications for licensure that are established by statute and regulation.

Licensure requirements vary in their specificity and flexibility. In many cases, the stated qualifications are specific and provide the regulating entity with little or no discretion over what experience or education can be accepted. Professional and occupational licensure requirements may range from merely completing a form and paying a licensing fee – to satisfying extensive requirements for experience and education and taking an exam.

Veterans' Fee Waivers

Existing law provides various fee waivers for veterans:

- 1) Motor Vehicle Registration Fees: Waiver of vehicle registration fees, and free license plate for one passenger motor vehicle, one motorcycle, or one commercial motor vehicle of less than 8,001 pounds unladen weight. Eligibility: Medal of Honor recipients, American ex-prisoners of war (POW) and "disabled veterans," as specified,
- 2) Fishing and Hunting License Fees: Partial waiver (reduction) of annual fees. Eligibility: Any honorably-discharged veteran with a 50% or greater service-connected disability.
- 3) State Parks and Recreation "Distinguished Veteran" Pass Fees: Waiver of all fees for use of all basic State Park System operated facilities, including camping and day use. Eligibility: Medal of Honor recipients, American ex-POWs and disabled veterans with a 50% or more service-connected disability.
- 4) Business License, Tax and Fees: Waiver on municipal, county, and state business license fees, taxes, and fees for veterans who hawk, peddle, or vend any goods, wares, or merchandise owned by the veteran, except spirituous, malt, vinous, or other intoxicating liquor, including sales from a fixed location. Eligibility: Honorably discharged veterans who engage in sales (not services) activities may be eligible. Eligibility criteria will differ based upon local jurisdiction.

According to the author, initial application and occupational license fees can act as a barrier for entry to the workforce for the 240,000 to 360,000 veterans who separate from the



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military each year. Many either already reside in or intend to make California their home, adding to the 1.9 million veterans residing in the state.

Other States Granting Licensing Fee Waivers for Veterans:

Florida, Texas, and Wisconsin have granted licensing fee waivers for the initial issuance of occupational licenses to honorably discharged veterans. Ohio is in the process of passing a similar law.

Related Legislation

None.

Prior Legislation:

None.

Fiscal Impact:

1. The Department estimates that approximately 8,700 applicants would have fees waived pursuant to this bill, resulting in revenue loss of \$1.2 million. According to the Department, most boards and bureaus indicate the loss in revenue and any associated workload would be minor and absorbable. However, the Board of Registered Nursing anticipates a loss in licensing revenue of about \$465,000 annually which would likely cause a decrease in the associated fund's already constrained reserves. In addition, the Physical Therapy Board and the Bureau of Security and Investigative Services anticipate losses in licensing revenue of \$45,000 and \$298,000 annually and respectively, which would exacerbate to the structural imbalance of associated funds.
2. Additional absorbable workload to the Department to make necessary changes to the Department's online licensing and enforcement system, BreZE, that would necessitate an implementation date of January 1, 2018. Additional minor costs for updating websites related to applications.

Support and Opposition

Support:

AMVETS California

California Association of Licenses Investigators

American GI Forum of California

California Association of Veterans Service Officers

Veterans of Foreign Wars of the United States, Department of California

Military Officers Association of America- California Council of Chapters

Goodwill Industries of Southern California

The California Association of Licensed Investigators Inc. is in support of this bill and believes that the provisions of this measure will remove an obstacle for veterans who desire to work in our state and will facilitate their entrance into the civilian workforce by



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waiving the application and licensing fees that are paid by applicants to obtain occupational license.

Opposition:
None.

Comments
None.

Action Required
Board staff recommend a Watch position at this time.

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1155

Introduced by Senator Morrell

February 18, 2016

An act to add Section 114.6 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, as amended, Morrell. Professions and vocations: licenses: military service.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met. Existing law also requires the boards to waive the renewal fees, continuing education requirements, and other renewal requirements, if applicable, of any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard, if certain requirements are met. Existing law requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military. Existing law, on and after July 1, 2016, requires a board within the Department of Consumer Affairs to expedite, and authorizes a board to assist, the initial licensure process for an applicant who has served as an active duty member of the ~~Armed Forces of the United States~~ *Armed Forces* and was honorably discharged.

This bill would require ~~the Department of Consumer Affairs, in consultation with the Department of Veterans Affairs and the Military Department, to establish and maintain a program that grants every board within the Department of Consumer Affairs to grant~~ a fee waiver for the application for and the issuance of an initial license to an individual who is an honorably discharged veteran, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 114.6 is added to the Business and
- 2 Professions Code, to read:
- 3 114.6. ~~The Department of Consumer Affairs, in consultation~~
- 4 ~~with the Department of Veterans Affairs and the Military~~
- 5 ~~Department, shall establish and maintain a program that grants~~
- 6 *Notwithstanding any other provision of law, every board within*
- 7 *the department shall grant* a fee waiver for the application for and
- 8 issuance of a license to an individual who is an honorably
- 9 discharged veteran who served as an active duty member of the
- 10 California National Guard or the United States Armed Forces.
- 11 Under this program, all of the following apply:
- 12 (a) ~~The Department of Consumer Affairs shall grant only one~~
- 13 ~~fee waiver to a veteran. A veteran shall be granted only one fee~~
- 14 ~~waiver.~~
- 15 (b) The fee waiver shall apply only to an application of and a
- 16 license issued to an individual veteran and not to an application
- 17 of or a license issued to a business or other entity.
- 18 (c) A waiver shall not be issued for a renewal of a license or for
- 19 the application for and issuance of a license other than one initial
- 20 license.

O



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Bill Analysis

Bill Number: SB 1195 Version: Amended 4/6/16
 Author: Hill Sponsor: The Author
 Subject: Professions and Status: Senate-
 Vocations: Board Appropriations
 Actions: Committee
 Competitive Impact

Adopted Position:
None.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

1. Provides for the licensure and regulation of various professions and vocations by the boards within the DCA, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction.
2. Makes decisions of any board within the DCA pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of the DCA. (Business and Professions Code (BPC § 109 (a)).
3. Provides that the Director may initiate an investigation of any allegations of misconduct in the preparation, administration, or scoring of any examination which is administered by a board, or in the review and qualifications which are part of the licensing process of any board. (BPC § 109 (b)).
4. Provides that the Director may intervene in any matter of any board where an investigation by the Division of Investigation discloses probable cause to believe that the conduct or activity of a board, or its members or employees constitutes a violation of criminal law. (BPC § 109 (c)).
5. Authorizes the Director to audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by the Medical Board of California, the allied health professional boards, and the California Board of



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Podiatric Medicine and the Director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature or both. (BPC § 116 (a)).

6. Requires the Director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, of monitoring and evaluation. (BPC § 116 (b)).
7. Authorizes the Director to contract for services of experts and consultants where necessary. (BPC § 307).
8. Requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the DCA, to comply with certain requirements before the regulation or fee change can take effect, including that the Director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. (BPC § 313.1).
9. Prohibits a rule or regulation that is disapproved by the Director from having any force or effect, unless the Director's disapproval is overridden by a unanimous vote of the members of the board, as specified.
10. Provides, until January 1, 2018, for the licensure and regulation of registered nurses by the Board of Registered Nursing (BRN) which is within the DCA, and requires the BRN to appoint an executive officer who is a nurse currently licensed by the BRN.
11. Establishes the California Veterinary Medicine Practice Act until January 1, 2017, and requires the Veterinary Medical Board (VMB) within the Department of Consumer Affairs (DCA) to, among other things, license and regulate veterinarians, registered veterinary technicians (RVTs), RVT schools and programs, and veterinary premises. (BPC § 4800 et seq.)
12. Requires a public entity to pay any judgment or any compromise settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of the trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action. (Government Code § 825).
13. Specifies that the Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for review of those regulatory actions by the Office of Administrative Law and requires the review of the office to follow certain standards, including, among others, necessity, as defined. (Government Code § 11340 et seq.).



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This Bill

1. Authorizes the Director, upon his or her own initiative, and require the Director, upon the request of a consumer or licensee, to review a decision or other action, except as specified, of a board within the DCA to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action, as specified.
2. Requires the Director to post on the DCA's website his or her final written decision and reasons for the decision within 90 days from receipt of the request of a consumer or licensee.
3. Commencing on March 1, 2017, would require the Director to annually report to the chairs of specified committees of the Legislature information regarding the Director's disapprovals, modifications, or findings from any audit, review or monitoring and evaluation.
4. Authorizes the Director to seek, designate, employ, or contract for services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints of trade.
5. Requires the Director to review and approve any regulation promulgated by a board within the DCA, as specified, and would authorize the Director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect.
6. Prohibits any rule or regulation from having any force or effect if the Director does not approve the regulation because it has an impermissible anticompetitive effect.
7. Extends the sunset date for the VMB and Executive Officer of the Board until January 1, 2021.
8. Authorizes a veterinarian and registered veterinarian technician who is under the director supervision of a veterinarian with a current and active license to compound a drug for anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the VMB, as specified, and would authorize the California State Board of Pharmacy and the VMB to ensure compliance with these requirements.
9. Requires veterinarians engaged in practice of veterinary medicine employed by the University of California or by Western University of Health Sciences while engage in the performance of specific duties to be licensed as a veterinarians in the state or hold a university license issued by the VMB, and that the applicant for a university



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license to meet certain requirements, including that the applicant passes a specified exam.

10. Provides that a veterinary premise registration may be canceled after five years of delinquency, unless the VMB finds circumstances or conditions that would justify a new premise registration to be issued.
11. Makes technical changes to BPC regarding the VMB.
12. Requires a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of her or her employment as a member of a regulatory board.
13. Adds competitive impact, as defined, as an additional standard for the Office of Administrative Law (Office) to follow when reviewing regulatory actions of a state board on which a controlling number of decision makers are active market participants in the market that the board regulates, and requires the Office to, among other things, consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits.
14. Authorizes the Office to designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact.
15. Requires state boards on which a controlling number of decision makers are active market participants in the market that the board regulates, when preparing the public notice, to additionally include a statement that the agency has evaluated the impact of the regulation on competition and that the effect of the regulation is within a clearly articulated and affirmatively expressed state law or policy.

Background/Purpose

Purpose:

This bill is sponsored by the Author, and is one of five “sunset bills” the Author is sponsoring this Session. According to the Author, this bill is necessary to make changes to the California Veterinary Medicine Practice Act relating to the operation of the Veterinary Medical Board and to both the authority of the Director of the DCA and the Office of Administrative Law to assure compliance with a recent U.S. Supreme Court Decision, *North Carolina State Board of Dental Examiners v. FTC*. These changes arose from issues raised in the Board’s sunset review process, and require legislative action.

Background:

Oversight Hearings and Sunset Review of Licensing Boards and Programs. Beginning in 2015, the Senate Business, Professions, and Economic Development Committee and the Assembly Business and Professions Committee (Committees) conducted joint oversight



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hearings to review 12 regulatory entities: DCA, Acupuncture Board, Board of Behavioral Sciences, California Massage Therapy Association, Court Reporters Board, Board of Pharmacy, Physician Assistant Board, Board of Podiatric Medicine, Bureau of Private Postsecondary Education, Board of Psychology, Bureau of Real Estate, Bureau of Real Estate Appraisers, and Veterinary Medical Board. The Committees conducted three hearings in March to review these entities. This bill and the accompanying sunset bills are intended to implement legislative changes as recommended by staff of the Committees and which are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed this year.

Potential Antitrust (Anticompetitive) Actions of Boards – Compliance with *North Carolina State Board of Dental Examiners v. FTC*. In 2010, the Federal Trade Commission (FTC) brought an administrative complaint against the North Carolina State Board of Dental Examiners (Board) for exclusion of non-dentists from the practice of teeth whitening. The FTC alleged that the Board's decision was an uncompetitive and unfair method of competition under the Federal Trade Commission Act. This opened the Board to lawsuits and substantial damages from affected parties.

The Board was composed of 6 licensed, practicing dentists and 2 public members. The practice of teeth whitening was not addressed in the statutes comprising the Dental Practice Act. Instead of initiating a rulemaking effort to clarify the appropriate practice of teeth whitening, the Board sent cease-and-desist letters to non-dentists in the state offering teeth whitening services. The Board argued that the FTC's complaint was invalid because the Board was acting as an agent of North Carolina, and according to state-action immunity, one cannot sue the state acting in its sovereign capacity for anticompetitive conduct. A federal appeals court sided with the FTC, and the Board appealed to the United States Supreme Court (Court).

In February 2015, the Court agreed with the FTC and determined that the Board was not acting as a state agent and could be sued for its actions. The Court ruled, "Because a controlling number of the Board's decision-makers are active participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met."

The Court was not specific about what may constitute "active participants" or "active supervision." However, the Court did say that "active supervision" requires "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy," and that "the supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it."

FTC Staff Guidance on Active Supervision of State Regulatory Boards. In October 2015, the FTC released a staff guidance, "*Active Supervision of State Regulatory Boards Controlled*



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by Market Participants,” in order to better explain when active supervision of a state regulatory board would be required in order for a board to invoke the state action defense. The guidance also aimed to highlight what factors are relevant when determining if the active supervision requirement has been satisfied. The FTC stated that active supervision includes the ability of a state supervisor to review the substance of the anticompetitive decision and have the power to veto or modify a decision. The state supervisor may not be an active market participant. In addition, the FTC states that active supervision must precede the implementation of the alleged anticompetitive restraint.

The FTC stated that the guidance addresses only the active supervision requirement of the state action defense, and antitrust analysis is fact-specific and context-dependent. This means that although a state action defense might not be applicable in a certain case, this does not mean that the conduct of a regulatory board necessarily violates federal antitrust laws.

Implications for the Boards under the DCA. On October 22, 2015, the Senate Committee on Business, Professions and Economic Development and Assembly Business and Professions Committee held a joint informational hearing to explore the implications of the Court decision on the DCA’s 26 professional regulatory boards and consider recommendations. In response to the Court’s decision, the Chair of this Committee, State Senator Jerry Hill, requested an opinion from the Office of Attorney General Kamala Harris (AG). The AG released the following:

North Carolina Dental has brought both the composition of licensing boards and the concept of active state supervision into the public spotlight, but the standard it imposes is flexible and context-specific. This leaves the state with many variables to consider in deciding how to respond.

Whatever the chosen response may be, the state can be assured that North Carolina Dental’s “active state supervision” requirement is satisfied when a non-market-participant state official has and exercises the power to substantively review a board’s action and determines whether the action effectuates the state’s regulatory policies.

The DCA boards are semiautonomous bodies whose members are appointed by the Governor and the Legislature. It is important to note that although a most of the non-healing arts boards have the statutory authority for a public majority allotment in their makeup, more than half of the healing arts and non-healing arts boards are currently comprised of a majority of members representing the profession, based on vacancies and current appointments. There are currently only one health board and four non-health boards that are comprised of a public member majority with their current makeup. While the boards operate largely independently, they also fall within the DCA’s jurisdiction. The Legislature provides routine oversight and the Office of Administrative Law reviews regulations stemming from rulemaking undertaken by the boards.

Although the boards are tied to the state through various structural and statutory oversights, it is presently unclear whether current laws and practices are sufficient to



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ensure that the boards are state actors and, thus, immune from legal action. The recent decision against the Texas Medical Board in the *Teladoc* case emphasizes the need for California to prove that it provides active state supervision. In that case, one of the nation's largest providers of telephone medical services, *Teladoc*, sued the Texas Medical Board after the Board issued a rule that requires physicians to either meet with patients in person before treating them remotely, or to treat them face-to-face via technology while other providers are physically present with them when treating a patient for the first time. *Teladoc* alleged that this rule violates antitrust laws because it would restrict the company's ability to compete, resulting in higher prices and less access to doctors for Texans. The Board argued that it should be immune from antitrust liability as a state agency but a judge rejected that argument, writing that "for a board to be considered actively supervised, the state supervisor must have power to veto or modify the board's decisions, and supervision of the Texas Medical Board does not meet that requirement."

It appears necessary for the Legislature and the Department to devise a mechanism for independent state review of regulatory board actions, including the ability of some type of state supervisor to veto or modify decisions, as cited in the Texas *Teladoc* case, in order for these boards and board members to ensure that boards can continue to effectively regulate California's professions without fear of being sued.

During the sunset review hearing in March, in which several DCA issues were discussed, the need to respond to the implications surrounding this recent Court decision were reviewed by the Committees and the DCA. The DCA at that time was asked to address two questions and was asked to respond to the Committees in 30 days:

- (1) How does the DCA plan on addressing the "active state supervision" requirement; and,
- (2) What does the DCA believe are necessary next steps to ensure robust protection of the public from potentially problematic trust forming coalitions on regulatory boards.

It was also recommended by the Committees, that in light of the FTC guidance on the active supervision of state regulatory boards controlled by market participants, that the Committees should remove the active license requirement for the Executive Officer position for the BRN and that there should basically be no Executive Officer of any board who was a licensee of the board they serve.

As indicated earlier, *North Carolina State Board of Dental Examiners v. FTC* placed limitations on the immunity of regulatory boards controlled by active market participants. This is because individuals who are directly affected by their own rulemaking may not be able to detect their biases, purposefully or inadvertently placing their benefit over those of the public. Or, as the Supreme Court stated, "Dual allegiances are not always apparent to an actor." In the North Carolina case, the focus was on board members, but the argument against interested participants could also be made for boards' administrative managers. The



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DCA executive officers (EOs) wield a great deal of power, daily directing and running the administrative machine with often only occasional guidance from an ever-changing board. EOs are vested with substantial decision-making authority and have the ability to shape policy direction of a particular board through their recommendations, management, and relationships.

Presently, the Board of Registered Nursing (BRN) is the only board within the DCA that requires its EO to be currently licensed by the board he or she regulates; the Board of Vocational Nursing and Psychiatric Technicians removed this requirement last year in light of serious allegations of mismanagement. According to the recent hiring bulletin for the BRN's Executive Officer, the EO is responsible for "...planning, organizing and directing the activities of the Board in areas of administration, enforcement and licensure. The EO serves as the liaison between the Board and stakeholders. The EO enforces the overall policies established by the Board relating to Board programs...." To place this control with an interested stakeholder may be directly contrary to the intent of a well-balanced regulatory system.

Response by the DCA. On April 11, 2016, the DCA responded to the questions and recommendations of the Committees as follows:

(1) How does the DCA plan on addressing the "active state supervision" requirement?

According to the DCA, they have proactively provided training and guidance to its constituent entities regarding the North Carolina case, including the active state supervision requirement. Based upon the case, the California Attorney General's opinion, and the Federal Trade Commission's published guidelines, the Department has provided guidance to its entities regarding best practices, including:

- Continuing to promote their primary mission of consumer protection;
- Identifying when the board may be making market-sensitive decisions;
- Conducting an analysis of the competitive aspects of decisions;
- Utilizing the applicable state processes which contain elements of state supervision;
- Considering objective evidence; and,
- Adequately documenting the discussions on a particular decision.

The Department and the Attorney General's Office have also collaborated to develop and present training regarding the case for executive officers and board presidents. Additionally, DCA indicates that information related to the case has been incorporated in the Board Member Orientation Training which is held each quarter. Presentations regarding the case have taken place at numerous board meetings.

The Department addressed potential statutory changes and identified two areas where it believes that the law should be strengthened and clarified.



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First, the existing regulatory review process must be made stronger. Under current law, the Director reviews board regulations and has the authority to disapprove them if they are “injurious to the public health, safety or welfare.” However, current law does not specifically authorize the Director to disapprove regulations for anticompetitive impacts in the market without furthering a clearly articulated state policy. In order to ensure appropriate state supervision, the Department believes that the Director should have the specific authority to disapprove regulations that will have anticompetitive impacts in the market, if these are not substantiated by state policy.

Second, the DCA stated that current potential liability of board members needs to be addressed. Lawsuits regarding antitrust violations, if successful, can lead to awards of treble damages. The Department believes that these damages are not punitive in nature, and wishes to clarify this position in statute to ensure that if a board member is acting pursuant to a state policy, they will be indemnified by the state for an antitrust violation in the same way they are for other types of lawsuits.

(2) What does the DCA believe are necessary next steps to ensure robust protection of the public from potentially problematic trust forming coalitions on regulatory boards?

As noted above, the Department states that it will continue to encourage the boards to utilize best practices and provide training in this area, which should assist in mitigating the potential for board actions which violate antitrust laws. As discussed at the hearing, the Department believes that some legislative change is warranted in the areas of the Director’s review of regulations, the classification of treble damages arising in anti-trust litigation as damages that can be indemnified by the state, and the employment of Executive Officers that are licensees. The Department further states that it will continue to evaluate the impact of the North Carolina case and continue to work closely with the Administration and committee staff to vet policies related to potential antitrust liability based upon the board governance model.

(3) In light of the FTC guidance on the Active Supervision of State Regulatory Boards Controlled by Market Participants, the Committees should remove the active license requirement for the Executive Officer position for the Board of Registered Nursing.

The Department agrees, in concept, with the Committees’ recommendation that the active license requirement for executive officers should be removed. Having a nonmarket participant serve as an executive officer is critical in minimizing the impact an active market participant executive officer may have on the operations. This would be an additional step in addressing the concerns of the North Carolina case.

This measure is intended to address the concerns raised by the DCA and both its suggested changes and recommendations to comply with the recent U.S. Supreme Court decision. It will expand the authority of the Director to review and take appropriate action regarding regulations or board decisions which may have



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potential antitrust (anticompetitive) implications, clarify potential liability for board members involved in possible antitrust litigation, and eliminate the requirement that the Executive Officer of the BRN be a registered nurse.

Background on VMB.

The mission of the Veterinary Medical Board (VMB) is to protect consumers and animals through development and maintenance of professional standards, licensing of veterinarians, registered veterinary technicians, and premises, and diligent enforcement of the California Veterinary Medicine Practice Act. The Board is composed of eight members: four veterinarians, one RVT, and three public members. The Board licenses 12,086 Veterinarians and 6,424 RVTs. The licensee population has increased steadily over the past five years. The Board also requires registration of all premises where veterinary medicine, veterinary dentistry, veterinary surgery, and the various branches thereof, is being practiced. The Board currently registers 3,636 veterinary premises.

The pet-owning public expects that the providers of their pet's health care are well-trained and are competent to provide these services. The Board assures the public that veterinarians and RVTs possess the level of competence required to perform these services by developing and enforcing standards for examinations, licensing, and hospital and school inspection. The Board also conducts regular practice analyses to validate the licensing examinations for both veterinarians and RVTs. Additional eligibility pathways have also been approved for licensure of internationally trained veterinary graduates and certification of RVTs to allow qualified applicants from other states in the U.S. and countries around the world to come to California and to improve the provision of veterinary health care for consumers and their animals. The Board's goals, as stated in its Strategic Plan, include decreased enforcement cycle times, enhanced quality and training of hospital inspectors, inspecting existing hospitals within one year of registration, and working with DCA to reduce the amount of unlicensed activity occurring in the marketplace.

Review of the VMB – Issues Identified and Recommended Changes.

The Board was last reviewed by the Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business, Professions and Consumer Protection (now Assembly Business and Professions) in 2012-13. At that time, both committees identified 12 issues for discussion. The Board's sunset date was only extended for two years because of serious concerns raised by the Committees during its review. However, it was determined that the Board would only have to submit a report to the Committees that addressed only the most significant issues for the Board to discuss. On December 1, 2015, the Board submitted its required Supplemental Sunset Review Report to the Committees.

The following are some of the major issues pertaining to the Board along with background information concerning the particular issue. Recommendations were made by Committee staff regarding the particular issue areas that needed to be addressed.



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Issue: University Licensure.

Background: Existing law, BPC Section 4830(a)(4) allows for an exemption to licensure for veterinarians working at both veterinary medical schools in California, UC Davis and Western University.

States that have veterinary schools typically have exemptions or some form of university licensure to accommodate the schools' hiring needs. Veterinary schools hire veterinarians from all over the world who sometimes come into a state for a limited period of time, and who do not practice outside the confines of the university. However, problems can arise when the university veterinary hospital is providing services to the general public and the consumer does not have recourse through a licensing board for standard of care issues. The Board receives calls periodically from consumers whom are unhappy with the services at a university teaching hospital and request the Board to intervene. Since veterinarians working at the universities are exempt from licensure, the Board states that it has no authority to pursue disciplinary action and must advise the consumer to seek recourse through the university's complaint mediation process. The exemption presents consumer protection issue, and the Board believes that all veterinarians providing treatment to the public's animals should be licensed and regulated. Faculty recruited for clinical positions within the university typically specialize in certain species and conditions, are experts in their field of study, and have undergone intensive specialty testing that exceeds the examinations required for entry-level licensure. In fact, for employment in clinical faculty positions, the university requires specialty training or other advanced clinical training. Some faculty may have graduated from foreign veterinary schools that are recognized but not accredited by the American Veterinary Medical Association. As reported by UC Davis and Western University, requiring full licensure would negatively impact the universities' ability to attract and recruit the best qualified veterinarians.

During the past two years, the MDC has debated the issue of requiring veterinarians working in a university setting to obtain a University License and therefore, no longer be exempt from Board oversight. As part of the MDC's research, former legal counsel reviewed the pertinent statutes, BPC section 4830 (a)(4), and concluded that the existing exemption for veterinarians employed by the universities would need to be amended to either to strike the language in section 4830 (a)(4) and thus require a license for university personnel or include language in 4830 (a)(4) that would qualify when a "University License" must be issued in order for a veterinarian employed by a university to provide veterinary services to the public's animals.

The MDC voted to recommend to the Board that a separate University License be issued to veterinarians who are employed by and who engage in the practice of veterinary medicine in the performance of their duties for the university. Both UC Davis and Western University are supportive of requiring a University License for veterinarians practicing within the university setting as it will provide consumer recourse through the Board and allow the Board to assist the university in handling enforcement matters involving university employees.



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The Board voted to approve the request for a statutory change at its October 2015 meeting and requests assistance from the Legislature to amend Section BPC Section 4830 and add new BPC 4848.1.

The change would require an implementation date set out at least 6 months from the effective date to enable university personnel to comply with the proposed examination requirements (California jurisprudence exam) and educational course on regionally specific diseases and conditions.

Recommendation and Proposed Statutory Change: The Committees may wish to amend Business and Professions Code to require the Board to separately license veterinarians practicing within a university setting.

This bill requires the Board to provide a separate licensure category for veterinarians practicing solely within the university setting.

Issue: Delinquent Registration Status.

Background: Currently there is no provision for the premises registration to cancel after five years, as would be consistent with other license types regulated by the Board. Instead hospital premises registrations are left in a delinquent status indefinitely and remain on the Board's records. The records are accessible on the Board's website under the "License Verification" feature. It is confusing for consumers who use the website to find registered veterinary premises and retrieve data on hospitals that have been in a delinquent status for more than five years. Many of these hospitals are no longer operating veterinary premises, yet there is not mechanism by which the Board may cancel the premises registration. In addition, the retention of electronic records for delinquent premises registrations is a resource issue for the Board as there is a "per record" cost for maintaining the data.

Recommendation and Proposed Statutory Change: The Committees may wish to amend Business and Professions Code to allow the Board to cancel the premises registration of veterinary premises that have remained in delinquent status for more than five years.

This bill allows for a premise registration to be canceled after five years of delinquency.

Issues: Drug Compounding.

Background: During hospital inspections, Board inspectors routinely encounter bulk form drugs used for compounding medications stored at veterinary hospitals. If the drugs are not properly stored, labeled, or are expired, the inspector will advise the Licensing Manager of the compliance issue. However, there are no specific provisions in the Practice Act to provide oversight of a veterinarian compounding drugs for use in day-to-day veterinary practices and for dispensing to clients. Instead, the Board has looked to laws and regulations governing pharmacies (BPC Sections 4051, 4052, and 4127 & Title 16 CCR Sections 1735-1735.8 and 1751 et. seq.) since veterinarians are authorized prescribers under BPC Section 4170. Pharmacy regulations not only include specific requirements for pharmacies that compound and dispense medications, but also define the "reasonable



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quantity” of a compounded medication that may be furnished to a prescriber (in this case, veterinarian) by the pharmacy to administer to the prescriber’s patients within their facility, or to dispense to their patient/client. It should be noted that the Board of Pharmacy is currently pursuing a regulatory amendment to its Compounding Drug Preparation regulations that includes amendments to the “reasonable quantity” definition of compounded drugs that may be supplied to veterinarians for the purposes of dispensing. In addition to pharmacy provisions, federal law provides for Extralabel Drug Use in Animals, CFR Title 21 Part 530.13, which authorizes veterinarians to compound medications in following situations:

- There is no approved animal or human drug available that is labeled for, and in a concentration or form appropriate for, treating the condition diagnosed.
- The compounding is performed by a licensed veterinarian within the scope of a professional practice.
- Adequate measures are followed to ensure the safety and effectiveness of the compounded product.
- The quantity of compounding is commensurate with the established need of the identified patient.

The Board has been actively engaged in discussions regarding the regulation of veterinarians compounding drugs since October 2014 when the US Government Accountability Office contacted the Board to obtain information on California’s regulation of animal drug compounding. At that time, the federal Food and Drug Administration (FDA) was considering changes to its guidance on Compounding Animal Drugs from Bulk Drug Substances. Ultimately, the FDA released Draft Guidance #230 in May 2015, which was intended to provide parameters for compounding animal drugs.

At its October 20, 2014 meeting, the MDC reviewed the issue of drug compounding by veterinarians for their animal patients. The issue, as raised by Board legal counsel, was that there is no explicit grant of authority in the Practice Act authorizing licensed veterinarians to compound drugs pursuant to federal law. Board counsel advised that provisions for veterinarians to compound drugs for animal patients would need to be added to the veterinary medicine scope of practice. The MDC examined the lack of statutory guidance for veterinarians and ultimately recommended that the Board consider a legislative proposal to grant veterinarians the authority to compound drugs for their animal patients under the existing limitations of CFR Title 21 Part 530.13.

Recommendation and Proposed Statutory Change: The Committees may wish to amend Business and Professions Code to grant limited state authority for veterinarians to compound drugs.

This bill establishes authority for drug compounding in the practice of veterinary medicine.

Note: The exact language for this section is still under revision and will likely be amended at a later date.



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Related Legislation:

None.

Prior Legislation

SB 1243 (Lieu, Chapter 395, Statutes of 2014) Extended until January 1, 2017, the provisions establishing the Veterinary Medical Board and the term of the executive officer of the Board.

SB 304 (Lieu, Chapter 515, Statutes of 2013) extended until January 1, 2016, the provisions establishing the VMB, subjects the VMB to a review by the appropriate policy committees of the Legislature, and clarifies that the review of the VMB shall be limited to those issues identified by the appropriate policy committees.

Fiscal Impact:

Unknown. This bill is keyed “fiscal” by Legislative Counsel.

Support and Opposition

Support:

University of California – Davis School of Veterinary Medicine

They support the licensing provisions for veterinarians practicing solely within a university setting. They cite that the proposed change in licensing requirements respects the need for consumer protection in California and provides recourse for consumers with complains while retaining sufficient flexibility for the University to fulfill its mission by recruiting the very best veterinary faculty.

Support if Amended: California Veterinary Medical Association

While they support the continued existence of a Veterinary Medical Board, CVMA is concerned with components of the current language as it relates to veterinary drug compounding. The proposed language seeks to substitute the terms “pharmacist” and “pharmacies” with “veterinarian” and “veterinary premises” in statute and in reference to numerous compounding regulations. CVMA believes the compounding for veterinarians is uniquely different from the pharmacy profession and requires separate regulations. They also raise concern that the language may inadvertently cancel out previous statutory agreements relative to veterinary labeling and drug packaging. However, they indicated confidence that they will be able to achieve a positive resolution at an upcoming meeting with stakeholders including the Board, Board of Pharmacy, CVMA, and Committee staff. As previously noted in this analysis, the drug compounding language is still under revision pending the outcome of that meeting.

Opposition:

None.



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Comments

None.

Action Required

Board staff recommend a Watch position at this time.

AMENDED IN SENATE APRIL 6, 2016

SENATE BILL

No. 1195

Introduced by Senator Hill

February 18, 2016

An act to amend Sections ~~4800 and 4804.5~~ of 109, 116, 153, 307, 313.1, 2708, 4800, 4804.5, 4825.1, 4830, and 4846.5 of, and to add Sections 4826.3, 4826.5, 4826.7, 4848.1, and 4853.7 to, the Business and Professions Code, and to amend Sections 825, 11346.5, 11349, and 11349.1 of the Government Code, relating to ~~healing arts~~; professional regulation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as amended, Hill. ~~Veterinary Medical Board: executive officer~~. Professions and vocations: board actions: competitive impact.

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction. Existing law makes decisions of any board within the department pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of Consumer Affairs. Existing law authorizes the director to audit and review certain inquiries and complaints regarding licensees, including the dismissal of a disciplinary case. Existing law requires the director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, or monitoring and evaluation. Existing law authorizes the director to contract for services of experts and consultants where necessary.

Existing law requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the department, to comply with certain requirements before the regulation or fee change can take effect, including that the director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. Existing law prohibits a rule or regulation that is disapproved by the director from having any force or effect, unless the director's disapproval is overridden by a unanimous vote of the members of the board, as specified.

This bill would instead authorize the director, upon his or her own initiative, and require the director, upon the request of a consumer or licensee, to review a decision or other action, except as specified, of a board within the department to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action, as specified. The bill would require the director to post on the department's Internet Web site his or her final written decision and the reasons for the decision within 90 days from receipt of the request of a consumer or licensee. The bill would, commencing on March 1, 2017, require the director to annually report to the chairs of specified committees of the Legislature information regarding the director's disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation. The bill would authorize the director to seek, designate, employ, or contract for the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints on trade. The bill would also require the director to review and approve any regulation promulgated by a board within the department, as specified. The bill would authorize the director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect. The bill would prohibit any rule or regulation from having any force or effect if the director does not approve the regulation because it has an impermissible anticompetitive effect.

(2) Existing law, until January 1, 2018, provides for the licensure and regulation of registered nurses by the Board of Registered Nursing, which is within the Department of Consumer Affairs, and requires the board to appoint an executive officer who is a nurse currently licensed by the board.

This bill would instead prohibit the executive officer from being a licensee of the board.

~~The~~

(3) *The Veterinary Medicine Practice Act provides for the licensure and registration of veterinarians and registered veterinary technicians and the regulation of the practice of veterinary medicine by the Veterinary Medical Board, which is within the Department of Consumer Affairs, and authorizes the board to appoint an executive officer, as specified. Existing law repeals the provisions establishing the board and authorizing the board to appoint an executive officer as of January 1, 2017. That act exempts certain persons from the requirements of the act, including a veterinarian employed by the University of California or the Western University of Health Sciences while engaged in the performance of specified duties. That act requires all premises where veterinary medicine, dentistry, and surgery is being practiced to register with the board. That act requires all fees collected on behalf of the board to be deposited into the Veterinary Medical Board Contingent Fund, which continuously appropriates fees deposited into the fund. That act makes a violation of any provision of the act punishable as a misdemeanor.*

This bill would extend the operation of the board and the authorization of the board to appoint an executive officer to January 1, 2021. *The bill would authorize a veterinarian and registered veterinary technician who is under the direct supervision of a veterinarian with a current and active license to compound a drug for anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the board, as specified. The bill would authorize the California State Board of Pharmacy and the board to ensure compliance with these requirements. The bill would instead require veterinarians engaged in the practice of veterinary medicine employed by the University of California or by the Western University of Health Sciences while engaged in the performance of specified duties to be licensed as a veterinarian in the state or hold a university license issued by the board. The bill would require an applicant for a university license to meet certain requirements, including that the applicant passes a specified exam. The bill would also prohibit a premise registration that is not renewed within 5 years after its expiration from being renewed, restored, reissued, or reinstated; however, the bill would authorize a new premise registration to be issued to an applicant if no fact, circumstance, or condition exists that would justify the revocation or suspension of the registration if the registration was issued and if specified fees are paid. By requiring*

additional persons to be licensed and pay certain fees that would go into a continuously appropriated fund, this bill would make an appropriation. By requiring additional persons to be licensed under the act that were previously exempt, this bill would expand the definition of an existing crime and would, therefore, result in a state-mandated local program.

(4) Existing law, except as provided, requires a public entity to pay any judgment or any compromise or settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action.

This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board.

(5) The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. That act requires the review by the office to follow certain standards, including, among others, necessity, as defined. That act requires an agency proposing to adopt, amend, or repeal a regulation to prepare a notice to the public that includes specified information, including reference to the authority under which the regulation is proposed.

This bill would add competitive impact, as defined, as an additional standard for the office to follow when reviewing regulatory actions of a state board on which a controlling number of decisionmakers are active market participants in the market that the board regulates, and requires the office to, among other things, consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits. The bill would authorize the office to designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact. The bill would require state boards on which a controlling number of decisionmakers are active market participants

in the market that the board regulates, when preparing the public notice, to additionally include a statement that the agency has evaluated the impact of the regulation on competition and that the effect of the regulation is within a clearly articulated and affirmatively expressed state law or policy.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 109 of the Business and Professions Code
2 is amended to read:

3 109. ~~(a) The decisions of any of the boards comprising the~~
4 ~~department with respect to setting standards, conducting~~
5 ~~examinations, passing candidates, and revoking licenses, are not~~
6 ~~subject to review by the director, but are final within the limits~~
7 ~~provided by this code which are applicable to the particular board,~~
8 ~~except as provided in this section.~~

9 ~~(b)~~

10 109. (a) The director may initiate an investigation of any
11 allegations of misconduct in the preparation, administration, or
12 scoring of an examination which is administered by a board, or in
13 the review of qualifications which are a part of the licensing process
14 of any board. A request for investigation shall be made by the
15 director to the Division of Investigation through the chief of the
16 division or to any law enforcement agency in the jurisdiction where
17 the alleged misconduct occurred.

18 ~~(c)~~

19 (b) (1) The director may intervene in any matter of any board
20 where an investigation by the Division of Investigation discloses
21 probable cause to believe that the conduct or activity of a board,
22 or its members or employees constitutes a violation of criminal
23 law.

24 ~~The~~

1 (2) ~~The term “intervene,” as used in paragraph (c) of this section~~
2 (1) may include, but is not limited to, an application for a
3 restraining order or injunctive relief as specified in Section 123.5,
4 or a referral or request for criminal prosecution. For purposes of
5 this section, the director shall be deemed to have standing under
6 Section 123.5 and shall seek representation of the Attorney
7 General, or other appropriate counsel in the event of a conflict in
8 pursuing that action.

9 (c) *The director may, upon his or her own initiative, and shall,*
10 *upon request by a consumer or licensee, review any board decision*
11 *or other action to determine whether it unreasonably restrains*
12 *trade. Such a review shall proceed as follows:*

13 (1) *The director shall assess whether the action or decision*
14 *reflects a clearly articulated and affirmatively expressed state law.*
15 *If the director determines that the action or decision does not*
16 *reflect a clearly articulated and affirmatively expressed state law,*
17 *the director shall disapprove the board action or decision and it*
18 *shall not go into effect.*

19 (2) *If the action or decision is a reflection of clearly articulated*
20 *and affirmatively expressed state law, the director shall assess*
21 *whether the action or decision was the result of the board’s*
22 *exercise of ministerial or discretionary judgment. If the director*
23 *finds no exercise of discretionary judgment, but merely the direct*
24 *application of statutory or constitutional provisions, the director*
25 *shall close the investigation and review of the board action or*
26 *decision.*

27 (3) *If the director concludes under paragraph (2) that the board*
28 *exercised discretionary judgment, the director shall review the*
29 *board action or decision as follows:*

30 (A) *The director shall conduct a full review of the board action*
31 *or decision using all relevant facts, data, market conditions, public*
32 *comment, studies, or other documentary evidence pertaining to*
33 *the market impacted by the board’s action or decision and*
34 *determine whether the anticompetitive effects of the action or*
35 *decision are clearly outweighed by the benefit to the public. The*
36 *director may seek, designate, employ, or contract for the services*
37 *of independent antitrust or economic experts pursuant to Section*
38 *307. These experts shall not be active participants in the market*
39 *affected by the board action or decision.*

1 (B) If the board action or decision was not previously subject
2 to a public comment period, the director shall release the subject
3 matter of his or her investigation for a 30-day public comment
4 period and shall consider all comments received.

5 (C) If the director determines that the action or decision furthers
6 the public protection mission of the board and the impact on
7 competition is justified, the director may approve the action or
8 decision.

9 (D) If the director determines that the action furthers the public
10 protection mission of the board and the impact on competition is
11 justified, the director may approve the action or decision. If the
12 director finds the action or decision does not further the public
13 protection mission of the board or finds that the action or decision
14 is not justified, the director shall either refuse to approve it or
15 shall modify the action or decision to ensure that any restraints
16 of trade are related to, and advance, clearly articulated state law
17 or public policy.

18 (4) The director shall issue, and post on the department's
19 Internet Web site, his or her final written decision approving,
20 modifying, or disapproving the action or decision with an
21 explanation of the reasons and rationale behind the director's
22 decision within 90 days from receipt of the request from a
23 consumer or licensee. Notwithstanding any other law, the decision
24 of the director shall be final, except if the state or federal
25 constitution requires an appeal of the director's decision.

26 (d) The review set forth in paragraph (3) of subdivision (c) shall
27 not apply when an individual seeks review of disciplinary or other
28 action pertaining solely to that individual.

29 (e) The director shall report to the Chairs of the Senate Business,
30 Professions, and Economic Development Committee and the
31 Assembly Business and Professions Committee annually,
32 commencing March 1, 2017, regarding his or her disapprovals,
33 modifications, or findings from any audit, review, or monitoring
34 and evaluation conducted pursuant to this section. That report
35 shall be submitted in compliance with Section 9795 of the
36 Government Code.

37 (f) If the director has already reviewed a board action or
38 decision pursuant to this section or Section 313.1, the director
39 shall not review that action or decision again.

1 (g) *This section shall not be construed to affect, impede, or*
 2 *delay any disciplinary actions of any board.*

3 *SEC. 2. Section 116 of the Business and Professions Code is*
 4 *amended to read:*

5 116. (a) The director may audit and review, upon his or her
 6 own initiative, or upon the request of a consumer or licensee,
 7 inquiries and complaints regarding licensees, dismissals of
 8 disciplinary cases, the opening, conduct, or closure of
 9 investigations, informal conferences, and discipline short of formal
 10 accusation by ~~the Medical Board of California, the allied health~~
 11 ~~professional boards, and the California Board of Podiatric~~
 12 ~~Medicine. The director may make recommendations for changes~~
 13 ~~to the disciplinary system to the appropriate board, the Legislature,~~
 14 ~~or both.~~ *any board or bureau within the department.*

15 (b) The director shall report to the ~~Chairpersons~~ *Chairs* of the
 16 ~~Senate Business and Professions~~ *Business, Professions, and*
 17 *Economic Development* Committee and the ~~Assembly Health~~
 18 *Business and Professions* Committee annually, commencing March
 19 1, ~~1995,~~ 2017, regarding his or her findings from any audit, review,
 20 or monitoring and evaluation conducted pursuant to this section.
 21 *This report shall be submitted in compliance with Section 9795 of*
 22 *the Government Code.*

23 *SEC. 3. Section 153 of the Business and Professions Code is*
 24 *amended to read:*

25 153. The director may investigate the work of the several
 26 boards in his department and may obtain a copy of all records and
 27 full and complete data in all official matters in possession of the
 28 boards, their members, officers, or ~~employees, other than~~
 29 ~~examination questions prior to submission to applicants at~~
 30 ~~scheduled examinations.~~ *employees.*

31 *SEC. 4. Section 307 of the Business and Professions Code is*
 32 *amended to read:*

33 307. The director may contract for the services of experts and
 34 consultants where necessary to carry out ~~the provisions of this~~
 35 chapter and may provide compensation and reimbursement of
 36 expenses for ~~such~~ *those* experts and consultants in accordance with
 37 state law.

38 *SEC. 5. Section 313.1 of the Business and Professions Code*
 39 *is amended to read:*

1 313.1. (a) Notwithstanding any other ~~provision~~ of law to the
2 contrary, no rule or ~~regulation, except those relating to~~
3 ~~examinations and qualifications for licensure, regulation~~ and no
4 fee change proposed or promulgated by any of the boards,
5 commissions, or committees within the department, shall take
6 effect pending compliance with this section.

7 (b) The director shall be formally notified of and shall ~~be~~
8 ~~provided a full opportunity to review, in accordance with the~~
9 requirements of Article 5 (commencing with Section 11346) of
10 Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government
11 Code, *the requirements in subdivision (c) of Section 109*, and this
12 section, all of the following:

13 (1) All notices of proposed action, any modifications and
14 supplements thereto, and the text of proposed regulations.

15 (2) Any notices of sufficiently related changes to regulations
16 previously noticed to the public, and the text of proposed
17 regulations showing modifications to the text.

18 (3) Final rulemaking records.

19 (4) *All relevant facts, data, public comments, market conditions,*
20 *studies, or other documentary evidence pertaining to the market*
21 *impacted by the proposed regulation. This information shall be*
22 *included in the written decision of the director required under*
23 *paragraph (4) of subdivision (c) of Section 109.*

24 (c) The submission of all notices and final rulemaking records
25 to the director and the ~~completion of the director's review,~~
26 *approval*, as authorized by this section, shall be a precondition to
27 the filing of any rule or regulation with the Office of Administrative
28 Law. The Office of Administrative Law shall have no jurisdiction
29 to review a rule or regulation subject to this section until after the
30 ~~completion of the director's review and only then if the director~~
31 ~~has not disapproved it.~~ *approval*. The filing of any document with
32 the Office of Administrative Law shall be accompanied by a
33 certification that the board, commission, or committee has complied
34 with the requirements of this section.

35 (d) Following the receipt of any final rulemaking record subject
36 to subdivision (a), the director shall have the authority for a period
37 of 30 days to *approve a proposed rule or regulation or disapprove*
38 *a proposed rule or regulation on the ground that it is injurious to*
39 *the public health, safety, or ~~welfare.~~ welfare, or has an*
40 *impermissible anticompetitive effect. The director may modify a*

1 rule or regulation as a condition of approval. Any modifications
 2 to regulations by the director shall be subject to a 30-day public
 3 comment period before the director issues a final decision
 4 regarding the modified regulation. If the director does not approve
 5 the rule or regulation within the 30-day period, the rule or
 6 regulation shall not be submitted to the Office of Administrative
 7 Law and the rule or regulation shall have no effect.

8 (e) Final rulemaking records shall be filed with the director
 9 within the one-year notice period specified in Section 11346.4 of
 10 the Government Code. If necessary for compliance with this
 11 section, the one-year notice period may be extended, as specified
 12 by this subdivision.

13 (1) In the event that the one-year notice period lapses during
 14 the director's 30-day review period, or within 60 days following
 15 the notice of the director's disapproval, it may be extended for a
 16 maximum of 90 days.

17 (2) If the director approves the final rulemaking record or
 18 declines to take action on it within 30 days, record, the board,
 19 commission, or committee shall have five days from the receipt
 20 of the record from the director within which to file it with the
 21 Office of Administrative Law.

22 (3) If the director disapproves a rule or regulation, it shall have
 23 no force or effect unless, within 60 days of the notice of
 24 disapproval, (A) the disapproval is overridden by a unanimous
 25 vote of the members of the board, commission, or committee, and
 26 (B) the board, commission, or committee files the final rulemaking
 27 record with the Office of Administrative Law in compliance with
 28 this section and the procedures required by Chapter 3.5
 29 (commencing with Section 11340) of Part 1 of Division 3 of Title
 30 2 of the Government Code. *This paragraph shall not apply to any*
 31 *decision disapproved by the director under subdivision (c) of*
 32 *Section 109.*

33 (f) ~~Nothing in this~~ This section shall *not* be construed to prohibit
 34 the director from affirmatively approving a proposed rule,
 35 regulation, or fee change at any time within the 30-day period after
 36 it has been submitted to him or her, in which event it shall become
 37 effective upon compliance with this section and the procedures
 38 required by Chapter 3.5 (commencing with Section 11340) of Part
 39 1 of Division 3 of Title 2 of the Government Code.

1 *SEC. 6. Section 2708 of the Business and Professions Code is*
2 *amended to read:*

3 2708. (a) The board shall appoint an executive officer who
4 shall perform the duties delegated by the board and who shall be
5 responsible to it for the accomplishment of those duties.

6 (b) The executive officer shall *not* be a ~~nurse currently licensed~~
7 *licensee* under this chapter and shall possess other qualifications
8 as determined by the board.

9 (c) The executive officer shall not be a member of the board.

10 (d) This section shall remain in effect only until January 1, 2018,
11 and as of that date is repealed, unless a later enacted statute, that
12 is enacted before January 1, 2018, deletes or extends that date.

13 ~~SECTION 1.~~

14 *SEC. 7. Section 4800 of the Business and Professions Code is*
15 *amended to read:*

16 4800. (a) There is in the Department of Consumer Affairs a
17 Veterinary Medical Board in which the administration of this
18 chapter is vested. The board consists of the following members:

19 (1) Four licensed veterinarians.

20 (2) One registered veterinary technician.

21 (3) Three public members.

22 (b) This section shall remain in effect only until January 1, 2021,
23 and as of that date is repealed.

24 (c) Notwithstanding any other law, the repeal of this section
25 renders the board subject to review by the appropriate policy
26 committees of the Legislature. However, the review of the board
27 shall be limited to those issues identified by the appropriate policy
28 committees of the Legislature and shall not involve the preparation
29 or submission of a sunset review document or evaluative
30 questionnaire.

31 ~~SEC. 2.~~

32 *SEC. 8. Section 4804.5 of the Business and Professions Code*
33 *is amended to read:*

34 4804.5. (a) The board may appoint a person exempt from civil
35 service who shall be designated as an executive officer and who
36 shall exercise the powers and perform the duties delegated by the
37 board and vested in him or her by this chapter.

38 (b) This section shall remain in effect only until January 1, 2021,
39 and as of that date is repealed.

1 *SEC. 9. Section 4825.1 of the Business and Professions Code*
2 *is amended to read:*

3 4825.1. These definitions shall govern the construction of this
4 chapter as it applies to veterinary medicine.

5 (a) “Diagnosis” means the act or process of identifying or
6 determining the health status of an animal through examination
7 and the opinion derived from that examination.

8 (b) “Animal” means any member of the animal kingdom other
9 than humans, and includes fowl, fish, and reptiles, wild or
10 domestic, whether living or dead.

11 (c) “Food animal” means any animal that is raised for the
12 production of an edible product intended for consumption by
13 humans. The edible product includes, but is not limited to, milk,
14 meat, and eggs. Food animal includes, but is not limited to, cattle
15 (beef or dairy), swine, sheep, poultry, fish, and amphibian species.

16 (d) “Livestock” includes all animals, poultry, aquatic and
17 amphibian species that are raised, kept, or used for profit. It does
18 not include those species that are usually kept as pets such as dogs,
19 cats, and pet birds, or companion animals, including equines.

20 (e) “Compounding,” for the purposes of veterinary medicine,
21 shall have the same meaning given in Section 1735 of Title 16 of
22 the California Code of Regulations, except that every reference
23 therein to “pharmacy” and “pharmacist” shall be replaced with
24 “veterinary premises” and “veterinarian,” and except that only
25 a licensed veterinarian or a licensed registered veterinarian
26 technician under direct supervision of a veterinarian may perform
27 compounding and shall not delegate to or supervise any part of
28 the performance of compounding by any other person.

29 *SEC. 10. Section 4826.3 is added to the Business and*
30 *Professions Code, to read:*

31 4826.3. (a) Notwithstanding Section 4051, a veterinarian or
32 registered veterinarian technician under the direct supervision of
33 a veterinarian with a current and active license may compound a
34 drug for anesthesia, the prevention, cure, or relief of a wound,
35 fracture, bodily injury, or disease of an animal in a premises
36 currently and actively registered with the board and only under
37 the following conditions:

38 (1) Where there is no FDA-approved animal or human drug
39 that can be used as labeled or in an appropriate extralabel manner

1 to properly treat the disease, symptom, or condition for which the
2 drug is being prescribed.

3 (2) Where the compounded drug is not available from a
4 compounding pharmacy, outsourcing facility, or other
5 compounding supplier in a dosage form and concentration to
6 appropriately treat the disease, symptom, or condition for which
7 the drug is being prescribed.

8 (3) Where the need and prescription for the compounded
9 medication has arisen within an established
10 veterinarian-client-patient relationship as a means to treat a
11 specific occurrence of a disease, symptom, or condition observed
12 and diagnosed by the veterinarian in a specific animal that
13 threatens the health of the animal or will cause suffering or death
14 if left untreated.

15 (4) Where the quantity compounded does not exceed a quantity
16 demonstrably needed to treat a patient with which the veterinarian
17 has a current veterinarian-client-patient relationship.

18 (5) Except as specified in subdivision (c), where the compound
19 is prepared only with commercially available FDA-approved
20 animal or human drugs as active ingredients.

21 (b) A compounded veterinary drug may be prepared from an
22 FDA-approved animal or human drug for extralabel use only when
23 there is no approved animal or human drug that, when used as
24 labeled or in an appropriate extralabel manner will, in the
25 available dosage form and concentration, treat the disease,
26 symptom, or condition. Compounding from an approved human
27 drug for use in food-producing animals is not permitted if an
28 approved animal drug can be used for compounding.

29 (c) A compounded veterinary drug may be prepared from bulk
30 drug substances only when:

31 (1) The drug is compounded and dispensed by the veterinarian
32 to treat an individually identified animal patient under his or her
33 care.

34 (2) The drug is not intended for use in food-producing animals.

35 (3) If the drug contains a bulk drug substance that is a
36 component of any marketed FDA-approved animal or human drug,
37 there is a change between the compounded drug and the
38 comparable marketed drug made for an individually identified
39 animal patient that produces a clinical difference for that
40 individually identified animal patient, as determined by the

1 veterinarian prescribing the compounded drug for his or her
2 patient.

3 (4) There are no FDA-approved animal or human drugs that
4 can be used as labeled or in an appropriate extralabel manner to
5 properly treat the disease, symptom, or condition for which the
6 drug is being prescribed.

7 (5) All bulk drug substances used in compounding are
8 manufactured by an establishment registered under Section 360
9 of Title 21 of the United States Code and are accompanied by a
10 valid certificate of analysis.

11 (6) The drug is not sold or transferred by the veterinarian
12 compounding the drug, except that the veterinarian shall be
13 permitted to administer the drug to a patient under his or her care
14 or dispense it to the owner or caretaker of an animal under his or
15 her care.

16 (7) Within 15 days of becoming aware of any product defect or
17 serious adverse event associated with any drug compounded by
18 the veterinarian from bulk drug substances, the veterinarian shall
19 report it to the federal Food and Drug Administration on Form
20 FDA 1932a.

21 (8) In addition to any other requirements, the label of any
22 veterinary drug compounded from bulk drug substances shall
23 indicate the species of the intended animal patient, the name of
24 the animal patient, and the name of the owner or caretaker of the
25 patient.

26 (d) Each compounded veterinary drug preparation shall meet
27 the labeling requirements of Section 4076 and Sections 1707.5
28 and 1735.4 of Title 16 of the California Code of Regulations, except
29 that every reference therein to “pharmacy” and “pharmacist”
30 shall be replaced by “veterinary premises” and “veterinarian,”
31 and any reference to “patient” shall be understood to refer to the
32 animal patient. In addition, each label on a compounded veterinary
33 drug preparation shall include withdrawal and holding times, if
34 needed, and the disease, symptom, or condition for which the drug
35 is being prescribed. Any compounded veterinary drug preparation
36 that is intended to be sterile, including for injection, administration
37 into the eye, or inhalation, shall in addition meet the labeling
38 requirements of Section 1751.2 of Title 16 of the California Code
39 of Regulations, except that every reference therein to “pharmacy”
40 and “pharmacist” shall be replaced by “veterinary premises” and

1 “veterinarian,” and any reference to “patient” shall be understood
2 to refer to the animal patient.

3 (e) Any veterinarian, registered veterinarian technician who is
4 under the direct supervision of a veterinarian, and veterinary
5 premises engaged in compounding shall meet the compounding
6 requirements for pharmacies and pharmacists stated by the
7 provisions of Article 4.5 (commencing with Section 1735) of Title
8 16 of the California Code of Regulations, except that every
9 reference therein to “pharmacy” and “pharmacist” shall be
10 replaced by “veterinary premises” and “veterinarian,” and any
11 reference to “patient” shall be understood to refer to the animal
12 patient:

13 (1) Section 1735.1 of Title 16 of the California Code of
14 Regulations.

15 (2) Subdivisions (d),(e), (f), (g), (h), (i), (j), (k), and (l) of Section
16 1735.2 of Title 16 of the California Code of Regulations.

17 (3) Section 1735.3 of Title 16 of the California Code of
18 Regulations, except that only a licensed veterinarian or registered
19 veterinarian technician may perform compounding and shall not
20 delegate to or supervise any part of the performance of
21 compounding by any other person.

22 (4) Section 1735.4 of Title 16 of the California Code of
23 Regulations.

24 (5) Section 1735.5 of Title 16 of the California Code of
25 Regulations.

26 (6) Section 1735.6 of Title 16 of the California Code of
27 Regulations.

28 (7) Section 1735.7 of Title 16 of the California Code of
29 Regulations.

30 (8) Section 1735.8 of Title 16 of the California Code of
31 Regulations.

32 (f) Any veterinarian, registered veterinarian technician under
33 the direct supervision of a veterinarian, and veterinary premises
34 engaged in sterile compounding shall meet the sterile compounding
35 requirements for pharmacies and pharmacists under Article 7
36 (commencing with Section 1751) of Title 16 of the California Code
37 of Regulations, except that every reference therein to “pharmacy”
38 and “pharmacist” shall be replaced by “veterinary premises” and
39 “veterinarian,” and any reference to “patient” shall be understood
40 to refer to the animal patient.

1 (g) *The California State Board of Pharmacy shall have authority*
 2 *with the board to ensure compliance with this section and shall*
 3 *have the right to inspect any veterinary premises engaged in*
 4 *compounding, along with or separate from the board, to ensure*
 5 *compliance with this section. The board is specifically charged*
 6 *with enforcing this section with regard to its licensees.*

7 *SEC. 11. Section 4826.5 is added to the Business and*
 8 *Professions Code, to read:*

9 *4826.5. Failure by a licensed veterinarian, registered*
 10 *veterinarian technician, or veterinary premises to comply with the*
 11 *provisions of this article shall be deemed unprofessional conduct*
 12 *and constitute grounds for discipline.*

13 *SEC. 12. Section 4826.7 is added to the Business and*
 14 *Professions Code, to read:*

15 *4826.7. The board may adopt regulations to implement the*
 16 *provisions of this article.*

17 *SEC. 13. Section 4830 of the Business and Professions Code*
 18 *is amended to read:*

19 4830. (a) This chapter does not apply to:

20 (1) Veterinarians while serving in any armed branch of the
 21 military service of the United States or the United States
 22 Department of Agriculture while actually engaged and employed
 23 in their official capacity.

24 (2) Regularly licensed veterinarians in actual consultation from
 25 other states.

26 (3) Regularly licensed veterinarians actually called from other
 27 states to attend cases in this state, but who do not open an office
 28 or appoint a place to do business within this state.

29 ~~(4) Veterinarians employed by the University of California~~
 30 ~~while engaged in the performance of duties in connection with the~~
 31 ~~College of Agriculture, the Agricultural Experiment Station, the~~
 32 ~~School of Veterinary Medicine, or the agricultural extension work~~
 33 ~~of the university or employed by the Western University of Health~~
 34 ~~Sciences while engaged in the performance of duties in connection~~
 35 ~~with the College of Veterinary Medicine or the agricultural~~
 36 ~~extension work of the university.~~

37 ~~(5)~~

38 (4) Students in the School of Veterinary Medicine of the
 39 University of California or the College of Veterinary Medicine of
 40 the Western University of Health Sciences who participate in

1 diagnosis and treatment as part of their educational experience,
2 including those in off-campus educational programs under the
3 direct supervision of a licensed veterinarian in good standing, as
4 defined in paragraph (1) of subdivision (b) of Section 4848,
5 appointed by the University of California, Davis, or the Western
6 University of Health Sciences.

7 ~~(6)~~

8 (5) A veterinarian who is employed by the Meat and Poultry
9 Inspection Branch of the California Department of Food and
10 Agriculture while actually engaged and employed in his or her
11 official capacity. A person exempt under this paragraph shall not
12 otherwise engage in the practice of veterinary medicine unless he
13 or she is issued a license by the board.

14 ~~(7)~~

15 (6) Unlicensed personnel employed by the Department of Food
16 and Agriculture or the United States Department of Agriculture
17 when in the course of their duties they are directed by a veterinarian
18 supervisor to conduct an examination, obtain biological specimens,
19 apply biological tests, or administer medications or biological
20 products as part of government disease or condition monitoring,
21 investigation, control, or eradication activities.

22 (b) (1) For purposes of paragraph (3) of subdivision (a), a
23 regularly licensed veterinarian in good standing who is called from
24 another state by a law enforcement agency or animal control
25 agency, as defined in Section 31606 of the Food and Agricultural
26 Code, to attend to cases that are a part of an investigation of an
27 alleged violation of federal or state animal fighting or animal
28 cruelty laws within a single geographic location shall be exempt
29 from the licensing requirements of this chapter if the law
30 enforcement agency or animal control agency determines that it
31 is necessary to call the veterinarian in order for the agency or
32 officer to conduct the investigation in a timely, efficient, and
33 effective manner. In determining whether it is necessary to call a
34 veterinarian from another state, consideration shall be given to the
35 availability of veterinarians in this state to attend to these cases.
36 An agency, department, or officer that calls a veterinarian pursuant
37 to this subdivision shall notify the board of the investigation.

38 (2) Notwithstanding any other provision of this chapter, a
39 regularly licensed veterinarian in good standing who is called from
40 another state to attend to cases that are a part of an investigation

1 described in paragraph (1) may provide veterinary medical care
2 for animals that are affected by the investigation with a temporary
3 shelter facility, and the temporary shelter facility shall be exempt
4 from the registration requirement of Section 4853 if all of the
5 following conditions are met:

6 (A) The temporary shelter facility is established only for the
7 purpose of the investigation.

8 (B) The temporary shelter facility provides veterinary medical
9 care, shelter, food, and water only to animals that are affected by
10 the investigation.

11 (C) The temporary shelter facility complies with Section 4854.

12 (D) The temporary shelter facility exists for not more than 60
13 days, unless the law enforcement agency or animal control agency
14 determines that a longer period of time is necessary to complete
15 the investigation.

16 (E) Within 30 calendar days upon completion of the provision
17 of veterinary health care services at a temporary shelter facility
18 established pursuant to this section, the veterinarian called from
19 another state by a law enforcement agency or animal control agency
20 to attend to a case shall file a report with the board. The report
21 shall contain the date, place, type, and general description of the
22 care provided, along with a listing of the veterinary health care
23 practitioners who participated in providing that care.

24 (c) For purposes of paragraph (3) of subdivision (a), the board
25 may inspect temporary facilities established pursuant to this
26 section.

27 *SEC. 14. Section 4846.5 of the Business and Professions Code*
28 *is amended to read:*

29 4846.5. (a) Except as provided in this section, the board shall
30 issue renewal licenses only to those applicants that have completed
31 a minimum of 36 hours of continuing education in the preceding
32 two years.

33 (b) (1) Notwithstanding any other law, continuing education
34 hours shall be earned by attending courses relevant to veterinary
35 medicine and sponsored or cosponsored by any of the following:

36 (A) American Veterinary Medical Association (AVMA)
37 accredited veterinary medical colleges.

38 (B) Accredited colleges or universities offering programs
39 relevant to veterinary medicine.

40 (C) The American Veterinary Medical Association.

1 (D) American Veterinary Medical Association recognized
2 specialty or affiliated allied groups.

3 (E) American Veterinary Medical Association's affiliated state
4 veterinary medical associations.

5 (F) Nonprofit annual conferences established in conjunction
6 with state veterinary medical associations.

7 (G) Educational organizations affiliated with the American
8 Veterinary Medical Association or its state affiliated veterinary
9 medical associations.

10 (H) Local veterinary medical associations affiliated with the
11 California Veterinary Medical Association.

12 (I) Federal, state, or local government agencies.

13 (J) Providers accredited by the Accreditation Council for
14 Continuing Medical Education (ACCME) or approved by the
15 American Medical Association (AMA), providers recognized by
16 the American Dental Association Continuing Education
17 Recognition Program (ADA CERP), and AMA or ADA affiliated
18 state, local, and specialty organizations.

19 (2) Continuing education credits shall be granted to those
20 veterinarians taking self-study courses, which may include, but
21 are not limited to, reading journals, viewing video recordings, or
22 listening to audio recordings. The taking of these courses shall be
23 limited to no more than six hours biennially.

24 (3) The board may approve other continuing veterinary medical
25 education providers not specified in paragraph (1).

26 (A) The board has the authority to recognize national continuing
27 education approval bodies for the purpose of approving continuing
28 education providers not specified in paragraph (1).

29 (B) Applicants seeking continuing education provider approval
30 shall have the option of applying to the board or to a
31 board-recognized national approval body.

32 (4) For good cause, the board may adopt an order specifying,
33 on a prospective basis, that a provider of continuing veterinary
34 medical education authorized pursuant to paragraph (1) or (3) is
35 no longer an acceptable provider.

36 (5) Continuing education hours earned by attending courses
37 sponsored or cosponsored by those entities listed in paragraph (1)
38 between January 1, 2000, and January 1, 2001, shall be credited
39 toward a veterinarian's continuing education requirement under
40 this section.

1 (c) Every person renewing his or her license issued pursuant to
 2 Section 4846.4, or any person applying for relicensure or for
 3 reinstatement of his or her license to active status, shall submit
 4 proof of compliance with this section to the board certifying that
 5 he or she is in compliance with this section. Any false statement
 6 submitted pursuant to this section shall be a violation subject to
 7 Section 4831.

8 (d) This section shall not apply to a veterinarian’s first license
 9 renewal. This section shall apply only to second and subsequent
 10 license renewals granted on or after January 1, 2002.

11 (e) The board shall have the right to audit the records of all
 12 applicants to verify the completion of the continuing education
 13 requirement. Applicants shall maintain records of completion of
 14 required continuing education coursework for a period of four
 15 years and shall make these records available to the board for
 16 auditing purposes upon request. If the board, during this audit,
 17 questions whether any course reported by the veterinarian satisfies
 18 the continuing education requirement, the veterinarian shall provide
 19 information to the board concerning the content of the course; the
 20 name of its sponsor and cosponsor, if any; and specify the specific
 21 curricula that was of benefit to the veterinarian.

22 (f) A veterinarian desiring an inactive license or to restore an
 23 inactive license under Section 701 shall submit an application on
 24 a form provided by the board. In order to restore an inactive license
 25 to active status, the veterinarian shall have completed a minimum
 26 of 36 hours of continuing education within the last two years
 27 preceding application. The inactive license status of a veterinarian
 28 shall not deprive the board of its authority to institute or continue
 29 a disciplinary action against a licensee.

30 (g) Knowing misrepresentation of compliance with this article
 31 by a veterinarian constitutes unprofessional conduct and grounds
 32 for disciplinary action or for the issuance of a citation and the
 33 imposition of a civil penalty pursuant to Section 4883.

34 (h) The board, in its discretion, may exempt from the continuing
 35 education requirement any veterinarian who for reasons of health,
 36 military service, or undue hardship cannot meet those requirements.
 37 Applications for waivers shall be submitted on a form provided
 38 by the board.

39 (i) The administration of this section may be funded through
 40 professional license and continuing education provider fees. The

1 fees related to the administration of this section shall not exceed
2 the costs of administering the corresponding provisions of this
3 section.

4 (j) For those continuing education providers not listed in
5 paragraph (1) of subdivision (b), the board or its recognized
6 national approval agent shall establish criteria by which a provider
7 of continuing education shall be approved. The board shall initially
8 review and approve these criteria and may review the criteria as
9 needed. The board or its recognized agent shall monitor, maintain,
10 and manage related records and data. The board may impose an
11 application fee, not to exceed two hundred dollars (\$200)
12 biennially, for continuing education providers not listed in
13 paragraph (1) of subdivision (b).

14 (k) (1) ~~On or after~~ Beginning January 1, 2018, a licensed
15 veterinarian who renews his or her license shall complete a
16 minimum of one credit hour of continuing education on the
17 judicious use of medically important antimicrobial drugs every
18 four years as part of his or her continuing education requirements.

19 (2) For purposes of this subdivision, “medically important
20 antimicrobial drug” means an antimicrobial drug listed in Appendix
21 A of the federal Food and Drug Administration’s Guidance for
22 Industry #152, including critically important, highly important,
23 and important antimicrobial drugs, as that appendix may be
24 amended.

25 *SEC. 15. Section 4848.1 is added to the Business and*
26 *Professions Code, to read:*

27 *4848.1. (a) A veterinarian engaged in the practice of veterinary*
28 *medicine, as defined in Section 4826, employed by the University*
29 *of California while engaged in the performance of duties in*
30 *connection with the School of Veterinary Medicine or employed*
31 *by the Western University of Health Sciences while engaged in the*
32 *performance of duties in connection with the College of Veterinary*
33 *Medicine shall be licensed in California or shall hold a university*
34 *license issued by the board.*

35 *(b) An applicant is eligible to hold a university license if all of*
36 *the following are satisfied:*

37 *(1) The applicant is currently employed by the University of*
38 *California or Western University of Health Sciences as defined in*
39 *subdivision (a).*

1 (2) *Passes an examination concerning the statutes and*
2 *regulations of the Veterinary Medicine Practice Act, administered*
3 *by the board, pursuant to subparagraph (C) of paragraph (2) of*
4 *subdivision (a) of Section 4848.*

5 (3) *Successfully completes the approved educational curriculum*
6 *described in paragraph (5) of subdivision (b) of Section 4848 on*
7 *regionally specific and important diseases and conditions.*

8 (c) *A university license:*

9 (1) *Shall be numbered as described in Section 4847.*

10 (2) *Shall cease to be valid upon termination of employment by*
11 *the University of California or by the Western University of Health*
12 *Sciences.*

13 (3) *Shall be subject to the license renewal provisions in Section*
14 *4846.4.*

15 (4) *Shall be subject to denial, revocation, or suspension pursuant*
16 *to Sections 4875 and 4883.*

17 (d) *An individual who holds a University License is exempt from*
18 *satisfying the license renewal requirements of Section 4846.5.*

19 SEC. 16. *Section 4853.7 is added to the Business and*
20 *Professions Code, to read:*

21 4853.7. *A premise registration that is not renewed within five*
22 *years after its expiration may not be renewed and shall not be*
23 *restored, reissued, or reinstated thereafter. However, an*
24 *application for a new premise registration may be submitted and*
25 *obtained if both of the following conditions are met:*

26 (a) *No fact, circumstance, or condition exists that, if the premise*
27 *registration was issued, would justify its revocation or suspension.*

28 (b) *All of the fees that would be required for the initial premise*
29 *registration are paid at the time of application.*

30 SEC. 17. *Section 825 of the Government Code is amended to*
31 *read:*

32 825. (a) *Except as otherwise provided in this section, if an*
33 *employee or former employee of a public entity requests the public*
34 *entity to defend him or her against any claim or action against him*
35 *or her for an injury arising out of an act or omission occurring*
36 *within the scope of his or her employment as an employee of the*
37 *public entity and the request is made in writing not less than 10*
38 *days before the day of trial, and the employee or former employee*
39 *reasonably cooperates in good faith in the defense of the claim or*
40 *action, the public entity shall pay any judgment based thereon or*

1 any compromise or settlement of the claim or action to which the
2 public entity has agreed.

3 If the public entity conducts the defense of an employee or
4 former employee against any claim or action with his or her
5 reasonable good-faith cooperation, the public entity shall pay any
6 judgment based thereon or any compromise or settlement of the
7 claim or action to which the public entity has agreed. However,
8 where the public entity conducted the defense pursuant to an
9 agreement with the employee or former employee reserving the
10 rights of the public entity not to pay the judgment, compromise,
11 or settlement until it is established that the injury arose out of an
12 act or omission occurring within the scope of his or her
13 employment as an employee of the public entity, the public entity
14 is required to pay the judgment, compromise, or settlement only
15 if it is established that the injury arose out of an act or omission
16 occurring in the scope of his or her employment as an employee
17 of the public entity.

18 Nothing in this section authorizes a public entity to pay that part
19 of a claim or judgment that is for punitive or exemplary damages.

20 (b) Notwithstanding subdivision (a) or any other provision of
21 law, a public entity is authorized to pay that part of a judgment
22 that is for punitive or exemplary damages if the governing body
23 of that public entity, acting in its sole discretion except in cases
24 involving an entity of the state government, finds all of the
25 following:

26 (1) The judgment is based on an act or omission of an employee
27 or former employee acting within the course and scope of his or
28 her employment as an employee of the public entity.

29 (2) At the time of the act giving rise to the liability, the employee
30 or former employee acted, or failed to act, in good faith, without
31 actual malice and in the apparent best interests of the public entity.

32 (3) Payment of the claim or judgment would be in the best
33 interests of the public entity.

34 As used in this subdivision with respect to an entity of state
35 government, “a decision of the governing body” means the
36 approval of the Legislature for payment of that part of a judgment
37 that is for punitive damages or exemplary damages, upon
38 recommendation of the appointing power of the employee or
39 former employee, based upon the finding by the Legislature and
40 the appointing authority of the existence of the three conditions

1 for payment of a punitive or exemplary damages claim. The
2 provisions of subdivision (a) of Section 965.6 shall apply to the
3 payment of any claim pursuant to this subdivision.

4 The discovery of the assets of a public entity and the introduction
5 of evidence of the assets of a public entity shall not be permitted
6 in an action in which it is alleged that a public employee is liable
7 for punitive or exemplary damages.

8 The possibility that a public entity may pay that part of a
9 judgment that is for punitive damages shall not be disclosed in any
10 trial in which it is alleged that a public employee is liable for
11 punitive or exemplary damages, and that disclosure shall be
12 grounds for a mistrial.

13 (c) Except as provided in subdivision (d), if the provisions of
14 this section are in conflict with the provisions of a memorandum
15 of understanding reached pursuant to Chapter 10 (commencing
16 with Section 3500) of Division 4 of Title 1, the memorandum of
17 understanding shall be controlling without further legislative action,
18 except that if those provisions of a memorandum of understanding
19 require the expenditure of funds, the provisions shall not become
20 effective unless approved by the Legislature in the annual Budget
21 Act.

22 (d) The subject of payment of punitive damages pursuant to this
23 section or any other provision of law shall not be a subject of meet
24 and confer under the provisions of Chapter 10 (commencing with
25 Section 3500) of Division 4 of Title 1, or pursuant to any other
26 law or authority.

27 (e) Nothing in this section shall affect the provisions of Section
28 818 prohibiting the award of punitive damages against a public
29 entity. This section shall not be construed as a waiver of a public
30 entity's immunity from liability for punitive damages under Section
31 1981, 1983, or 1985 of Title 42 of the United States Code.

32 (f) (1) Except as provided in paragraph (2), a public entity shall
33 not pay a judgment, compromise, or settlement arising from a
34 claim or action against an elected official, if the claim or action is
35 based on conduct by the elected official by way of tortiously
36 intervening or attempting to intervene in, or by way of tortiously
37 influencing or attempting to influence the outcome of, any judicial
38 action or proceeding for the benefit of a particular party by
39 contacting the trial judge or any commissioner, court-appointed
40 arbitrator, court-appointed mediator, or court-appointed special

1 referee assigned to the matter, or the court clerk, bailiff, or marshal
2 after an action has been filed, unless he or she was counsel of
3 record acting lawfully within the scope of his or her employment
4 on behalf of that party. Notwithstanding Section 825.6, if a public
5 entity conducted the defense of an elected official against such a
6 claim or action and the elected official is found liable by the trier
7 of fact, the court shall order the elected official to pay to the public
8 entity the cost of that defense.

9 (2) If an elected official is held liable for monetary damages in
10 the action, the plaintiff shall first seek recovery of the judgment
11 against the assets of the elected official. If the elected official's
12 assets are insufficient to satisfy the total judgment, as determined
13 by the court, the public entity may pay the deficiency if the public
14 entity is authorized by law to pay that judgment.

15 (3) To the extent the public entity pays any portion of the
16 judgment or is entitled to reimbursement of defense costs pursuant
17 to paragraph (1), the public entity shall pursue all available
18 creditor's remedies against the elected official, including
19 garnishment, until that party has fully reimbursed the public entity.

20 (4) This subdivision shall not apply to any criminal or civil
21 enforcement action brought in the name of the people of the State
22 of California by an elected district attorney, city attorney, or
23 attorney general.

24 (g) *Notwithstanding subdivision (a), a public entity shall pay*
25 *for a judgment or settlement for treble damage antitrust awards*
26 *against a member of a regulatory board for an act or omission*
27 *occurring within the scope of his or her employment as a member*
28 *of a regulatory board.*

29 *SEC. 18. Section 11346.5 of the Government Code is amended*
30 *to read:*

31 11346.5. (a) The notice of proposed adoption, amendment, or
32 repeal of a regulation shall include the following:

33 (1) A statement of the time, place, and nature of proceedings
34 for adoption, amendment, or repeal of the regulation.

35 (2) Reference to the authority under which the regulation is
36 proposed and a reference to the particular code sections or other
37 provisions of law that are being implemented, interpreted, or made
38 specific.

1 (3) An informative digest drafted in plain English in a format
2 similar to the Legislative Counsel’s digest on legislative bills. The
3 informative digest shall include the following:

4 (A) A concise and clear summary of existing laws and
5 regulations, if any, related directly to the proposed action and of
6 the effect of the proposed action.

7 (B) If the proposed action differs substantially from an existing
8 comparable federal regulation or statute, a brief description of the
9 significant differences and the full citation of the federal regulations
10 or statutes.

11 (C) A policy statement overview explaining the broad objectives
12 of the regulation and the specific benefits anticipated by the
13 proposed adoption, amendment, or repeal of a regulation, including,
14 to the extent applicable, nonmonetary benefits such as the
15 protection of public health and safety, worker safety, or the
16 environment, the prevention of discrimination, the promotion of
17 fairness or social equity, and the increase in openness and
18 transparency in business and government, among other things.

19 (D) An evaluation of whether the proposed regulation is
20 inconsistent or incompatible with existing state regulations.

21 (4) Any other matters as are prescribed by statute applicable to
22 the specific state agency or to any specific regulation or class of
23 regulations.

24 (5) A determination as to whether the regulation imposes a
25 mandate on local agencies or school districts and, if so, whether
26 the mandate requires state reimbursement pursuant to Part 7
27 (commencing with Section 17500) of Division 4.

28 (6) An estimate, prepared in accordance with instructions
29 adopted by the Department of Finance, of the cost or savings to
30 any state agency, the cost to any local agency or school district
31 that is required to be reimbursed under Part 7 (commencing with
32 Section 17500) of Division 4, other nondiscretionary cost or
33 savings imposed on local agencies, and the cost or savings in
34 federal funding to the state.

35 For purposes of this paragraph, “cost or savings” means
36 additional costs or savings, both direct and indirect, that a public
37 agency necessarily incurs in reasonable compliance with
38 regulations.

39 (7) If a state agency, in proposing to adopt, amend, or repeal
40 any administrative regulation, makes an initial determination that

1 the action may have a significant, statewide adverse economic
2 impact directly affecting business, including the ability of
3 California businesses to compete with businesses in other states,
4 it shall include the following information in the notice of proposed
5 action:

6 (A) Identification of the types of businesses that would be
7 affected.

8 (B) A description of the projected reporting, recordkeeping, and
9 other compliance requirements that would result from the proposed
10 action.

11 (C) The following statement: “The (name of agency) has made
12 an initial determination that the (adoption/amendment/repeal) of
13 this regulation may have a significant, statewide adverse economic
14 impact directly affecting business, including the ability of
15 California businesses to compete with businesses in other states.
16 The (name of agency) (has/has not) considered proposed
17 alternatives that would lessen any adverse economic impact on
18 business and invites you to submit proposals. Submissions may
19 include the following considerations:

20 (i) The establishment of differing compliance or reporting
21 requirements or timetables that take into account the resources
22 available to businesses.

23 (ii) Consolidation or simplification of compliance and reporting
24 requirements for businesses.

25 (iii) The use of performance standards rather than prescriptive
26 standards.

27 (iv) Exemption or partial exemption from the regulatory
28 requirements for businesses.”

29 (8) If a state agency, in adopting, amending, or repealing any
30 administrative regulation, makes an initial determination that the
31 action will not have a significant, statewide adverse economic
32 impact directly affecting business, including the ability of
33 California businesses to compete with businesses in other states,
34 it shall make a declaration to that effect in the notice of proposed
35 action. In making this declaration, the agency shall provide in the
36 record facts, evidence, documents, testimony, or other evidence
37 upon which the agency relies to support its initial determination.

38 An agency’s initial determination and declaration that a proposed
39 adoption, amendment, or repeal of a regulation may have or will
40 not have a significant, adverse impact on businesses, including the

1 ability of California businesses to compete with businesses in other
2 states, shall not be grounds for the office to refuse to publish the
3 notice of proposed action.

4 (9) A description of all cost impacts, known to the agency at
5 the time the notice of proposed action is submitted to the office,
6 that a representative private person or business would necessarily
7 incur in reasonable compliance with the proposed action.

8 If no cost impacts are known to the agency, it shall state the
9 following:

10 “The agency is not aware of any cost impacts that a
11 representative private person or business would necessarily incur
12 in reasonable compliance with the proposed action.”

13 (10) A statement of the results of the economic impact
14 assessment required by subdivision (b) of Section 11346.3 or the
15 standardized regulatory impact analysis if required by subdivision
16 (c) of Section 11346.3, a summary of any comments submitted to
17 the agency pursuant to subdivision (f) of Section 11346.3 and the
18 agency’s response to those comments.

19 (11) The finding prescribed by subdivision (d) of Section
20 11346.3, if required.

21 (12) (A) A statement that the action would have a significant
22 effect on housing costs, if a state agency, in adopting, amending,
23 or repealing any administrative regulation, makes an initial
24 determination that the action would have that effect.

25 (B) The agency officer designated in paragraph ~~(14)~~ (15) shall
26 make available to the public, upon request, the agency’s evaluation,
27 if any, of the effect of the proposed regulatory action on housing
28 costs.

29 (C) The statement described in subparagraph (A) shall also
30 include the estimated costs of compliance and potential benefits
31 of a building standard, if any, that were included in the initial
32 statement of reasons.

33 (D) For purposes of model codes adopted pursuant to Section
34 18928 of the Health and Safety Code, the agency shall comply
35 with the requirements of this paragraph only if an interested party
36 has made a request to the agency to examine a specific section for
37 purposes of estimating the costs of compliance and potential
38 benefits for that section, as described in Section 11346.2.

39 (13) *If the regulatory action is submitted by a state board on*
40 *which a controlling number of decisionmakers are active market*

1 *participants in the market the board regulates, a statement that*
2 *the adopting agency has evaluated the impact of the proposed*
3 *regulation on competition, and that the proposed regulation*
4 *further a clearly articulated and affirmatively expressed state law*
5 *to restrain competition.*

6 ~~(13)~~

7 (14) A statement that the adopting agency must determine that
8 no reasonable alternative considered by the agency or that has
9 otherwise been identified and brought to the attention of the agency
10 would be more effective in carrying out the purpose for which the
11 action is proposed, would be as effective and less burdensome to
12 affected private persons than the proposed action, or would be
13 more cost effective to affected private persons and equally effective
14 in implementing the statutory policy or other provision of law. For
15 a major regulation, as defined by Section 11342.548, proposed on
16 or after November 1, 2013, the statement shall be based, in part,
17 upon the standardized regulatory impact analysis of the proposed
18 regulation, as required by Section 11346.3, as well as upon the
19 benefits of the proposed regulation identified pursuant to
20 subparagraph (C) of paragraph (3).

21 ~~(14)~~

22 (15) The name and telephone number of the agency
23 representative and designated backup contact person to whom
24 inquiries concerning the proposed administrative action may be
25 directed.

26 ~~(15)~~

27 (16) The date by which comments submitted in writing must
28 be received to present statements, arguments, or contentions in
29 writing relating to the proposed action in order for them to be
30 considered by the state agency before it adopts, amends, or repeals
31 a regulation.

32 ~~(16)~~

33 (17) Reference to the fact that the agency proposing the action
34 has prepared a statement of the reasons for the proposed action,
35 has available all the information upon which its proposal is based,
36 and has available the express terms of the proposed action, pursuant
37 to subdivision (b).

38 ~~(17)~~

39 (18) A statement that if a public hearing is not scheduled, any
40 interested person or his or her duly authorized representative may

1 request, no later than 15 days prior to the close of the written
2 comment period, a public hearing pursuant to Section 11346.8.

3 ~~(18)~~

4 (19) A statement indicating that the full text of a regulation
5 changed pursuant to Section 11346.8 will be available for at least
6 15 days prior to the date on which the agency adopts, amends, or
7 repeals the resulting regulation.

8 ~~(19)~~

9 (20) A statement explaining how to obtain a copy of the final
10 statement of reasons once it has been prepared pursuant to
11 subdivision (a) of Section 11346.9.

12 ~~(20)~~

13 (21) If the agency maintains an Internet Web site or other similar
14 forum for the electronic publication or distribution of written
15 material, a statement explaining how materials published or
16 distributed through that forum can be accessed.

17 ~~(21)~~

18 (22) If the proposed regulation is subject to Section 11346.6, a
19 statement that the agency shall provide, upon request, a description
20 of the proposed changes included in the proposed action, in the
21 manner provided by Section 11346.6, to accommodate a person
22 with a visual or other disability for which effective communication
23 is required under state or federal law and that providing the
24 description of proposed changes may require extending the period
25 of public comment for the proposed action.

26 (b) The agency representative designated in paragraph~~(14)~~ (15)
27 of subdivision (a) shall make available to the public upon request
28 the express terms of the proposed action. The representative shall
29 also make available to the public upon request the location of
30 public records, including reports, documentation, and other
31 materials, related to the proposed action. If the representative
32 receives an inquiry regarding the proposed action that the
33 representative cannot answer, the representative shall refer the
34 inquiry to another person in the agency for a prompt response.

35 (c) This section shall not be construed in any manner that results
36 in the invalidation of a regulation because of the alleged inadequacy
37 of the notice content or the summary or cost estimates, or the
38 alleged inadequacy or inaccuracy of the housing cost estimates, if
39 there has been substantial compliance with those requirements.

1 *SEC. 19. Section 11349 of the Government Code is amended*
2 *to read:*

3 11349. The following definitions govern the interpretation of
4 this chapter:

5 (a) “Necessity” means the record of the rulemaking proceeding
6 demonstrates by substantial evidence the need for a regulation to
7 effectuate the purpose of the statute, court decision, or other
8 provision of law that the regulation implements, interprets, or
9 makes specific, taking into account the totality of the record. For
10 purposes of this standard, evidence includes, but is not limited to,
11 facts, studies, and expert opinion.

12 (b) “Authority” means the provision of law which permits or
13 obligates the agency to adopt, amend, or repeal a regulation.

14 (c) “Clarity” means written or displayed so that the meaning of
15 regulations will be easily understood by those persons directly
16 affected by them.

17 (d) “Consistency” means being in harmony with, and not in
18 conflict with or contradictory to, existing statutes, court decisions,
19 or other provisions of law.

20 (e) “Reference” means the statute, court decision, or other
21 provision of law which the agency implements, interprets, or makes
22 specific by adopting, amending, or repealing a regulation.

23 (f) “Nonduplication” means that a regulation does not serve the
24 same purpose as a state or federal statute or another regulation.
25 This standard requires that an agency proposing to amend or adopt
26 a regulation must identify any state or federal statute or regulation
27 which is overlapped or duplicated by the proposed regulation and
28 justify any overlap or duplication. This standard is not intended
29 to prohibit state agencies from printing relevant portions of
30 enabling legislation in regulations when the duplication is necessary
31 to satisfy the clarity standard in paragraph (3) of subdivision (a)
32 of Section 11349.1. This standard is intended to prevent the
33 indiscriminate incorporation of statutory language in a regulation.

34 (g) “*Competitive impact*” means that the record of the
35 rulemaking proceeding or other documentation demonstrates that
36 the regulation is authorized by a clearly articulated and
37 affirmatively expressed state law, that the regulation furthers the
38 public protection mission of the state agency, and that the impact
39 on competition is justified in light of the applicable regulatory
40 rationale for the regulation.

1 *SEC. 20. Section 11349.1 of the Government Code is amended*
2 *to read:*

3 11349.1. (a) The office shall review all regulations adopted,
4 amended, or repealed pursuant to the procedure specified in Article
5 5 (commencing with Section 11346) and submitted to it for
6 publication in the California Code of Regulations Supplement and
7 for transmittal to the Secretary of State and make determinations
8 using all of the following standards:

9 (1) Necessity.

10 (2) Authority.

11 (3) Clarity.

12 (4) Consistency.

13 (5) Reference.

14 (6) Nonduplication.

15 (7) *For those regulations submitted by a state board on which*
16 *a controlling number of decisionmakers are active market*
17 *participants in the market the board regulates, the office shall*
18 *review for competitive impact.*

19 In reviewing regulations pursuant to this section, the office shall
20 restrict its review to the regulation and the record of the rulemaking
21 ~~proceeding~~ *except as directed in subdivision (h)*. The office shall
22 approve the regulation or order of repeal if it complies with the
23 standards set forth in this section and with this chapter.

24 (b) In reviewing proposed regulations for the criteria in
25 subdivision (a), the office may consider the clarity of the proposed
26 regulation in the context of related regulations already in existence.

27 (c) The office shall adopt regulations governing the procedures
28 it uses in reviewing regulations submitted to it. The regulations
29 shall provide for an orderly review and shall specify the methods,
30 standards, presumptions, and principles the office uses, and the
31 limitations it observes, in reviewing regulations to establish
32 compliance with the standards specified in subdivision (a). The
33 regulations adopted by the office shall ensure that it does not
34 substitute its judgment for that of the rulemaking agency as
35 expressed in the substantive content of adopted regulations.

36 (d) The office shall return any regulation subject to this chapter
37 to the adopting agency if any of the following occur:

38 (1) The adopting agency has not prepared the estimate required
39 by paragraph (6) of subdivision (a) of Section 11346.5 and has not

1 included the data used and calculations made and the summary
2 report of the estimate in the file of the rulemaking.

3 (2) The agency has not complied with Section 11346.3.
4 “Noncompliance” means that the agency failed to complete the
5 economic impact assessment or standardized regulatory impact
6 analysis required by Section 11346.3 or failed to include the
7 assessment or analysis in the file of the rulemaking proceeding as
8 required by Section 11347.3.

9 (3) The adopting agency has prepared the estimate required by
10 paragraph (6) of subdivision (a) of Section 11346.5, the estimate
11 indicates that the regulation will result in a cost to local agencies
12 or school districts that is required to be reimbursed under Part 7
13 (commencing with Section 17500) of Division 4, and the adopting
14 agency fails to do any of the following:

15 (A) Cite an item in the Budget Act for the fiscal year in which
16 the regulation will go into effect as the source from which the
17 Controller may pay the claims of local agencies or school districts.

18 (B) Cite an accompanying bill appropriating funds as the source
19 from which the Controller may pay the claims of local agencies
20 or school districts.

21 (C) Attach a letter or other documentation from the Department
22 of Finance which states that the Department of Finance has
23 approved a request by the agency that funds be included in the
24 Budget Bill for the next following fiscal year to reimburse local
25 agencies or school districts for the costs mandated by the
26 regulation.

27 (D) Attach a letter or other documentation from the Department
28 of Finance which states that the Department of Finance has
29 authorized the augmentation of the amount available for
30 expenditure under the agency’s appropriation in the Budget Act
31 which is for reimbursement pursuant to Part 7 (commencing with
32 Section 17500) of Division 4 to local agencies or school districts
33 from the unencumbered balances of other appropriations in the
34 Budget Act and that this augmentation is sufficient to reimburse
35 local agencies or school districts for their costs mandated by the
36 regulation.

37 (4) The proposed regulation conflicts with an existing state
38 regulation and the agency has not identified the manner in which
39 the conflict may be resolved.

1 (5) The agency did not make the alternatives determination as
2 required by paragraph (4) of subdivision (a) of Section 11346.9.

3 (6) *The office decides that the record of the rulemaking*
4 *proceeding or other documentation for the proposed regulation*
5 *does not demonstrate that the regulation is authorized by a clearly*
6 *articulated and affirmatively expressed state law, that the*
7 *regulation does not further the public protection mission of the*
8 *state agency, or that the impact on competition is not justified in*
9 *light of the applicable regulatory rationale for the regulation.*

10 (e) The office shall notify the Department of Finance of all
11 regulations returned pursuant to subdivision (d).

12 (f) The office shall return a rulemaking file to the submitting
13 agency if the file does not comply with subdivisions (a) and (b)
14 of Section 11347.3. Within three state working days of the receipt
15 of a rulemaking file, the office shall notify the submitting agency
16 of any deficiency identified. If no notice of deficiency is mailed
17 to the adopting agency within that time, a rulemaking file shall be
18 deemed submitted as of the date of its original receipt by the office.
19 A rulemaking file shall not be deemed submitted until each
20 deficiency identified under this subdivision has been corrected.

21 (g) Notwithstanding any other law, return of the regulation to
22 the adopting agency by the office pursuant to this section is the
23 exclusive remedy for a failure to comply with subdivision (c) of
24 Section 11346.3 or paragraph (10) of subdivision (a) of Section
25 11346.5.

26 (h) *The office may designate, employ, or contract for the services*
27 *of independent antitrust or applicable economic experts when*
28 *reviewing proposed regulations for competitive impact. When*
29 *reviewing a regulation for competitive impact, the office shall do*
30 *all of the following:*

31 (1) *If the Director of Consumer Affairs issued a written decision*
32 *pursuant to subdivision (c) of Section 109 of the Business and*
33 *Professions Code, the office shall review and consider the decision*
34 *and all supporting documentation in the rulemaking file.*

35 (2) *Consider whether the anticompetitive effects of the proposed*
36 *regulation are clearly outweighed by the public policy merits.*

37 (3) *Provide a written opinion setting forth the office's findings*
38 *and substantive conclusions under paragraph (2), including, but*
39 *not limited to, whether rejection or modification of the proposed*
40 *regulation is necessary to ensure that restraints of trade are related*

1 *to and advance the public policy underlying the applicable*
2 *regulatory rationale.*

3 *SEC. 21. No reimbursement is required by this act pursuant*
4 *to Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

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Physical Therapy Board of California

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

Physical Therapy Board of California

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Bill Analysis

Bill Number:	SB 1348	Version:	Introduced 2/19/16
Author:	Cannella	Sponsor:	The Author
Subject:	Licensure Applications: Military Experience	Status:	Senate- Appropriations Committee Suspense File

Adopted Position:
None.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Enrolled	Vetoed	Chaptered	Effective Date	2 yr./ Dead
1 st House				2 nd House								

Red: Current/completed status Gray: Not applicable

Existing Law

1. Provides for the licensure, registration and regulation of various professions and vocations by the boards, bureaus, committees, programs and commission (board(s)) within the Department.
2. Specifies that it is the policy of this state that persons with the skills, knowledge, and experiences obtained in the armed services should be permitted to apply this learning and contribute to the employment needs of this state at the maximum level of responsibility and skill for which they are qualified, and that to this end, that the rules and regulations of boards shall provide a method of evaluating education, training and experience obtained in the armed services and determine how it may be used to meet the licensure requirements for the particular business, or occupation, or profession regulated. (Business and Professions Code (BPC) § 35).
3. Requires after July 1, 2016, that a board within the Department expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged and provides that the board may adopt regulations necessary to implement this requirement. (BPC § 115.4).
4. States that it is the policy of the State of California that, consistent with high quality health care services, persons with skills, knowledge and experience obtained in the armed services of the United States should be permitted to apply such learning and contribute to the health manpower needs of the state at the maximum level of



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responsibility and skill for which they are qualified, and to this end, the rules and regulations of healing arts boards shall provide for methods of evaluating education, training, and experience obtained in military service if such training is applicable to the requirements of that profession. (BPC § 710).

5. Requires, by July 1, 2015, the Chancellor of the California Community Colleges, using common course descriptors and pertinent standards of the American Council on Education, to determine for which courses credit should be awarded for prior military experience. (Education Code § 66025.7)

This Bill

This bill would require each board, with governing law authorizing veterans to apply military experience and training towards licensure requirements, to modify their application for licensure to advise veteran applicants about their ability to apply that experience and training towards licensure requirements.

Background/Purpose

Background:

The Department currently oversees 39 licensing programs that issue more than two million licenses, registrations and certifications in nearly 200 professional categories. These licensing boards are charged with regulating a particular profession through licensure and enforcement programs. Each of these entities is responsible for enforcing the minimum qualifications for licensure that are established by statute and regulation. Licensure requirements vary in their specificity and flexibility. In many cases, the stated qualifications are specific and provide the regulating entity with little or no discretion over what experience or education can be accepted. Professional and occupational licensure requirements range from completing a form and paying a licensing fee to satisfying significant experience, education and exam requirements.

Purpose:

This bill is sponsored by the Author. According to the Author's office, "This bill would require each board, with a governing law authorizing veterans to apply military experience and training towards licensure requirements, to modify their application for licensure to advise veteran applicants about their ability to apply that experience and training towards licensure requirements. By building off of AB 1057 from 2013, this bill closes this technical gap in code, ensuring veterans receive notification in writing when applying for licensure in boards that accept military experience and training towards their licensure requirements."

Related Legislation

SB 1155 (Morrell) would require every board under the Department of Consumer Affairs to grant a waiver for the application and initial licensing fee to an honorably discharged veteran. (*Status: this bill is pending in the Senate Appropriations Committee.*)



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Prior Legislation

SB 466 (Hill, Chapter 489, Statutes of 2015) extended the sunset date on the Board of Registered Nursing (BRN) until January 1, 2018, required the California State Auditor's Office to conduct an audit of the BRN's enforcement program and required BRN to promulgate regulations to ensure that schools grant credit for military education and experience.

AB 1057 (Medina, Chapter 693, Statutes of 2013) required licensing boards within the Department of Consumer Affairs, beginning January 1, 2015, to ask on every application for licensure if the applicant is serving in, or has previously served in, the military.

AB 705 (Blumenfeld, 2013) required the BRN to promulgate regulations that identify the military education, training, and experience that is equivalent or transferable to coursework required for licensure as a registered nurse (RN) and, upon receipt of an applicant's record of education, training, and experience completed in the Armed Forces, provide the applicant with a list of coursework, if any, that the applicant must complete for license eligibility. (*Status: this bill was held in Assembly Appropriations Committee.*)

AB 704 (Blumenfeld, 2013) required the Emergency Medical Services Authority (EMSA) to adopt regulations by January 1, 2015, to accept the military education, training, and practical experience of applicants, as specified, towards certification as an Emergency Medical Technician (EMT)-I and EMT-II, and towards licensure as an EMT-Paramedic (EMT-P). (*Status: this bill was vetoed by the Governor.*)

Fiscal Impact:

1. One time cost of \$260,000 for the Department of Consumer Affairs to make necessary modifications to the BreZE system used to electronically process license applications and renewals by boards and bureaus within the Department (various funds).
2. One time cost of about \$100,000 for the Dental Board of California to amend various existing regulations regarding license applications to include the required information in the bill (State Dentistry Fund).
3. The Board of Registered Nursing has indicated that it would require significant additional staff resources to implement a process to evaluate how education and training gained in the military would translate into educational or training requirements for licensure by the Board and for increased application processing when it is necessary to evaluate military training or experience. Staff notes that



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current law already requires the Board to provide for methods to evaluate military training and experiences.

Support and Opposition

Support:

None.

Opposition:

None.

Comments

None.

Action Required

Board staff recommend a Watch position at this time.

Introduced by Senator Cannella

February 19, 2016

An act to amend Section 114.5 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, as introduced, Cannella. Licensure applications: military experience.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires each board to inquire in every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

This bill would require each board, with a governing law authorizing veterans to apply military experience and training towards licensure requirements, to modify their application for licensure to advise veteran applicants about their ability to apply that experience and training towards licensure requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 114.5 of the Business and Professions
- 2 Code is amended to read:
- 3 114.5. ~~Commencing January 1, 2015, each~~ (a) Each board
- 4 shall inquire in every application for licensure if the individual
- 5 applying for licensure is serving in, or has previously served in,
- 6 the military.

1 ***(b) If a board's governing law authorizes veterans to apply***
2 ***military experience and training towards licensure requirements,***
3 ***that board shall modify their application for licensure to advise***
4 ***veteran applicants about their ability to apply military experience***
5 ***and training towards licensure requirements.***

O



Physical Therapy Board of California

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

Physical Therapy Board of California

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Briefing Paper

Date: April 8, 2016
Prepared for: PTBC Members
Prepared by: Brooke Arneson
Subject: Rulemaking Report

Purpose:

To update the Board on the status of proposed rulemaking in progress.

Background:

At the November 2015 meeting, the Board adopted the 2016 Rulemaking Calendar as required by Government Code (GC) § 11017.6. The rulemaking calendar prepared pursuant to this section sets forth the Board's rulemaking plan for the year and is published by the Office of Administrative Law (OAL) in the California Regulatory Notice Register (Notice Register); the Notice Register is available on OAL's website:

http://www.oal.ca.gov/Notice_Register.htm

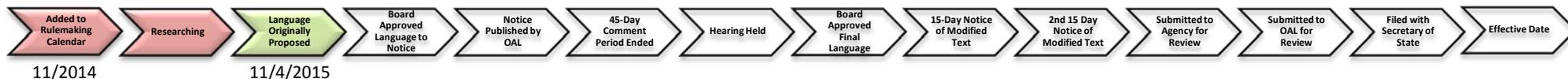
From the 2016 Rulemaking Calendar, staff developed a rulemaking tracking form on which all rulemaking progress is noted and reported to the Board at its quarterly meetings. Also included in this tracking form is rulemaking from the 2015 Rulemaking Calendar that is still in process or has recently commenced to provide an update to the Board.

Action Requested:

No action is requested on presentation of the rulemaking report; however, staff is requesting action which will be addressed during the presentation of agenda item 13(B).

2015/2016 Rulemaking Tracking Form

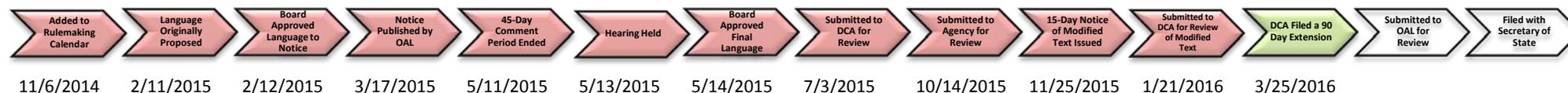
(2015/2016) License Renewal Exemptions: Retired Status



OAL No.:

Notes: Please see Agenda Item 13B).

(2015/16) Requirements for Graduates from Non-Accredited Programs: Test of English as a Foreign Language (TOEFL)



OAL No.: Notice File No. Z-2015-0317-07

Notes: Business and Profession Code (BPC) § 2653 was amended by Chapter 338, Statutes of 2013 (SB 198, Lieu), which added a provision requiring applicants who graduated from non-accredited physical therapist programs to demonstrate English proficiency by achieving a score specified by the Board on the TOEFL. Currently the passing score on the TOEFL is being reported by each credential evaluation service when an applicant’s education is evaluated. This regulation will provide for specific exemptions to the TOEFL requirement and set a Board established passing score.

The Language was modified per Agency’s recommendations and the 15 day Notice of Modified Text commenced on December 10th. Board staff updated the rulemaking file and it was returned to the Department for additional review. A 90 day extension was filed by the Department which will expire on June 25, 2016. The Department completed their review, and the file was resubmitted to Agency and was approved on April 27, 2016. The file was submitted to the Department of Finance for approval on April 28, 2016. The Board is aiming for a July 1, 2016 effective date.

Green: Current Status Red: Completed Grey: Not Applicable

Agenda Item 13(A) – Rulemaking Update

(2016) Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant/Coursework Tool



11/5/2015

OAL No.:

Notes:

Placed on the 2016 Rulemaking Calendar that was adopted at the Board meeting on November 5, 2015.

(2016) Examination Passing Standard/Setting Examination Score



11/5/2015

OAL No.:

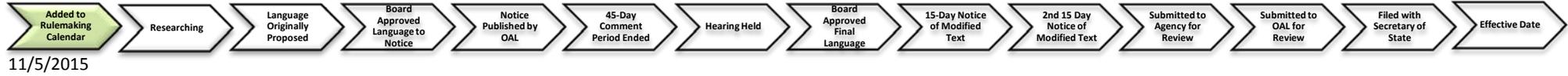
Notes:

Placed on the 2016 Rulemaking Calendar that was adopted at the Board meeting on November 5, 2015.

Green: Current Status Red: Completed Grey: Not Applicable

Agenda Item 13(A) – Rulemaking Update

(2016) License Renewal Exemptions: Disability



OAL No.:

Notes:

Placed on the 2016 Rulemaking Calendar that was adopted at the Board meeting on November 5, 2015.

(2016) Application and Licensing Regulations, Continuing Competency



OAL No.:

Notes:

Placed on the 2016 Rulemaking Calendar that was adopted at the Board meeting on November 5, 2015.

Green: Current Status Red: Completed Grey: Not Applicable

Agenda Item 13(A) – Rulemaking Update

(2016) Unprofessional Conduct



11/5/2015

OAL No.:

Notes:

Placed on the 2016 Rulemaking Calendar that was adopted at the Board meeting on November 5, 2015.

Green: Current Status Red: Completed Grey: Not Applicable

Agenda Item 13(A) – Rulemaking Update

Processing Times

- The “Added to Rulemaking Calendar” date is the date the Board adopts the Rulemaking Calendar.
- A rulemaking file must be completed within one year of the publication date of the Notice of Proposed Action. The OAL issues the Notice File Number upon filing the Notice of Proposed Action.
- The DCA is allowed thirty calendar days to review the rulemaking file prior to submission to the Dept. of Finance (DOF).
- The DOF is allowed thirty days to review the rulemaking file prior to submission to the OAL.
- The OAL is allowed thirty working days to review the file and determine whether to approve or disapprove it. The OAL issues the Regulatory Action Number upon submission of the rulemaking file for final review.
- Pursuant to Government Code section 11343.4, as amended by Section 2 of Chapter 295 of the Statutes of 2012 (SB 1099, Wright), regulation effective dates are as follows:

<u>Date Filed with the Secretary of State</u>	<u>Effective Date</u>
September 1 st – November 30 th	January 1 st
December 1 st – February 29 th	April 1 st
March 1 st – May 31 st	July 1 st
June 1 st – August 31 st	October 1st



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Physical Therapy Board of California

Briefing Paper

Date: April 8, 2016

Prepared for: PTBC Members

Prepared by: Brooke Arneson

Subject: Retired Status Requirements

Purpose: To propose language establishing procedures for a licensee with a current, valid and unrestricted license to apply for retired status.

- Attachments:**
1. [Proposed Regulatory Language](#)
 2. ["Request for Retired Status" form](#)
 3. ["Request to Restore Active License Status" form](#)

Background: SB 198 added Business and Professions Code (BPC) § 2648.7 to the Physical Therapy Practice Act (Act) when it was chaptered into law. The amendment to the Act exempts a licensee from the payment of the renewal fee and from meeting the requirements set forth in Section 2649 (Continuing Competency) if the licensee applies to the board for license status. A licensee in retired status pursuant to this section shall not engage in the practice of, or assist in the provision of, physical therapy unless the licensee applies for renewal and meets all of the renewal requirements set forth in Section 2644.

Analysis:

Article 4. Renewal of Licenses includes BPC Sections 2644 through 2649. This briefing paper will refer to the following specific sections:

BPC § 2644 requires:

- (a) *Every license shall expire at 12 a.m. on the last day of the birth month of the licensee during the second year of a two-year term, if not renewed.*
- (b) *To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board, pay the prescribed renewal fee, and submit proof of the completion of continuing competency required by the board pursuant to Section 2649. The licensee shall disclose on his or her license renewal application any misdemeanor or other criminal offense for which he or she has been found guilty or to which he or she has plead guilty or no contest.*

BPC § 2647

A person who fails to renew his or her license within five years after its expiration may not renew it, and it shall not be reissued, reinstated, or restored thereafter. However, the person may apply for a new license if he or she satisfies the requirements set forth in Article 3 (commencing with Section 2635).

BPC § 2648.7

A licensee is exempt from the payment of the renewal fee and from meeting the requirements set forth in Section 2649 if he or she has applied to the board for retired license status. A holder of a license in retired status pursuant to this section shall not engage in the practice of, or assist in the provision of, physical therapy unless the licensee applies for renewal and meets all of the requirements as set forth in Section 2644.

To further define, clarify and implement the Board's administration of the statute, staff proposes the following:

- A licensee applying for retired status shall have a current, valid and unrestricted license in order to enter into retired status. This prevents a licensee from entering into retired status to avoid payment of delinquent fees.
- The proposed language considers a license expired once it enters into retired status since it is no longer a license to practice.
- Denies a request for retired status to a licensee whose license is suspended, placed on probation, revoked, or is otherwise subject to disciplinary action, i.e. an Accusation has been filed. This prevents a licensee from entering into retired status and tolling probation.
- Since BPC § 2648.7 requires a licensee to apply to the Board for retired status and conversely BPC § 2644 requires a licensee to apply to the Board for renewal, the Board must develop a form for entering into and out of retired status.
- Clarifies the licensee is still under the jurisdiction of the Board while in retired status and therefore is required to comply with the Physical Therapy Practice Act and regulations governing the protection of consumers of physical therapy, i.e. maintain a current address, reporting requirements, etc.
- Requires the licensee in retired status to either reactive the license within five years from the date of expiration or go delinquent and the license will be cancelled in retired status. This is consistent with all licensees pursuant to BPC § 2647 thereby eliminating the Board's responsibility to ensure the licensee's compliance with the laws and regulations governing the protection of the consumers of physical therapy.

Action Requested:

Adopt the proposed language as written or modify the proposed language and direct staff to proceed with the rulemaking process. Amendments to the proposed language suggested by the Board at the November 2015 meeting are reflected in red text and strikeout for further discussion.

The Physical Therapy Board of California proposes to add section 1399.56 to Article 10, Division 13.2, Title 16 of the California Code of Regulations, to read as follows:

(a) A physical therapist or physical therapist assistant who holds a license that is current and valid, and whose license is not suspended, revoked, or otherwise restricted by the board or subject to discipline, may request retired status. A license shall be considered expired upon approval of the request.

(b) The board shall deny a request for retired license status if the license is suspended, placed on probation, revoked, ~~. or is otherwise subject to disciplinary action under this chapter.~~

(c) The request shall be on a form prescribed by the board titled “Request for Retired License Status (RS-112015).”

(d) The licensee shall disclose under penalty of perjury whether the licensee has any misdemeanor or other criminal offense for which he or she has been found guilty or to which he or she has pleaded guilty or no contest.

(e) A licensee in retired status shall not engage in any activity for which ~~an active~~ current and valid license is required.

(f) A licensee in retired status shall comply with the Physical Therapy Practice Act and Board’s regulations.

(g) In order to restore a license from retired status to active status, the licensee shall:

(1) Complete a form prescribed by the board titled “Request to Restore License to Active Status (AS-112015)”.

(2) Pay the ~~biennial~~ renewal fee. ~~.in effect at the time the request to restore the license to active status is received.~~

(3) Satisfy continuing competency requirements pursuant to section 2649 of the Code.

(h) A person who fails to ~~renew-restore~~ his or her retired license within five years ~~may shall -not renew-restore~~ it, and it shall ~~become expired and~~ not be reissued, reinstated, or restored thereafter. ~~However, t~~The person may apply for a new license if he or she satisfies the requirements set forth in Article 3.

(i) A licensee may be granted retired status on no more than two separate occasions.

(j) Failure to comply with this section is unprofessional conduct and grounds for citation or discipline.

Note: Authority cited: Sections 2615, Business and Professions Code. Reference: Sections 118, 125.9, 2647, 2648.7, 2660 and 2688, Business and Professions Code.

Request for Retired License Status

Failure to provide any requested data may prevent or significantly delay the processing of your request. Submit completed forms by mail, fax or email. You can verify your Retired status on the PTBC website under "Verify a License".

Licenses in Retired status are prohibited from engaging in the practice of, or assisting in the provision of, physical therapy services. Such licenses are exempt from the renewal fee and continuing competency requirements.

SECTION A: Personal Information			
License Type:	<input type="checkbox"/> PT	<input type="checkbox"/> PTA	License Number
First Name	Middle Name	Last Name	
Work Phone - -	Daytime Phone - -	Email Address	

SECTION B: Mandatory Conviction and License Disciplined Disclosure Question
<p>Since you last renewed your license, have you had any license disciplined by a government agency or other disciplinary body? Have you been convicted of or pled guilty or nolo contendere to any felony, misdemeanor, infraction or other criminal offense under the laws of any state, the United States, or a foreign country, including any conviction which has been dismissed under Section 1203.4 of the Penal Code? If you are awaiting judgment and sentencing following entry of a plea or jury verdict, you must still disclose the conviction.</p> <p style="text-align: center;"> <input type="checkbox"/> *Yes <input type="checkbox"/> No </p> <p><small>*If you answered yes to this question please provide details. If you have had a license disciplined, provide certified copies of the disciplinary order and any documentation of rehabilitation to the PTBC. If you have been convicted, please provide CERTIFIED TRUE COPIES of the court and arrest records for each criminal offense to the PTBC. Mail all documents within 30 days to: PTBC 2005 Evergreen Street, Suite 1350, Sacramento, CA 95815</small></p>

SECTION C: Declaration
<p>By signing below, I am requesting Retired Status. I understand that I am prohibited from engaging in the practice of, or assisting in the provision of physical therapy. I declare under penalty of perjury under the laws of the State of California that the information given above is true and correct; and, I am the person who was issued a license by the Physical Therapy Board of California.</p> <p>Signature: _____ Date: _____</p>

Request to Restore Active License Status

Failure to provide any requested data may prevent or significantly delay the processing of your request. Submit completed forms by mail, fax or email. You can verify your license status on the PTBC website under "Verify a License".

SECTION A: Personal Information			
License Type:	<input type="checkbox"/> PT	<input type="checkbox"/> PTA	License Number
First Name	Middle Name	Last Name	
Work Phone - -	Daytime Phone - -	Email Address	

SECTION B: Continuing Competency
<p>To obtain Active Status, the law requires that you complete continuing education equivalent to that required for a single renewal period of an active license. The continuing competency activity must have been completed within the last two years prior to applying to restore the license to active status. Continuing Competency completed more than two years before the request cannot be considered.</p> <p style="text-align: center;"><input type="checkbox"/> I have completed continuing education required as described above.</p>

SECTION C: Mandatory Conviction and License Disciplined Disclosure Question
<p>Since you last renewed your license, have you had any license disciplined by a government agency or other disciplinary body? Have you been convicted of or pled guilty or nolo contendere to any felony, misdemeanor, infraction or other criminal offense under the laws of any state, the United States, or a foreign country, including any conviction which has been dismissed under Section 1203.4 of the Penal Code? If you are awaiting judgment and sentencing following entry of a plea or jury verdict, you must still disclose the conviction.</p> <p style="text-align: center;"><input type="checkbox"/> *Yes <input type="checkbox"/> No</p> <p><small>*If you answered yes to this question please provide details. If you have had a license disciplined, provide certified copies of the disciplinary order and any documentation of rehabilitation to the PTBC. If you have been convicted, please provide CERTIFIED TRUE COPIES of the court and arrest records for each criminal offense to the PTBC. Mail all documents within 30 days to: PTBC 2005 Evergreen Street, Suite 1350, Sacramento, CA 95815</small></p>

SECTION D: Declaration
<p>By signing below, I am requesting to restore my license to Active Status. I declare under penalty of perjury under the laws of the State of California that the information given above is true, correct and that I am the person who was issued a license by the Physical Therapy Board of California.</p> <p>Signature: _____ Date: _____</p>



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Briefing Paper

Date: April 8, 2016
Prepared for: PTBC Members
Prepared by: Jason Kaiser
Subject: Physical Therapist (PT) & Physical Therapist Assistant (PTA)
License Status Codes

Purpose:

To update the Physical Therapy Board of California's (Board) Board Member on PT & PTA License Status Codes as they exist in the new BreEZe on-line licensing system

Background:

At the November 2015 PTBC Board meeting, during the Rulemaking report, proposed language for "License Renewal Exemptions – Retired Status" was discussed. Board members requested that definitions for each possible license status be provided by staff to aid in further discussion of the proposed language.

Analysis:

Attached is a License Status Legend. This legend provides descriptor, definition and code for all possible license status for both PT and PTA license.

Action Requested: None



Physical Therapy Board of California
License Status Legend



License Status	Definition – Publicly Displayed	Code
CURRENT	The license is current and valid until the expiration date. (Previously VALID)	20
CURRENT - INACTIVE	License is inactive. No practice is permitted while the license is inactive. Licensee is exempt from complying with the continuing competency requirements. (Previously INACTIVE)	21
CURRENT TEMP - FAMILY SUPPORT	Licensee issued a temporary 150-day license pursuant to Section 11350.6 of the Welfare and Institutions Code. Any questions should be directed to the Department of Consumer Affairs Family Support Unit at (916) 574-8018. The licensee may legally practice in California UNLESS the expiration date has passed, or the license has a second status of “denied.”	22
FAMILY SUPPORT SUSPENSION	Licensee suspended pursuant to Section 11350.6 of the Welfare and Institutions Code. No Practice permitted. Any questions should be directed to the Department of Consumer Affairs Family Support Unit at (916) 574-8018.	31
DELINQUENT	A license is delinquent if not renewed by its expiration date. No practice is permitted while the license is delinquent. Delinquent license may be renewed within five years of the expiration date.	45
SUSPENSION	License Suspended. For a copy of the disciplinary action, refer to Citations and Disciplinary Actions page on the Board's website www.ptb.ca.gov or fax a request to (916) 263-2560. It is not the intent of the Board that licensees, the fact that the licensee is disciplined, shall be used as the sole basis for any third party payor to remove licensee from any list of approved providers. (Previously SUSPENDED-DISCIPLINE)	48
CANCELLED	The license was delinquent for five years; cancelled, no longer valid and licensee prohibited from practice in California	50
RETIRED	License is Retired. No practice is permitted. Licensee is exempt from renewal fees and Continuing Competency.	51
VOLUNTARY SURRENDER	The licensee has voluntarily surrendered the license as the result of a disciplinary action, and is no longer licensed. For a copy of the disciplinary action, refer to Citations and Disciplinary Actions page on the Board's website at www.ptb.ca.gov or fax a request to (916) 263-2560.	62
SURRENDERED	Disciplinary action taken, licensee surrendered license. For a copy of the disciplinary action, refer to Citations and Disciplinary Actions page on the Board's website at www.ptb.ca.gov or fax a request to (916) 263-2560.	63
REVOKED	License is revoked as a result of disciplinary action taken by the Board. No practice is permitted in California. For a copy of the disciplinary action, refer to Citations and Disciplinary Actions page on the Board's website at www.ptb.ca.gov or fax a request to (916) 263-2560.	65
DECEASED	Licensee is deceased. No Practice is permitted.	85



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Briefing Paper

Date: 04/28/2016

Prepared for: PTBC Members

Prepared by: Carl Nelson

Subject: Budget Report

Purpose:

To provide an update on PTBC's budget activities during third quarter (Q3), current fiscal year (CY 2015-16).

- Attachments:
1. [Revenue Report](#)
 2. [Revenue Measures Chart](#)
 3. [Revenue Source Definition Key](#)
 4. [Expenditure Report](#)
 5. [Expenditure Measures Chart](#)
 6. [Expenditure Source Definition Key](#)

Background:

The PTBC Budget Report is a quarterly review of the expenditures and revenues, including budget activities during the same period for previous fiscal year to outline trends, deficiencies, etc. The data is collected from the DCA, CalStars Financial Monthly Reports and generated quarterly: Jul -Sep (Q1), Oct-Dec (Q2), Jan-Mar (Q3) and Apr- Jun (Q4) for one fiscal year. The current fiscal year is July 1, 2015 through June 30, 2016.

During this quarter the reports and charts have been revised to be consistent with the data collection on PTBC's new licensing and enforcement online system, Breeze. In doing this, additional data has been added, discontinued or merged. Particularly, a Revenue Report has been added. The aim of this report is to enable staff and the public to understand the source of revenue that supports PTBC's operations. Also, the Expenditure Report now outlines expenditures for each quarter for the entire current fiscal year, including adjustments, increasing transparency and accountability.

CY 2015-16, the PTBC is authorized a budget of \$4,227,000. On average, the PTBC fully spends its budget authority, with less than 2% reversion and collects approximately \$3,430,834 in revenues (year-end). With expenditures exceeding revenues, the PTBC has a fund imbalance. As previously reported, the PTBC addressed this issue by revising its Fee Schedule through regulation, increasing initial application, initial license and license renewal fees, which was implemented May 6, 2016. The PTBC anticipates an increase in revenues during the next quarter (Q4).

Analysis:

REVENUES

The PTBC collected \$884,188 this quarter (Q3) with a year to date revenue intake of \$3,113,923 (as of 03/31/16). Revenues collected for the same period in FY 2014-15 were \$867,990 (Q3) and \$2,904,484 year to date.

Agenda Item 15 (A) – Budget Report



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In comparison to FY 2014-15 (Q3), revenues increased just shy of 2% for the quarter; however, increased by \$209,440 or 20% year to date (3/31/16). The primary source of revenue for the quarter was license renewal fees, being 83% of total revenue followed by initial application & licensure fees, contributing 7% of the total revenues collected.

EXPENDITURES

The PTBC spent \$447,160 in Personnel Services (PERS SVS) third quarter (Q3), spending \$1,278,669 or 73% of its \$1,761,383 if its' PERS SVS budget (as of 3/31/16). The Temp Help line item shows a deficit of \$77,033. This is common as the board has no budget allocated to this line item, but must use the line item to account for its temporary staff salary and wages expenditures. Over the past decade, the PTBC has suffered insufficient staffing resources and has relied on temp help to accommodate permanent workload in efforts to alleviate excessive backlogs. Expenditures for the same period in FY 2014-15 were \$133,765 for third quarter and \$1,232,395 (as of 3/31/15).

The Operating Expenses & Equipment (OE&E) expenditures for this quarter (Q3) was \$593,445, with a total expenditure of \$1,178,703 or 70% of the \$2,564,617 OE&E budget (3/31/16). These numbers do not account for reimbursements.

The PTBC spent \$2,967,372 year to date, revealing a 3% increase in expenditures over FY 2014-15. This is normal, as expenditures increase a minimum of 2% each fiscal year.

Action Requested:

No action is being requested at this time.

Physical Therapy Board of California

Budget Report -Q3

CY 2015-16 / FY 2014-15

Revenue Report (Q3)						
Revenue Source	FY 2014-15		CY 2015-16			
	Revenue Q3	YTD As of 3/31/15	Revenue Q1	Revenue Q2	Revenue Q3	YTD As of 3/31/16
OTHER REGULATORY						
Citation Fines - FTB Collection	0	17	0	0	0	0
Citation Fines	6,700	19,650	12,150	39,291	6,500	57,940
Endorsement (License Verification)	12,420	36,900	13,405	14,015	16,320	43,740
Duplicate License / Certificate	2,600	9,600	2,550	3,300	3,800	9,650
TOTALS	21,720	66,167	28,105	56,606	26,620	111,330
INITIAL APPLICATION & LICENSE						
FPTA Application & Initial License Fee	3,200	9,600	3,000	3,200	3,725	9,925
FPT Application Fee	13,600	33,800	12,600	10,000	11,125	33,725
ENMG Exam Fee	0	0	500	0	0	500
ENMG Application Fee	0	0	100	0	0	100
KEMG Exam Fee	0	0	0	0	0	0
KEMG Application Fee	0	0	0	0	0	0
PTA Application & Initial License Fee	10,000	41,500	11,750	20,875	20,094	52,719
PT Application Fee	16,500	98,750	56,875	32,625	25,066	114,566
PT Initial License Fee	15,500	87,725	48,400	28,400	3,275	80,075
<i>Refunded Reimbursements</i>	0	0	49	(49)	0	0
<i>Overt/Short Fees</i>	7	19	75	31	15,503	15,609
<i>Suspended Revenue</i>	500	800	650	500	9,676	10,826
<i>Prior Year Revenue Adjustment</i>	(2,650)	(5,200)	(3,285)	(5,500)	(2,774)	(11,559)
TOTALS	56,657	266,994	130,714	90,082	85,690	306,486
LICENSE RENEWAL						
PTA Renewal Fee	140,600	468,100	169,400	186,600	149,000	505,000
PT Renewal Fee	585,100	1,945,500	704,400	769,780	566,608	2,040,788
ENMG	250	350	250	50	300	600
KEMG	150	650	250	200	100	550
<i>Automated Revenue Refund Claim</i>	(2,000)	2,200	1,825	(125)	(150)	1,550
<i>Overt/Short Fees</i>	0	7	0	2	0	2
TOTALS	724,100	2,416,807	876,125	956,507	715,858	2,548,490
DELINQUENT LICENSE RENEWAL						
PTA Delinquent Fee	1,000	3,500	1,500	1,200	2,400	5,100
PT Delinquent Fee	3,500	9,200	2,600	3,100	4,100	9,800
EN Delinquent Fee	0	0	0	0	0	0
EK Delinquent Fee	0	50	0	0	0	0
TOTALS	4,500	12,750	4,100	4,300	6,500	14,900
MISCELLANEOUS						
Public Sales	144	145	0	0	50	50
Surplus Money Investments	733	1,534	0	1,831	2,400	4,232
Unclaimed Checks/Warrants	0	0	0	0	0	0
Cancelled Warrants	1,000	2,956	1,555	600	1,000	3,155
Miscellaneous Income	312	740	575	499	375	1,449
Dishonored Check Fee	75	200	75	75	100	250
TOTALS	2,264	5,575	2,205	3,005	3,925	9,136
SCHEDULED REIMBURSEMENTS						
Fingerprint Reports	4,851	21,462	8,232	7,437	8,771	24,440
External/Private/Grant	2,115	5,405	1,880	3,055	705	5,640
TOTALS	6,966	26,867	10,112	10,492	9,476	30,080
UNSCHEDULED REIMBURSEMENTS						
Investigative Cost Recovery - Investigations	48,565	99,983	36,524	13,523	34,481	84,527
Investigative Cost Recovery - Probation Monitoring	3,217	9,339	3,922	3,413	1,638	8,973
TOTALS	51,782	109,323	40,446	16,936	36,119	93,500
TOTAL REVENUES	867,989	2,904,484	1,091,807	1,137,928	884,188	3,113,923

Revenue Measures Chart (Q3)



1. Chart shows revenues increasing less than 2% during 3rd quarter over FY 2014/15.
2. Chart shows revenues increasing 20% year to date (as of 3/31/16).

Physical Therapy Board of California

Budget Report (Q3)

CY 2015-16 / FY 2014-15

Revenue Source - Definition Key

OTHER REGULATORY FEES	
Citation/Fine FTB Collection	Fines collected by the Franchise Tax Board on behalf of PTBC for fines past due.
Admin Citation Fines-Variou	Fines collected from administrative citations issued.
Endorsement Fee	Processing fee for endorsement (license verifications).
Duplicate License/Certification Fee	Processing fee for duplicate license or wall certificate.
INITIAL APPLICATION & LICENSE FEES	
FPTA Application & Initial License	Application & Initial License processing fees for foreign educated Physical Therapist Assistants.
FPT Application	Application processing fee for foreign educated Physical Therapists.
FPT Initial License	Initial License processing fee for foreign educated Physical Therapists.
PTA Application & Initial License	Application and Initial License processing fee for U.S educated Physical Therapist Assistants.
PT Application	Application processing fee for U..S educated Physical Therapists.
PT Initial License	Initial License processing fee for U.S. educated Physical Therapists.
Refunded Reimbursements	Used for cashiering errors, i.e., fingerprint fee cashiered with application fee.
Over/Short	Application or Initial License Fees paid over or short of established fee.
Suspended Revenue	Fee unable to identify/allocate -temporarily cashiered in suspense (reconciled year-end).
Prior Year Revenue Adjustment	Correction of prior year revenue reported.
LICENSE RENEWAL FEES	
Renewal - ENMG	Renewal Fees for Renewal ENMG Certification.
Renewal - KEMG	Renewal Fees for Renewal KEMG Certification.
Biennial Renewal - PTA	Renewal Fees for PTA license.
Biennial Renewal - PT	Renewal Fees for PT license.
Automated Revenue Refund Claim	Renewal refunds made to licensees.
Over/Short Fee	Renewal Fees paide/collected over or short of established fee.
MISCELLANEOUS INCOME	
Public Sales	Services to Public - e.g., DCA sales of PT/PTA mailing list.
Surplus Money Investments	Shared Revenues by State Controllers Office of earned interest from investment.
Unclaimed Checks / Warrants	Cancelled warrant (check) paid to applicant/licensee/agency-uncashed for 1 year.
Miscellaneous Income (General)	Used to cashier miscellaneous fees that do not have accounted code, i.e., Health Care Event, etc.
Dishonored Check Fees	Fees collected from dishonored checks (\$25).
SCHEDULED REIMBURSEMENTS	
Fingerprint Cards	Scheduled Reimbursements - applicants/licensees fingerprint process fees (DOJ).
External/Private Grant	Scheduled Reimbursements - received for OIS Public Sales
UNSCHEDULED REIMBURSEMENTS	
Investigative Cost Recovery	Money received from individuals to reimburse the cost incurred by PTBC for their case.
Probation Monitoring Cost Recovery	Money received from Probationers for their probation monitoring.

Physical Therapy Board of California

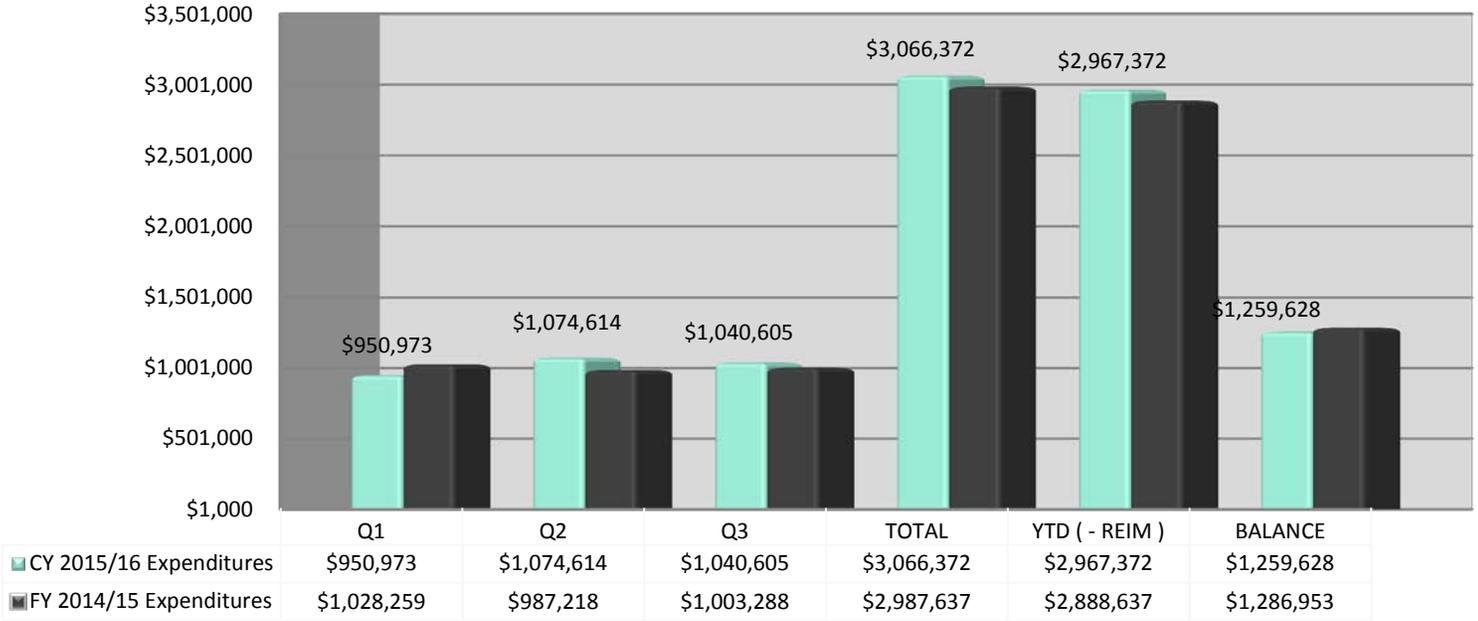
Budget Report -Q3

CY 2015-16 / FY 2014-15

Expenditure Report (Q3)								
Budget Line Items	FY 2014-15		CY 2015-16					
	Expended Q3	TOTAL As of 3/31/15	Authorized Budget	Expended Q1	Expended Q2	Expended Q3	TOTAL As of 3/31/16	Balance Remaining
PERSONNEL SERVICES								
Civil Services Permanent	220,322	656,437	1,055,000	221,575	231,626	234,893	688,094	366,906
Temp help	46,175	83,880	0	21,572	27,230	28,231	77,033	(77,033)
Statutory Exempt	20,232	60,696	77,000	20,739	20,967	21,258	62,964	14,036
Board Members	6,000	20,700	20,383	4,100	6,600	9,200	19,900	483
Overtime	0	0	0	0	0	0	0	0
Staff Benefits	138,898	410,682	609,000	136,187	140,733	153,578	430,678	178,322
TOTAL PERS SVS	431,627	1,232,395	1,761,383	404,173	427,156	447,160	1,278,669	482,714
OPERATING EXPENSES & EQUIPMENT								
General Services Totals	58,181	263,877	401,072	50,274	80,960	54,250	185,484	215,588
Fingerprints	6,238	19,677	99,000	5,944	8,115	6,846	20,905	78,095
General Expense	6,168	15,345	17,402	1,622	5,468	3,890	10,980	6,422
Minor Equipment	0	3,091	13,132	0	1,952	9,223	11,175	1,957
Major Equipment	0	0	4,868	0	0	0	0	4,868
Printing	2,492	7,371	13,000	1,450	16,404	-8,846	9,008	3,992
Communications	3,183	6,470	10,000	1,197	2,968	2,596	6,761	3,239
Postage	5,426	20,492	25,322	7,613	6,729	3,503	17,845	7,477
Travel in State	1,247	7,242	18,000	296	5,576	2,699	8,571	9,429
Training	0	430	1,000	0	0	0	0	1,000
Facilities Operations	28,300	111,945	118,000	27,740	28,450	28,102	84,292	33,708
C&P Services Interdepartmental	0	0	348	0	0	0	0	348
C&P Services External	5,127	71,814	81,000	4,412	5,298	6,237	15,947	65,053
Departmental Services Totals	177,316	532,900	956,495	235,580	236,045	244,864	716,489	240,006
OIS Pro Rata	85,197	255,591	550,000	136,000	136,000	141,250	413,250	136,750
Indirect Distributed Cost	45,216	135,648	238,000	58,000	58,000	62,500	178,500	59,500
Interagency Services	0	0	500	0	0	0	0	500
DOI Pro Rata	1,411	4,233	5,000	1,250	1,250	1,250	3,750	1,250
Public Affairs Pro Rata	1,376	4,128	7,000	1,500	1,500	7,500	10,500	(3,500)
PPRD Pro Rata	1,510	4,530	8,000	2,000	2,000	-4,000	0	8,000
Consolidated Data Center	219	689	2,795	821	680	356	1,857	938
Data Processing	0	918	1,200	0	606	0	606	594
Central Admin Services Pro Rata	42,387	127,163	144,000	36,009	36,009	36,008	108,026	35,974
Exams Totals	262	7,260	5,050	1,583	1,563	-288	2,858	2,192
Exam Administrative External	262	0	0	570	1,563	725	2,858	(2,858)
Exam Contracts	0	7,260	5,050	1,013	0	-1,013	0	5,050
Exam Subject Matter Experts	0	0	0	0	0	0	0	0
Enforcement Totals	335,902	951,205	1,202,000	259,363	328,890	294,619	882,872	319,128
Attorney General	147,462	401,940	428,000	104,982	140,273	91,149	336,404	91,596
Office of Admin Hearings	22,749	62,005	60,000	0	22,020	20,985	43,005	16,995
Evidence/Witness	26,410	68,802	100,000	4,777	17,422	19,203	41,402	58,598
Court Reporters	584	2,367	0	604	175	782	1,561	(1,561)
DOI Investigation	138,697	416,091	614,000	149,000	149,000	162,500	460,500	153,500
TOTAL OE & E	571,661	1,755,242	2,564,617	546,800	647,458	593,445	1,787,703	776,914
TOTALS, PERS SVS/OE&E	1,003,288	2,987,637	4,326,000	950,973	1,074,614	1,040,605	3,066,372	1,259,628
*Scheduled Reimbursements	(6,966)	(26,867)	(99,000)	(10,112)	(10,492)	(9,476)	(30,080)	
*Unsheduled Reimbursements	(51,782)	(72,133)		(40,446)	(16,936)	(36,118)	(68,920)	
TOTALS, PERS SVS/OE&E (-REIM)	944,540	2,888,637	4,227,000	900,415	1,047,186	995,011	2,967,372	1,259,628

*The PTBC is authorized to allocate \$99k of its revenues collected from scheduled/unscheduled reimbursements towards CY expenditures. Revenues over 99k are transferred to fund.

Expenditure Measures Chart (Q3)



1. CY 2015-16, the PTBC is authorized \$4,227,000 budget authority and \$4,175,590 authorized budget (w/ AG augmentation) FY 2014-15.
2. Chart reveals expenditures increasing 3% year to date (as of 3/31/16) over FY 2014/15.

Physical Therapy Board of California

Budget Report (Q3)

CY 2015-16 / FY 2014-15

Expenditure Source - Definition Key	
PERSONNEL SERVICES	
Civil Services Permanent	Salary / Wages of civil service - permanent employees (authorized positions).
Statutory Exempt	Salary / Wages of employees appointed/elected to state (Executive Officer).
Temp help	Salary / Wages of employees in blanket (permanent-intermittent/retired annuitant).
Board Commission	Per Diem reimbursement (Board Members).
Overtime	Ordered work time in excess of employee regular scheduled workweek.
Staff Benefits	Employer contributions for health, dental, vision, etc. (permanent, exempt and temp).
GENERAL SERVICES	
Fingerprints	Criminal and background checks by DOJ (new employees, applicants and licensees).
General Expense	Office supplies, freight (FedEx), subscriptions, admin overhead (DGS charges; purchase orders, contracts, etc.).
Minor Equipment	Replacement/additional equipment - less than \$5k per unit (copier, fax, etc.)
Major Equipment	Replacement/additional equipment - over \$5k per unit (copier, printer, etc.)
Printing	Publications, i.e., strategic plan, newsletter, etc. printed by State Printing and DCA.
Communication	Office and staff land lines, fax line, etc.
Postage	Standard U.S. mail, certified mail, wall certificate, pocket license, renewal notice, etc.
Travel In-State and Out-of-State	State travel reimbursement, i.e., per diem, lodging, transportation, business expense, and CalAters.
Training	Tuition/registration fees for training classes/conferences (External Vendors).
Facilities Ops	Rent - Building and Grounds (Non-State Owned), includes, self storage and overtime utility charges.
C&P Services Internal	Consultant/Professional services provided by other state agencies or DCA interagency agreement.
C&P Services External	Consultant/Professional Services provided by external agency, i.e., online credit card payments.
DEPARTMENTAL SERVICES	
*OIS Pro Rata	DCA- Office of Information Services, i.e., PC Support, Telecom, etc.
*Indirect Distributed Cost Pro Rata	DCA - Office of Administrative Services, i.e., Personnel, Budgets, etc.
*DOI Pro Rata	DCA Special Operations Unit Services i.e., criminal background checks on employees.
*Public Affairs Pro Rata	DCA Media Services, i.e., responses, creation/execution of marketing plans and outreach activities.
*PPRD Pro Rata	Conveys boards messages to the public through i.e., publications, outreach and correspondence for consumers.
*Central Admin Services Pro Rata	Administrative Services conducted by CalHR, DOF, SCO, State Treasurer, Legislature, Agency, etc.
<i>*DCA Pro-Rata is based on annual assessment of program size, workload, and overall operational need of services. Adjustments are made annually.</i>	
Interagency Services	Services provided by another DCA-Board/Bureau to PTBC (inter-agency agreement).
Consolidated Data Center	TEALE data center i.e., costs for maintaining records on Consumer Affairs System (CAS).
Data Processing	Technology maintenance and copier/printer paper, software, hardware, electronic waste recycling and disposal.
EXAMS	
C/P Administrative	External -Consultant/Professional Services (i.e. FSBPT service contract).
C/P Exam Subject Matter Experts	External -Consultant/Professional Services: Wages for services provided by Subject Matter Experts in the oral/written exam process, including travel.
ENFORCEMENT	
Attorney General	Services provided for enforcement cases initiated to the Attorney General Office.
Office of Admin Hearings	Services provided for hearing officer, administrative law judges, and filing fees, etc.
Evidence/Witness	Services provided by witness, i.e., witness fee, hourly wages, travel expenses, undercover operative fees; and, cost of films, flash bulbs, including medical services for use as evidence.
Court Reporters	Services provided by Court Reporter, including transcriptions (i.e. hearing transcripts, etc.).
DOI Investigation	Services provided by Division of Investigations (DOI) for investigative services.



Physical Therapy Board of California

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

Physical Therapy Board of California

2005 Evergreen St. Suite 1350, Sacramento, California 95815

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

Internet: www.ptbc.ca.gov



Briefing Paper

Date: April 7, 2016

Prepared for: PTBC Members

Prepared by: Jacki Maciel

Subject: Outreach Report

Purpose:

To provide an update on PTBC's Website, Facebook and Outreach activities during third quarter (Q3) for CY 2015/16.

Attachments: 1. [Outreach Statistics Chart](#)

Background:

Social media allows the physical therapist community to discover, read, and share news, information and content.

Recently, the PTBC began using Google Analytics. The PTBC can now identify how our users are visiting our site, what site directed them to us as well as how long they remain and what forms are being utilized most often. With this information, the PTBC can determine what improvements to our website may be needed and also suggest what information may be needed for social media.

Analysis:

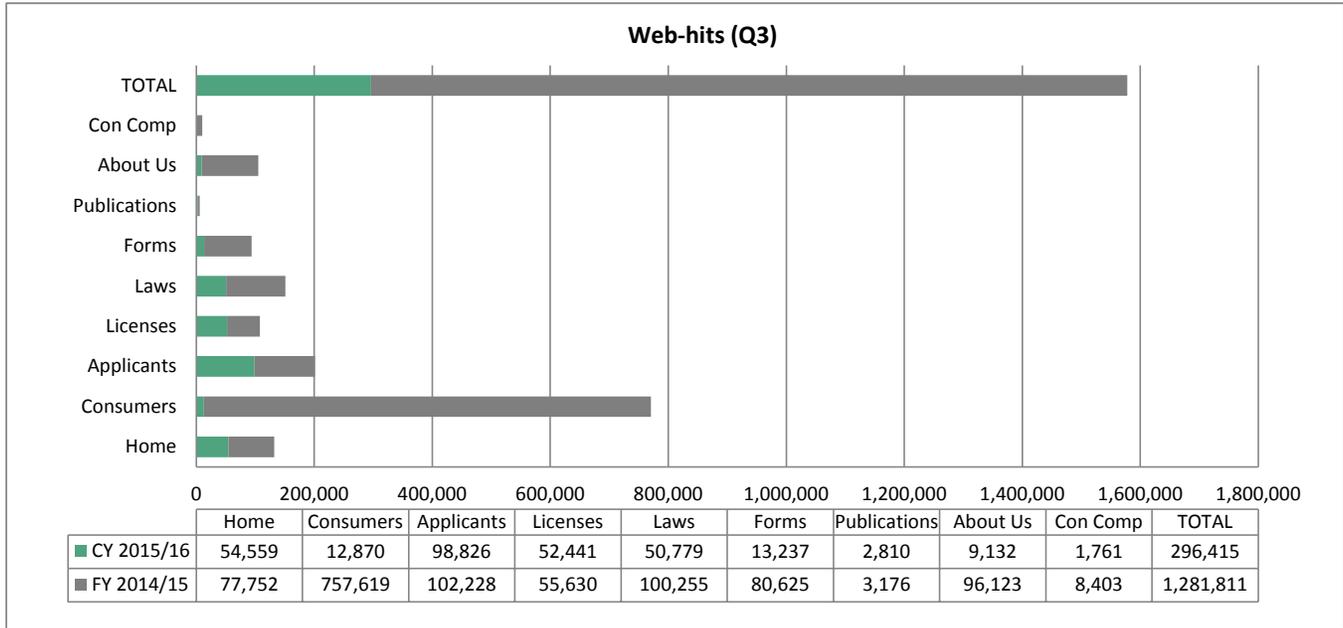
Website – With the new Google Analytics, the PTBC identified 21.3% of our website traffic was directed from our Facebook page. However, the website hits have decreased by 77% from previous fiscal year. This was expected with the implementation of BREEZE (1/19/16) – as the website was continuously undergoing maintenance from January through March 2016.

Facebook - PTBC Facebook remains #1 within the healing arts board's on social media. Our total likes have increased 8.4% from last fiscal year and visits reflect our most significant increase of 12,994%. In March 2016, one post received over 197,000 views alone and generated over 130 new likes. A vanity metric indeed, however, our information is being shared amongst the Physical Therapy community which is proving a widespread growth at an excessive pace.

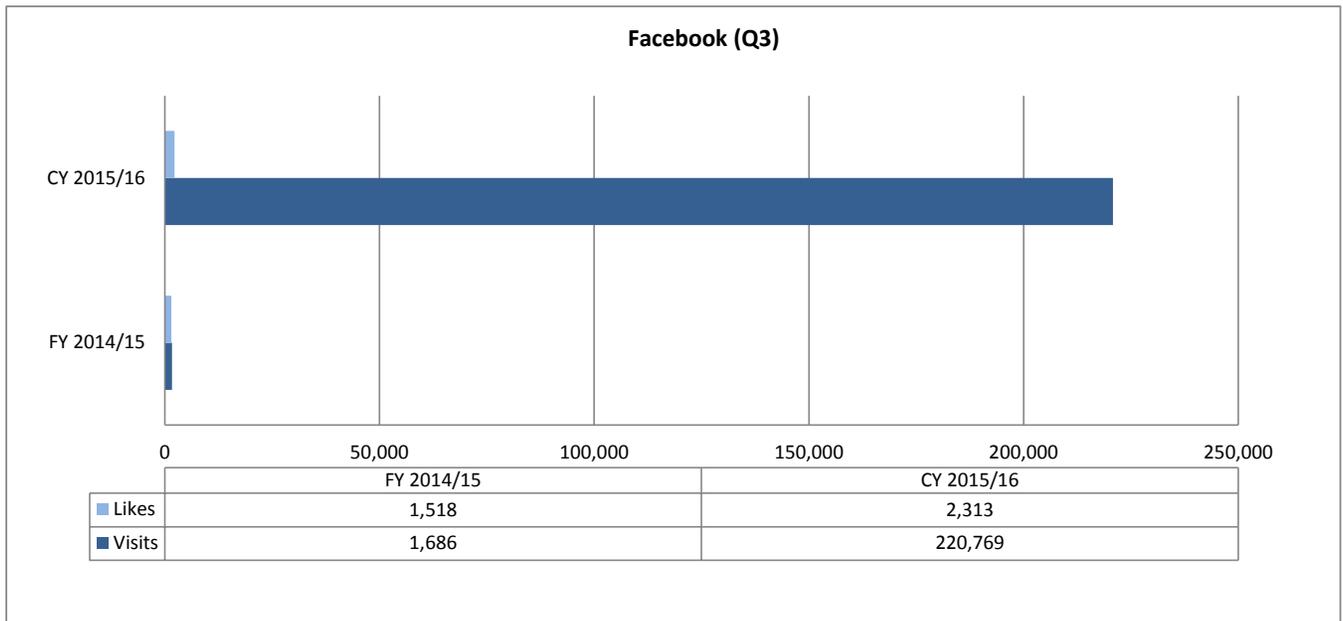
Action:

No action being requested at this time.

Outreach Statistics Chart (Q3)



1. Reveals a 77% decrease in website hits.



1. Reveals a 66% increase in Likes and a 12,994% increase in Visits.



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Briefing Paper

Date: 5/6/16

Prepared for: PTBC Members

Prepared by: Sarah Conley

Subject: Application and Licensing Services Report

Purpose:

To provide an update on PTBC's activities within the Application and Licensing Service programs.

Attachments: 1. [Application and Licensing Statistics Report](#)
 2. [Examination Statistics Report](#)

Background:

The PTBC Application and Licensing Report is a quarterly review of activities and program changes from July 1, 2015 -June 30, 2016 (CY 2015-16), including previous fiscal year (FY 2014-15) to outline any trends, anomalies, etc. The data is collected monthly and generated quarterly: Jul -Sep (Q1), Oct-Dec (Q2), Jan-Mar (Q3) and Apr- Jun (Q4).

This quarter reports have been revised to be consistent with the data collection accounts on PTBC's new licensing and enforcement online system, Breeze. Breeze has replaced the PTBC's legacy systems (ATS and CAS) and offers new ways in which to collect statistical data for the programs; this change will affect data comparisons year to year and quarter to quarter.

Statistics for applications received, including renewals is based on the fee payment received, if a fee is associated with the application. Prior to Breeze, the fee payment received date was also used; however, date was collected from the CalStars Budget Report. CalStars is an accounting report produced by the DCA and accounts for all revenues and expenditures, including adjustments, e.g., dishonored checks, etc. Therefore, application and licensing stats will differ from PTBC's Budget Report. Moreover, with the implementation of Breeze, a backlog occurred in application, licensing and cashiering services which affected stats for January and February 2016. Although some inconsistencies may exist, the statistics provide an overall accurate depiction of the program.

The changes quarter to quarter and year to year are reported by percentage –as Q3 changes and YTD changes; however, for data or change in data that was less than 1%, the number is reflected as zero. In addition, license status statistics YTD reflects the data collected as of 3/31/16 because this data is not cumulative but rather a snapshot of the number of licensees currently in that status.

Analysis:

The data reflects an increase in the number of applications received from graduates of accredited programs, an increase in the number of licenses issued, an increase in licensees in Retired status; and, a decrease in licensees in Inactive and Delinquent status. Overall, the PTBC's workload and license population increased from FY 2014-15.

Action Required: No action being requested at this time.

Physical Therapy Board of California
 Application and Licensing Report (Q3)
 CY 2015-16 / FY 2014-15

Application and Licensing Statistics Report (Q3)

Applications Received

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
PT	419	239	146	804	455	261	199	915	↑27%	↑12%
FPT	59	43	68	170	63	50	50	163	↓-36%	↓-4%
PTA	94	162	85	341	94	167	122	383	↑30%	↑11%
FPTA	39	12	18	69	15	16	14	45	↓-29%	↓-5%
E-PTA	5	1	0	6	3	0	3	6	↑3	→0
KEMG	0	0	0	0	0	0	0	0	→0	→0
ENMG	0	0	0	0	1	0	0	1	→0	↑1
Total	616	457	317	1,390	631	494	388	1,513	↑18%	↑8%

Licenses Issued

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
PT	329	357	351	1,037	523	436	271	1,230	↓-30%	↑16%
PTA	103	132	113	348	161	116	102	379	↓-11%	↑8%
KEMG	0	0	0	0	0	0	0	0	→0	→0
ENMG	0	0	0	0	0	1	0	1	→0	↑1
Total	432	489	464	1,385	684	553	373	1,610	↓-2%	↑14%

Renewal Applications Received

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
PT	4,147	2,655	2,926	9,728	3,522	3,849	2,321	9,692	↓-26%	→0
PTA	1,000	638	703	2,341	847	933	607	2,387	↓-16%	↑2%
KEMG	3	5	3	11	5	4	3	12	→0	↓-8%
ENMG	2	0	5	7	5	1	3	9	↓-67%	↑22%
Total	5,152	3,298	3,637	12,087	4,379	4,787	2,934	12,100	↓-24%	→0

Physical Therapy Board of California
 Application and Licensing Report (Q3)
 CY 2015-16 / FY 2014-15

Application and Licensing Statistics Report (Q3)

Active License Status

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
PT	22,159	22,374	22,621	22,621	22,956	23,216	23,406	23,406	↑ 3%	↑ 3%
PTA	5,407	5,504	5,562	5,562	5,790	5,857	5,960	5,960	↑ 7%	↑ 7%
KEMG	30	30	31	31	31	30	26	26	↓ -2%	↓ -2%
ENMG	24	23	23	23	22	21	18	18	↓ -3%	↓ -3%
Total	27,620	27,931	28,237	28,237	28,799	29,124	29,410	29,410	↑ 4%	↑ 4%

Inactive License Status

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
PT	1,454	1,489	1,547	1,547	1,614	1,637	1,345	1,345	↓ -15%	↓ -15%
PTA	392	399	417	417	431	437	363	363	↓ -15%	↓ -15%
Total	1,846	1,888	1,964	1,964	2,045	2,074	1,708	1,708	↓ -15%	↓ -15%

Delinquent License Status

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
PT	3,667	3,704	3,745	3,745	3,791	3,739	3,613	3,613	↓ -4%	↓ -4%
PTA	1,060	1,047	1,054	1,054	1,043	1,038	984	984	↓ -7%	↓ -7%
KEMG	2	2	1	1	1	1	0	0	↓ -1	↓ -1
ENMG	5	6	6	6	6	7	1	1	↓ -83%	↓ -83%
Total	4,734	4,759	4,806	4,806	4,841	4,785	4,598	4,598	↓ -5%	↓ -5%

License Renewal - Fee Exemptions / Waivers

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
Military (E)	0	0	0	0	0	0	0	0	→ 0	→ 0
Disability (W)	0	0	0	0	0	2	2	2	↑ 2	↑ 2
Volunteer Service (W)	0	0	0	0	0	0	0	0	→ 0	→ 0
Retired (E)	42	53	64	64	90	105	101	101	↑ 37%	↑ 37%
Total	42	53	65	64	90	107	103	103	↑ 37%	↑ 37%

Examination Statistics Report (Q3)

National PT and PTA Examination - CALIFORNIA STATISTICS

Accredited PT Program

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
Pass	217	176	144	537	271	268	157	696	↑8%	↑23
Fail	29	50	39	118	29	61	39	129	→0%	↑9%
Total	246	226	183	655	300	329	196	825	↑7%	↑21%
Pass Rate	88%	78%	79%	82%	90%	81%	80%	84%	↑1%	↑2%

Non-accredited Program - PT

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
Pass	11	3	9	23	7	9	5	21	↓-44%	↓-1%
Fail	42	47	47	136	39	49	16	104	↓-194%	↓-31%
Total	53	50	56	159	46	58	21	125	↓-167%	↓-27%
Pass Rate	21%	6%	16%	14%	15%	16%	24%	17%	↑8%	↑3

Accredited PTA Program

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
Pass	99	68	67	234	116	83	86	285	↑22%	↑18%
Fail	50	37	33	120	53	30	26	109	↓-27%	↓-10%
Total	149	105	100	354	169	113	112	394	↑2%	↑10%
Pass Rate	66%	65%	67%	66%	69%	73%	77%	72%	↑10%	↑6

Non-accredited Program - PTA

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
Pass	19	6	8	33	4	13	8	25	→0%	↓-32%
Fail	10	15	12	37	9	15	9	33	↓-33%	↓-12%
Total	29	21	20	70	13	28	17	58	↓-18%	↓-21%
Pass Rate	66%	29%	40%	47%	31%	46%	47%	43%	↑7%	↓-4%

California Law Examination (CLE)

Accredited Program

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
Pass	500	418	347	1,265	648	502	335	1,485	↓-4%	↑15%
Fail	243	194	204	641	271	233	165	669	↓-24%	↑4%
Total	743	612	551	1,906	919	735	500	2,154	↓-10%	↑12%
Pass Rate	67%	68%	63%	66%	71%	68%	67%	69%	↑4%	↑3

Non-accredited Program

	FY 2014/15				CY 2015/16				Q3 Changes	YTD Changes
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD		
Pass	58	60	62	180	51	40	43	134	↓-44%	↓-34%
Fail	64	44	66	174	34	36	28	98	↓-136%	↓-78%
Total	122	104	128	354	85	76	71	232	↓-70%	↓-53%
Pass Rate	48%	58%	48%	51%	60%	53%	61%	58%	↑13%	↑7

Examination Statistics Report (Q3)

National PT and PTA Examination - NATIONAL STATISTICS

Accredited PT Program

FY 2014/15					CY 2015/16					Q3	YTD
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD	Changes	Changes	
Pass	4,575	1,376	1,123	7,074	4,613	1,416	1,170	7,199	↑4%	↑2%	
Fail	562	505	381	1,448	635	641	281	1,557	↓-36%	↑7%	
Total	5,137	1,881	1,504	8,522	5,248	2,057	1,451	8,756	↓-4%	↑3%	
Pass Rate	89%	73%	75%	83%	88%	69%	81%	82%	↑6%	↓-1	

Non-accredited Program - PT

FY 2014/15					CY 2015/16					Q3	YTD
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD	Changes	Changes	
Pass	239	183	235	657	324	316	218	858	↓-8%	↑23%	
Fail	779	923	742	2,444	888	1,111	361	2,360	↓-106%	↓-4%	
Total	1,018	1,106	977	3,101	1,212	1,437	579	3,228	↓-69%	↑4%	
Pass Rate	23%	17%	24%	21%	27%	22%	38%	27%	↑14%	↑6	

Accredited PTA Program

FY 2014/15					CY 2015/16					Q3	YTD
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD	Changes	Changes	
Pass	3,181	1,349	902	5,432	3,167	1,523	903	5,593	→0	↑3%	
Fail	654	569	407	1,630	755	687	404	1,846	→0	↑12%	
Total	3,835	1,918	1,309	7,062	3,922	2,210	1,307	7,439	→0	↑5%	
Pass Rate	83%	70%	69%	77%	81%	69%	69%	75%	→0	↓-2%	

Non-accredited Program - PTA

FY 2014/15					CY 2015/16					Q3	YTD
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD	Changes	Changes	
Pass	84	65	88	237	67	104	76	247	↓-16%	↑4%	
Fail	77	110	93	280	86	113	56	255	↓-66%	↓-10%	
Total	161	175	181	517	153	217	132	502	↓-37%	↓-3%	
Pass Rate	52%	37%	49%	46%	44%	48%	58%	49%	↑9%	↑3	

Jurisprudence Examination - NATIONAL STATISTICS

Accredited Program

FY 2014/15					CY 2015/16					Q3	YTD
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD	Changes	Changes	
Pass	1,838	1,328	1,119	4,285	2,091	1,478	1,076	4,645	↓-4%	↑8%	
Fail	476	385	352	1,213	556	515	357	1,428	↑1%	↑15%	
Total	2,314	1,713	1,471	5,498	2,647	1,993	1,433	6,073	↓-3%	↑9%	
Pass Rate	79%	78%	76%	78%	79%	74%	75%	76%	↓-1%	↓-2%	

Non-accredited Program

FY 2014/15					CY 2015/16					Q3	YTD
	Q1	Q2	Q3	YTD	Q1	Q2	Q3	YTD	Changes	Changes	
Pass	130	134	157	421	117	126	117	360	↓-34%	↓-17%	
Fail	82	70	92	244	51	69	56	176	↓-64%	↓-39%	
Total	212	204	249	665	168	195	173	536	↓-44%	↓-24%	
Pass Rate	61%	66%	63%	63%	66%	65%	68%	67%	↑5%	↑4	



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY - GOVERNOR EDMUND G BROWN JR.

Physical Therapy Board of California

2005 Evergreen St. Suite 1350, Sacramento, California 95815

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

Internet: www.ptbc.ca.gov



Briefing Paper

Date: April 29, 2016

Prepared for: PTBC Members

Prepared by: Elsa Ybarra

SUBJECT: Consumer Protection Services Program (CPS)

Purpose: Consumer Protection Services Report

- Attachments:
1. [Quarter 3 - Performance Measures Report 17 \(A-1\)](#)
 2. [Consumer Protection Services Data 17 \(A-2\)](#)
 3. [Disciplinary Summary 17 \(A-3\)](#)

Quarter 3 Performance Measures Report – DRAFT (Attachment A-1):

The Performance Measures Report is used by all DCA organizations to provide the Department's public Performance Measures. Data is collected on a quarterly basis and posted on the Department's public website. http://www.dca.ca.gov/about_dca/enforcement.shtml

(a) Q3 January – March 2016

- PM1/Volume or Number of cases opened (complaints and convictions)

107 cases were initiated for this quarter. Of those, 49 were Consumer complaints and 58 were conviction related reports.

- PM2/Intake – Target: 9 Days

Average number of days from complaint received, to the date the complaint was acknowledged and assigned to staff in the Consumer Protection Services Program.

The Board's target is nine days to acknowledge a complaint once it's been received. The target is well within this range at 2 days.

- PM3/ Intake & Investigation: Target: 90 Days

Average time from complaint received to closure of the investigation process. This does not include cases resulting in formal discipline.

A total of 159 cases were closed without disciplinary action. Of those, 77 (48%) cases were closed within the 90 day target.

A number of factors, both internally and externally contribute to the case aging of cases. An investigation of the case begins at the at the desk level by staff; however, cases requiring formal investigation (e.g. field work, interviews, locating subjects and/or witnesses, serving subpoenas, etc.) are forwarded to the Department of Consumer Affairs, Division of Investigation (DOI).

Agenda Item 17 – Consumer Protection Services

Although DOI is under the Department of Consumer Affairs, the Board does not have control of the DOI's processing times, which are included in the average number of days to complete an investigation by the board. Another contributing factor, once a final report is received from the DOI, it may be returned to DOI for supplemental investigation.

- PM4/Formal Discipline. Target: 540 Days
Average number of days to complete the entire process for cases resulting in formal discipline.

There were a total of 14 cases resulting in disciplinary action. Of those 14 cases, 12 had a life cycle of 2-3 years to final disposition. Once again, there are a number of factors contributing to the case aging of cases. Additional various factors included in the case aging at this level include; additional information requested by the Deputy Attorney General in order to file the pleading document, requesting additional information from the expert and/or supplemental investigation by DOI, or amending an accusation. The other contributing factor is the scheduling of administrative hearings with the Office of Administrative Hearings which the Board nor the Attorney General's Office have control.

- PM7/Probation Intake. Target: 10 Days
Average number of days from probation monitor assignment to the date the probation monitor makes first contact with the probationer.

The 10 day target of first contact with new probationers continues to be met. The probation monitor is assigned the case within a couple of days of the Order date. Although the final decision packet includes a cover letter providing them with the probationers contact information, the probation monitor also follows up with a letter to the probationer notifying them of his contact information and that an initial meeting will be scheduled to review their terms and conditions of probation. The initial meeting is scheduled before the effective date. Currently, there are 98 licensees on probation.

- PM8/ Probation Violation Response. Target 7 Days
Average number of days from the date a violation of probation is reported to the date probation monitor initiates appropriate action.

For Q3, there was one case transmitted to the Office of the Attorney General for non-compliance of probation. When a violation of probation occurs, the probation monitor prepares a report documenting the violations and the matter is referred to the Office of the Attorney General for appropriate action.

(b) Consumer Protection Services (CPS) Report (Attachment A-2)

The CPS report provides specific data at various stages of the enforcement process. For easy reading, the report has been revised to reflect quarterly reporting for current fiscal year and also that of prior fiscal year.

(c) Disciplinary Summary (Attachment A-3)

The Disciplinary Summary reports formal discipline and citations issued within this quarter. Disciplinary actions are of public record and are available through the BreZE online license lookup.

Action Requested:

No Action Required

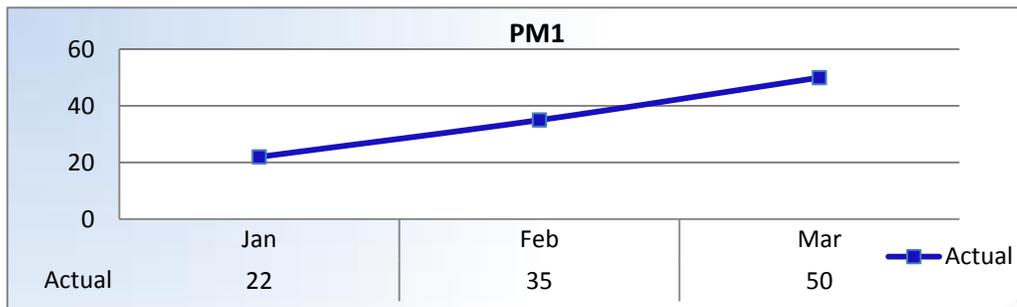
Performance Measures

Q3 Report (January - March 2016)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

PM1 | Volume

Number of complaints and convictions received.

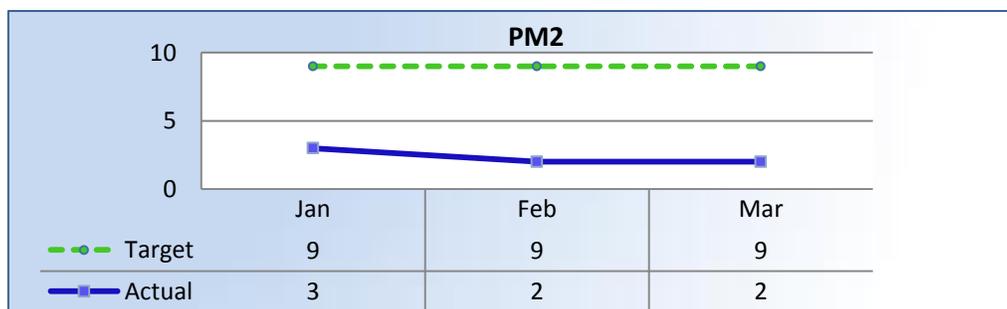


Total Received: 107 Monthly Average: 36

Complaints: 49 | Convictions: 58

PM2 | Intake

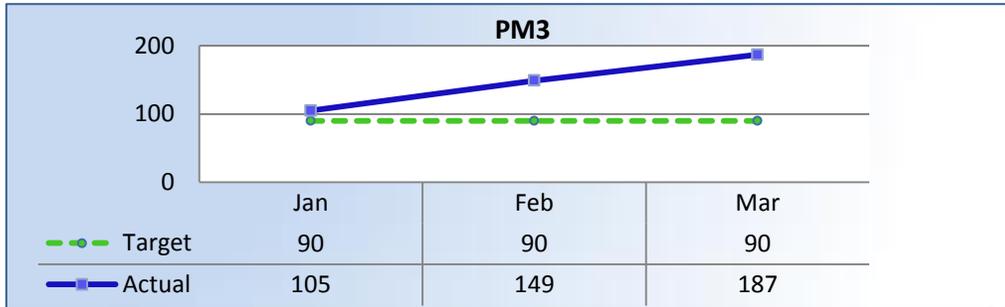
Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.



Target Average: 9 Days | Actual Average: 2 Days

PM3 | Intake & Investigation

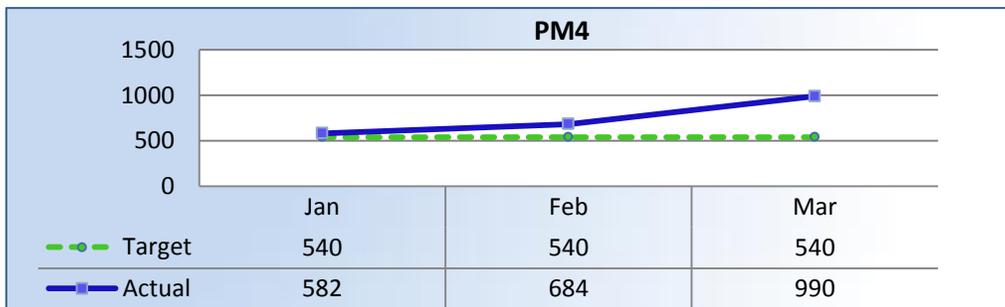
Average number of days to complete the entire enforcement process for cases not transmitted to the AG. (Includes intake and investigation)



Target Average: 90 Days | Actual Average: 148 Days

PM4 | Formal Discipline

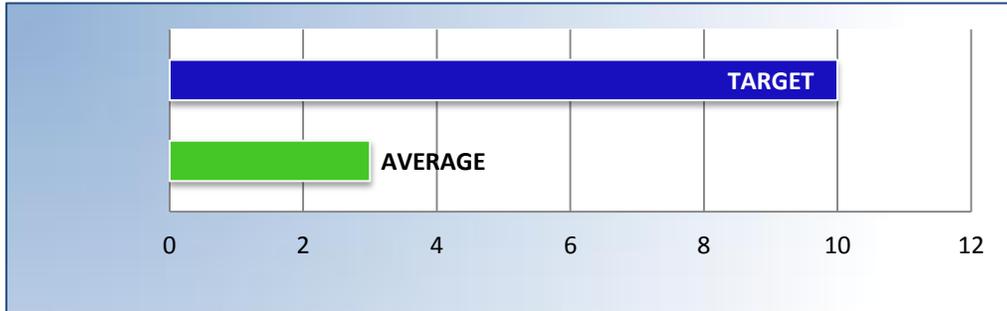
Average number of days to complete the entire enforcement process for cases transmitted to the AG for formal discipline. (Includes intake, investigation, and transmittal outcome)



Target Average: 540 Days | Actual Average: 873 Days

PM7 | Probation Intake

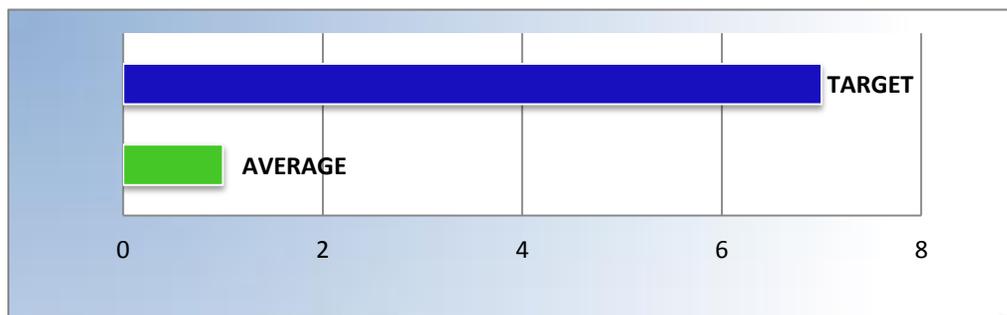
Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.



Target Average: 10 Days | Actual Average: 3 Days

PM8 | Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.



Target Average: 7 Days | Actual Average: 1 Day

CONSUMER PROTECTION SERVICES REPORT FY 2015/2016

	1st Quarter Jul - Sept	2nd Quarter Oct - Dec	3rd Quarter Jan - Mar	4th Quarter Apr - Jun	Current FY Total	FY 14-15
Complaint Intake	<i>Complaints Received by the Board. Measures from date received to assignment for investigation or closure without action.</i>					
Complaints						
Received	196	56	49		301	502
Closed without Assignment for Investigation	4	1	6		11	6
Assigned for Investigation - <i>Note: Number of assigned cases may include cases from previous month; therefore totals will not add up.</i>	191	59	42		292	479
Average Days to Close or Assigned for Investigation	4	10	2			4

Convictions/Arrest Reports						
Received	63	75	58		196	237
Closed / Assigned for Investigation	63	75	54		192	239
Total Intake						
Received	259	131	107		497	739
Closed w/o Inv. Assignment	4	1	10		15	9
Assigned for Investigation	254	134	96		484	715
Avg. Days to Close or Assign	3	7	2		4	4

Investigation	<i>Complaints investigated by the program whether by desk investigation or by field investigation. Measured by date the complaint is received to the date the complaint is closed or referred for discipline action. If a complaint is never referred for Field Investigation, it will be counted as "Closed" under Desk Investigation. If a complaint is referred for Field Investigation, it will be counted as "closed" under Sworn.</i>					
Desk Investigation	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	FY Total	FY 14-15
Initial Assignment for Desk Investigation	254	133	106		493	715
Closed	267	144	54		465	782
Average Days to Close	88	99	140		109	112
Pending	209	189	270			

Field Investigation (Sworn)						
Assignment for Sworn Field Investigation	8	17	14		39	70
Closed	25	25	27		77	61
Average Days to Close	634	825			729.5	454
Pending	98	91	72			112

All Investigations						
First Assignments	254	134	102		490	715
Closed	292	169	159		620	830
Average Days to Close	135	206	149		163.3	144
Pending	307	280	270			343

All Investigations Aging						
Up to 90 Days	207	89	77		373	489
91 to 180 Days	38	38	54		130	146
181 Days to 1 Year	14	19	11		44	69
1 to 2 Years	20	6	8		34	109
2 to 3 Years	5	6	5		16	12
Over 3 Years	8	11	4		23	5

Disciplinary Actions	This section DOES NOT include subsequent discipline on a license. Data from complaint records combined/consolidated inot a single case will not appear in this section.					
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	FY Total	FY 14-15
AG Cases Initiated	5	5	1		11	60
AG Cases Pending	53	40	25			66
SOIs Filed	1	0	1		2	8
Accusations Filed	7	5	1		13	52
SOI Disciplinary Orders						
SOI Final Orders (Dec/Stips)	2	1	1		4	3
Average Days to Complete	829	416	557		600.7	394
ACC Disciplinary Orders						
ACC Final Orders (Dec/Stips)	13	16	13		42	51
Average Days to Complete	811	870	990		890.3	883
Total Disciplinary Orders						
Total Final Orders (Dec/Stips)	15	17	14		46	54
Total Average Days to Complete	813	843	873		843.0	861.5
Total Orders Aging/Final Decision						
Up to 90 Days	0	0	0		0	0
91 to 180 Days	0	0	0		0	0
181 Days to 1 Year	1	1	0		2	1
1 to 2 Years	7	6	7		20	24
2 to 3 Years	4	6	5		15	10
Over 3 Years	3	4	2		9	19
Citations						
Final Citations	32	21	17		70	99
Average Days to Complete*	333	262	342.4		312.5	199

Agenda Item 17 (A - 2) Consumer Protection Services

Other Legal Actions	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	FY Total	FY 14-15
Interim Suspension & PC 23 Ordered	1	1	1		3	1
Probation						
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	FY Total	FY 14-15
Entered Probationer	8	11	11		30	21
Completed Probation	5	7	9		21	4
Probation Terminated/Surrendered					0	5
Entered Maximus	5	7	7		19	10
Completed Maximus	0	0	1		1	5
Non-Compliant w/Probation	0	0	1		1	2
Total Probationers	92	94	98		98	88
Total Maximus Participants	15	21	23		23	11

Performance Measures	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	FY Total	FY 14-15
PM1 Volume - Number of Complaints Received within the specified time period.	196	56	49		301	669
PM1 Volume - Conviction/Arrest Reports Received	63	75	58		196	337
PM2 Cycle Time - Intake Average number of complaint intake during the specified time period.	3	7	2		4	4
PM3 Cycle Time-No Discipline (Target 90 Days) Average number of days to complete complaint intake and investigation steps of the enforcement process for Closed Complaints not resulting in Formal Discipline.	132	193	148		158	155
PM 4 Cycle Time-Discipline (Target 540 Days) Average number of days to complete the enforcement process (Complaint intake, Investigation, and Formal Discipline steps) for cases closed with Formal Discipline.	758	870	873		834	929

Agenda Item 17 (A - 2) Consumer Protection Services

1 The following is a list of disciplinary actions taken by the Physical Therapy Board of California for the months of
2 January, February, & March 2016. The Decisions become operative on the Effective Date, with the exception of
3 situations where the licensee has obtained a court ordered stay. Stay orders do not occur in stipulated decisions,
4 which are negotiated settlements waiving court appeals.
5

6 Copies of Accusations, Decisions, or Citations may be obtained by visiting our website at www.ptbc.ca.gov. In
7 addition to obtaining this information from our website, you may also request it by telephone, fax, or mail. Please
8 address your request to:
9

10 Physical Therapy Board of California
11 Consumer Protection Services
12 2005 Evergreen Street, Suite 1350
13 Sacramento, CA 95815
14 (916) 561-8200 Ext. 8215/ FAX (916) 263-2560
15

16 Physical Therapy Board of California Disciplinary Summary

17
18
19
20 **January 2016**

21 **MAPHIS, FRANKLIN (PTA 6436)**

22 Accusation Filed 05/13/2015. Violation of B & P Codes: 490, 493, 2239, 2660(a), 2660(e), 2660(w), and 2661.
23 Violation of CCR: 1399.20 and 1399.24. Stipulated Settlement and Disciplinary Order Effective 01/11/2016,
24 Revocation, Stayed, 3 Years' Probation from the effective date, or from the completion of the Substance Abuse
25 Rehabilitation Program plus one year, whichever is longer.
26

27
28 **TSUDA, AARON (PTA 8827)**

29 Petition for Reinstatement of Revoked License Filed 03/01/2015. Petition for Reinstatement of Revoked License
30 Granted Effective 01/21/2016, Revocation, Stayed, 5 Years' Probation, or until completion of the Board's substance
31 abuse rehabilitation program plus one year, whichever is longer.
32

33 **February 2016**

34
35 **BEHRINGER, BLAINE (PT 25517)**

36 Accusation Filed 06/09/2015. Violation of B & P Codes: 2239, 2660(a), 2660(e), 2660(f)(2), 2660(f)(3), and 2661.
37 Violation of CCR: 1399.20 and 1399.24. Violation of H & S Code 11055(a). Stipulated Revocation of License and
38 Order Effective 02/11/2016, License Revoked.
39

40 **BRYAN, JESSICA (PTA 47931)**

41 License Denied 04/10/15. Statement of Issues Filed 09/02/15. Stipulated Settlement and Disciplinary Order
42 Effective 02/25/16, Revocation, Stayed, 3 Years' Probation, or completion of the Substance Abuse Rehabilitation
43 Program, plus one year, whichever is longer.
44

45 **FRANCO, LORRY (PT 14967)**

46 Accusation Filed 09/30/14. Violation of B & P Codes: 136, 2660(a), and 2649. Violation of CCR: 1398.6, 1399.91,
47 1399.93, and 1399.97. Stipulated Settlement and Disciplinary Order Effective 02/11/16, Public Repeval.
48

49 **GUNNARSSON, GUDMUNDUR (PT 10078)**

50 Accusation Filed 04/01/15. Violation of B & P Codes: 2620.7, 2622, 2660(a), 2660(g), 2660(h), and 2660(i).
51 Violation of CCR: 1398.13 and 1399. Stipulated Settlement and Disciplinary Order Effective 02/25/16, Public
52 Repeval.
53
54

1 **HARRITY, STEVEN (PT 16247)**

2 Accusation Filed 03/12/14. Violation of B & P Codes: 136, 490, 493, 2234, 2239, 2660, 2660(d), 2660(h), and
3 2661. Violation of CCR: 1398.6 and 1399.24. Stipulated Settlement and Disciplinary Order Effective 02/29/16,
4 Revocation, Stayed, 2 Years' and 360 Days Probation, or the time necessary to satisfactorily complete the Board's
5 Substance Abuse Rehabilitation Program plus 1 year, whichever is longer.

6
7 **March 2016**

8
9 **BOYD, KEVIN (PTA 9002)**

10 Order Prohibiting Practice as a Physical Therapist Assistant Effective 03/08/16,
11 License Suspended.

12
13 **CAMPAZZIE, LEON (PTA 4367)**

14 Accusation Filed 02/02/15. Amended Accusation Filed 06/09/15. Violation of B & P Codes: 490, 2239, 2660(a),
15 2660(e), and 2661. Violation of CCR: 1399.20. Stipulated Settlement and Disciplinary Order Effective 03/10/16,
16 Revocation, Stayed, 5 Years' Probation, or completion of the Substance Abuse Rehabilitation Program, plus 1 year,
17 whichever is longer.

18
19 **GALLAGHER, MARY MONICA (PT 17433)**

20 Accusation Filed 07/09/14. Violation of B & P Codes: 498, 583, 2234, 2261, 2684(b), 2620.7, 2630, 2660(b),
21 2660(g), 2660(h), 2660(i), 2660(j), and 2660(k). Violation of CCR: 1398.44, 1399, 1399.85, 1399.91, 1399.93, and
22 1399.97. Stipulated Settlement and Disciplinary Order Effective 03/25/16, Revocation, Stayed, 5 Years' Probation,
23 or until completed payment on all money owed in cost recovery, whichever is longer.

24
25 **HALE JR., DONNIE LEE (PTA 2648)**

26 Accusation Filed 08/08/14. Violation of B & P Codes: 2234, 2630, 2660, 2660(g), 2660(h), 2660(i), and 2660(j).
27 Violation of CCR: 1398.13, 1398.44, 1399, and 1399.85. Stipulated Settlement and Disciplinary Order Effective
28 03/09/16, Revocation, Stayed, 3 Years' Probation, or until completed payment on all money owed in cost recovery,
29 whichever is longer.

30
31 **KIRKNER, DANIEL FRANCIS (PT 5186)**

32 Violation of B & P Codes: 2660, 2660(g), and 2660(h). Violation of CCR: 1399.85. In House Public Letter of
33 Reprimand Issued Effective 03/17/16.

34
35 **MAMARIL, JOHANNA PAZ (PT 29464)**

36 Accusation Filed 06/18/15. Violation of B & P Codes: 680, 2234, 2609, 2620.7, 2630, 2655, 2660(g), 2660(h),
37 2660(i), 2660(j), and 2676. Violation of CCR: 1398.11, 1398.13, 1398.44, 1399, 1399.85, 1399.91, 1399.93, and
38 1399.97. Stipulated Settlement and Disciplinary Order Effective 03/30/16, Revocation, Stayed, 4 Years' Probation.

39
40 **MEDLEN, COURTNEY (PT 41705)**

41 Initial Probationary License Issued 09/18/14. Statement of Issues Filed. Stipulated Settlement and Disciplinary
42 Order Effective 03/21/16, 2 Years' Probation beginning 09/18/14.

43
44 **MILLER, JONATHAN MARK (PT 24052)**

45 Accusation Filed 05/29/15. Violation of B & P Codes: 490, 2239, 2660(a), 2660(e), and 2661. Violation of CCR:
46 1399.20. Stipulated Settlement and Disciplinary Order Effective 03/18/16, Revocation, Stayed, 5 Years' Probation,
47 or completion of the Substance Abuse Rehabilitation Program, plus one year, whichever is longer.

48
49 **TUOMAINEN, PAUL (PTA 4481)**

50 Accusation Filed 07/14/15. Violation of B & P Codes: 2239, 2660, 2660(a), 2660(e), and 2661. Violation of CCR:
51 1399.20. Stipulated Settlement and Disciplinary Order Effective 03/14/16, Revocation, Stayed, 3 Years' Probation,
52 or time necessary to satisfactorily complete the Board's Substance Abuse Rehabilitation Program plus one year,
53 whichever, is longer.

1
2 **ZABOROWSKI, EWA (PT 19645)**

3 Accusation Filed 05/13/15. Violation of B & P Codes: 490, 493, 2234, 2239, 2660, 2660(a), 2660(e), and 2661.
4 Violation of CCR: 1399.20. Stipulated Settlement and Disciplinary Order Effective 03/11/16, Revocation, Stayed, 3
5 Years' Probation, or the time necessary to satisfactorily complete the Board's Substance Abuse Rehabilitation
6 Program, plus one year, whichever is longer.
7

8 **Initial Probationary Licenses (IPL) Issued**
9

10
11
12 **January, February, and March 2016**

13
14 (NONE)
15

16 **Licenses Denied**
17

18
19
20 **January, February, and March 2016**

21
22 (NONE)
23

24 **Glossary of Terms**
25

26 B & P Code – Business and Professions Code
27 H & S Code – Health and Safety Code
28 R & R – Rules and Regulations
29 CCR – California Code of Regulations
30

31 Accusation: Charges and allegations filed against a licensee alleging violation(s) of the Physical Therapy Practice
32 Act.
33

34 Petition to Revoke Probation: A Petition to Revoke Probation is filed when a licensee is charged with a violation of
35 a prior disciplinary decision.
36

37 Probationary License: Where good cause exists to deny a license, the licensing agency has the option to issue a
38 conditional license subject to probationary terms and conditions.
39

40 Statement of Issues Filed: When an applicant for licensure is informed the license will be denied for cause, the
41 applicant has a right to a formal hearing, usually before an Administrative Law Judge. The process is initiated by
42 the filing of a Statement of Issues, which is similar to an accusation.
43

44 Statement of Issues Decision: A decision rendered after the filing of a Statement of Issues.
45

46 Stipulated Decision: A negotiated settlement waiving a court appeal.



MEMORANDUM

DATE	May 18, 2016
TO	Physical Therapy Board of California
FROM	Angelique Scott, Legal Affairs
SUBJECT	<i>Bagley Keene Open Meeting Act & Ethical Decision Making Training</i>

As appointed Board members of the Physical Therapy Board of California, you are all required to participate in the Department of Consumer Affairs, New Board Member Orientation Training (BMOT) upon each appointment: that includes initial appointment and any subsequent reappointments.

This presentation is an effort to promote good government practices and to serve as either a refresher to the Bagley-Keene Open Meeting Act Training you received during BMOT or, for new members, an introductory of the fundamentals you will learn in more detail during BMOT, which you may have covered with your Executive Officer.

My objectives today are two-fold:

- 1) First, to create awareness on your part of potential ethical dilemmas you may encounter as a board member.
- 2) Second, to suggest strategies for resolving those dilemmas.

During this training I will cover the following areas:

- Portions of the Bagley-Keene Open Meeting Act;
- Conflicts of Interest: Disqualification and Abstention.

LEGAL DISCLAIMER: This is in no way to replace the mandated BMOT training.



MEMORANDUM

DATE	May 18, 2016
TO	Physical Therapy Board of California
FROM	Angelique Scott, Legal Affairs
SUBJECT	<i>Bagley Keene Open Meeting Act Top Ten Rules</i>

1. All meetings are public. (*GC §11123*)
2. Meetings must be noticed 10 calendar days in advance--including posting on the Internet. (*GC §11125(a)*)
3. Agenda required--must include a description of specific items to be discussed (*GC §§ 11125 & 11125.1*). No item may be added to the agenda after it has been noticed unless it meets criteria for an emergency. (*GC §11125(b)*)
4. Meeting is “gathering” of a majority of the board or a majority of a committee of 3 or more persons where board business will be discussed. This includes telephone & e-mail communications. (*GC §11122.5; Stockton Newspapers Inc. v. Members of the Redevelopment Agency of the City of Stockton (1985) 171 Cal.App.3d 95.*)
5. The Open Meeting Act applies to boards, committees, subcommittees, and task forces that consist of 3 or more persons (includes all persons whether or not they are board members). (*GC §11121*)
6. Public comment must be allowed on agenda items before or during discussion of the items and before a vote, unless: (*GC §11125.7*)
 - a. The public was provided an opportunity to comment at a previous committee meeting of the board. If the item has been substantially changed, another opportunity for comment must be provided.
 - b. The subject matter is appropriate for closed session.

7. Closed sessions: (GC §11126)

At least one staff member must be present to document topics discussed and decisions made. (GC §11126.1)

Closed session allowed:

- a. Discuss and vote on disciplinary matters under the Administrative Procedure Act (APA). (GC §11126, subd. (c)(3))
- b. Prepare, approve or grade examinations. (GC §11126, subd. (c)(1))
- c. Pending litigation. (GC §11126, subd. (e)(1))
- d. Appointment, employment, or dismissal of executive officer (EO) unless EO requests such action to be held in public. (GC §11126, subds. (a)& (b))

No closed session allowed for:

- a. Election of board officers. (68 AG 65)
 - b. Discussion of controversial regulations or issues.
8. Each member's vote must be documented, even abstentions. No secret ballots or votes except mail votes on APA enforcement matters. (68 AG 65; GC §11526)
9. No proxy votes. (68 AG 65)
10. Meetings by teleconferencing (GC §11123)
- a. Suitable audio or video must be audible to those present at designated location(s). (GC §11123, subd. (b)(1)(B))
 - b. Notice and agenda required for the teleconference location. (GC §11123, subd. (b)(1)(A))
 - c. All members must attend at a public location. Every location open to the public must have at least one member of board physically present at the specified location. (GC §11123, subds. (b)(1)(C), and (b)(1)(F))
 - d. Roll call vote required. (GC §11123, subd. (b)(1)(D))
 - e. Emergency meeting closed sessions not allowed. (GC §11123, subd. (b)(1)(E))

[NOTE: GC § = Government Code Section; AG = Opinions of the California Attorney General.]

Reference: Department of Consumer Affairs Guide to the Bagley-Keene Open Meeting Act, January 1, 2015



PHYSICAL THERAPY BOARD OF CALIFORNIA

BAGLEY-KEENE OPEN MEETING ACT AND ETHICAL DECISION-MAKING TRAINING

TRAINING TOPICS:

- The Bagley-Keene Open Meeting Act
- Conflicts of Interest : Disqualification and Abstention
- **LEGAL DISCLAIMER: This training is in no way intended to replace your mandated BMOT training.**

The Bagley-Keene Open Meeting Act

- Promotes openness or transparency in state decision-making.
- Requires the Board to do business in public, and not in private, except where expressly permitted
- Imposes 3 Duties
 - Adequate Notice of Items to be Discussed
 - Conduct Meetings in Open Session
 - Public's Opportunity to Comment *before* Board action

The Bagley-Keene Open Meeting Act

- ▣ What meetings are covered by the Law?
- ▣ Public Perception
- ▣ Exceptions
- ▣ Top Ten Rules of the Open Meeting Act
- ▣ Examples

The Bagley-Keene Open Meeting Act

TOP TEN RULES

1. All meetings are public.
2. Meetings must be noticed 10 calendar days in advance – including posting on the Internet.
3. Agenda required for every meeting which must include a description of specific items to be discussed. And, no item may be added to the agenda unless it meets criteria for an emergency.
4. Meeting is “gathering” of a majority of the board or a majority of a committee of 3 or more persons where board business will be discussed. Includes telephone & e-mail communications.
5. OMA applies to all boards, committees, subcommittees, and task forces that consist of 3 or more persons (includes all persons whether or not they are board members).
6. Public comment must be allowed on agenda items before or during discussion of the items and before a vote.

The Bagley-Keene Open Meeting Act

TOP TEN RULES (Cont'd)

7. Closed session: At least one staff member must be present during closed session to document topics discussed and decisions made.

Closed session allowed:

- a. Discuss and vote on disciplinary matters under the APA.
- b. Prepare, approve or grade examinations.
- c. Pending litigation.
- d. Appointment, employment, or dismissal of EO.

No closed session allowed for:

- a. Election of board officers.
- b. Discussion of controversial regulations or issues.

The Bagley-Keene Open Meeting Act

TOP TEN RULES (Cont'd)

8. Each members vote must be recorded. No secret ballots or votes except mail votes on APA enforcement matters.
9. No proxy votes.
10. Teleconference Meetings
 - a. Suitable audio or video must be audible to those present at designated location(s).
 - b. Notice and agenda required.
 - c. Every location must be open to the public and at least one board member must be physically present at the specified location. All members must attend at a public location.
 - d. Roll call vote required.
 - e. Emergency meeting closed sessions not allowed.

The Bagley-Keene Open Meeting Act

Example 1. Email & Telephone

Let's say you are the Board chair who sends an email to all members of the Board that provides:

“To all members of the Physical Therapy Board: I have a great idea for continuing education! I think continuing education regarding office uniform colors would really improve the public image of our profession. I have attached a position paper I prepared on this.

Could you please read it and email me back whether you will support this proposal?”

The Bagley-Keene Open Meeting Act

Q1: What should you do if you receive this type of email?

Q2: What if an analyst of the Board disseminates the proposal on the Chair's behalf and asks each Board member if he or she will support the proposal?

Q3: What if this was a series of telephone calls among a majority of the Board members, rather than email?

The Bagley-Keene Open Meeting Act

Example 2. Social Occasions

You and 3 other members of the 7-member Board are at a table together during a multi-state physical therapy conference. After talking about the location and quality of food, one Board member asks the other members if they will support a bill to help a nonprofit group that provides counseling for physical therapy patients who suffer from phobias related to physical therapy.

Q: What should you do (and not do) in a situation such as this?

The Bagley-Keene Open Meeting Act

Example 3. New Members

You are now a veteran of the Board and a newly appointed Board member reaches out to you to learn about issues facing the Board.

Q: Does the Open Meeting Act preclude a new member from speaking with other members to learn about the issues facing the Board?

Conflicts of Interest: Disqualification and Abstention

Conflicts of Interest: Disqualification and Abstention

- ❑ Disqualification occurs when a member is “ineligible” to act on a specific matter before the Board, generally because of an actual or perceived bias or conflict of interest. Disqualification is sometimes referred to as “recusal”.
- ❑ Abstention occurs when a member chooses not to vote on a particular issue, even if the law allows you to participate and vote.
- ❑ Disqualification is mandatory while abstention is voluntary.

Conflicts of Interest Disqualification and Abstention

Example 4. Disqualification

Your spouse owns a private educational institution that offers board-approved educational programs, and an item on a Board meeting agenda concerns possible changes to the Board's Regulations that would essentially find that your spouse's program no longer meets the Board's requirements for continued approval.

Q: Could you participate in the discussion and vote on the matter?

Conflicts of Interest Disqualification and Abstention

Example 5. “Legally Required Participation Rule”

Let's say that only four (4) of the seven (7) seats that comprise the Board are filled, and the remaining three (3) seats are vacant. Since the presence and participation of four (4) Board members constitutes a quorum, the Board schedules and holds a public meeting. During the meeting, one of the four (4) Board members states that she is disqualified from participating in an agenda item because she has a financial interest in the matter.

Q1: Can the Board still discuss the item?

Q2: Can the Board member vote on the item?

Conflicts of Interest Disqualification and Abstention

Example 6. Choosing to Abstain

Same facts as above but the Board's attorney is of the opinion that there is no legal basis for disqualification, but you still feel uncomfortable about participating in the decision? This may occur if you feel that you cannot separate your personal interests from your duty as a Board member, or you may feel uncomfortable for any reason about participating in the matter. In this situation, you may want to abstain from casting a vote. Unlike a disqualification situation, this does not preclude you from participating in the discussion.

Q1: Can the Board still discuss the item?

Q2: Can you vote on the item?

Conflicts of Interest Disqualification and Abstention

Professional Association Relationships

Often times, professional members of the various entities within the Department of Consumer Affairs are also members or even officers of professional associations. Sometimes these dual interests may clash. While there is no prohibition against Board members meeting with professional associations outside of a publicly noticed meeting, this is where you have to ask yourself:

Must I disqualify myself or abstain from participating in a particular matter?

Conflicts of Interest Disqualification and Abstention

Example 7. Professional Association Relationships

The Physical Therapy Board is considering sponsoring legislation that would modify the Physical Therapy Act. The California State of Individuals Who Practice the Art and Science of Physical Therapy 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 Exercises Association (Association) adamantly opposes what the Board seeks to do. You are Chair of the Board and are also president of the Association. The Association's other board of directors are pressuring you to get the Board to drop the proposed legislation.

Q. What should you do when the agenda item is taken up for consideration by the Board?

Conflicts of Interest Disqualification and Abstention

Example 8. Professional Association Relationships

Unbeknownst to the other Board members and the Board's attorney, the Board Chair is also president of the California State Individuals who Practice the Art and Science of Physical Therapy 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 Exercises Association's board of directors. The Board Chair asks the Board's attorney, during a private, attorney-client protected conversation, whether it is legal for the Board to authorize the use of a particular treatment modality for two of its licensees that is not listed in the physical therapy statutes or regulations.

Conflicts of Interest Disqualification and Abstention

Cont'd.

The Board chair states that she believes it is an unauthorized act by the Executive Officer. Since the Board's attorney is not aware that the Board chair is also the president of the association, the Board's attorney provides her with legal advice regarding her inquiry. The Board Chair then reveals that she is the newly-elected association president, and the association will be filing a lawsuit against the Board for not enforcing its statutes and regulations.

Q. What did the Board Chair do wrong here?

BAGLEY KEENE OPEN MEETING ACT & ETHICAL DECISION MAKING TRAINING

CLOSING COMMENTS