

**October 25,  
2016**  
BOARD MEETING

DCA Lake Tahoe Conference Room  
2005 Evergreen Street  
Sacramento, CA 95815



Physical Therapy Board of California

# 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](http://www.ptbc.ca.gov)

## PHYSICAL THERAPY BOARD OF CALIFORNIA NOTICE OF PUBLIC MEETING

October 25, 2016 9:00 a.m.

DCA Lake Tahoe Conference Room  
2005 Evergreen Street  
Sacramento, CA 95815

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*

Sarah Conley, *Manager*

Brooke Arneson, *Associate Analyst*



Physical Therapy Board of California



STATE OF CALIFORNIA

**dca**

DEPARTMENT OF CONSUMER AFFAIRS

## Agenda

1. **Call to Order - 9:00 a.m.**
2. **Roll Call and Establishment of Quorum**
3. **Review and Approval of September 22, 2016 Meeting Minutes**  
–*Brooke Arneson*
4. **Discussion of Issues Regarding Test of English as a Foreign Language (TOEFL) Regulatory Language and Possible Board Action Regarding Modified Text on English Proficiency Requirements; Proposed Language to Amend Section 1398.25 and Add Section 1398.26.3 to Article 2, Division 13.2, Title 16 of the California Code of Regulations** – *Brooke Arneson*
5. **Discussion and Possible Board Action Regarding Sunset Review Subcommittee’s Recommendation on Issues to be Identified on the Sunset Review Report Pursuant to Business and Professions Code (BPC) Section 2602** – *Jason Kaiser*  
(A) **BPC Section 2653, English proficiency exemption**
6. **Review, Discussion and Possible Board Action on Sunset Review Report Pursuant to BPC Section 2602** – *Jason Kaiser*
7. **Public Comment on Items Not on the Agenda**  
*Please note that the Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code sections 11125 and 11125.7(a).]*
8. **Agenda Items for Future Meeting** – November 16 & 17, 2016  
The California Endowment  
1000 N. Alameda Street,  
Cabrillo Room  
Los Angeles, CA 90012
9. **Adjournment**

**Informational Notes:**

*Times stated are approximate and subject to change. Agenda order is tentative and subject to change at the discretion of the Board; agenda items may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. Agenda discussions and report items are subject to action being taken on them during the meeting by the Board at its discretion. 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 on particular issues may be limited.*

*\*Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on any matter not included in this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code sections 11125, 11125.7(a)).*

*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](mailto: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.*

**Roll Call**

**DCA Lake Tahoe Room  
Sacramento, CA**

**October 25, 2016**

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



Physical Therapy Board of California

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

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1

## Board Members

### President

Katarina Eleby

### Vice-President

Alicia Rabena-Amen, PT, MPT

### Members

Debra Alviso, PT, DPT

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Tonia McMillian

TJ Watkins

## Physical Therapy Board of California

### **DRAFT Meeting Minutes**

September 22, 2016 9:00 a.m.

### Department of Consumer Affairs

2005 Evergreen Street,

Lake Tahoe Conference Room

Sacramento, CA 95815

## Board Staff

Jason Kaiser, Executive Officer

Liz Constancio, Manager

Elsa Ybarra, Manager

Sarah Conley, Manager

Brooke Arneson, Associate

Analyst

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.

### 6 **1. Call to Order**

8 The Physical Therapy Board of California (Board) meeting was called to order by Katarina  
9 Eleby at 9:06 a.m. on September 22, 2016.

### 11 **2. Roll Call and Establishment of a Quorum**

12 All members were present and a quorum was established. Also present at the meeting  
13 were Tara Welch, Legal Counsel; Angelique Scott, Legal Counsel; Jason Kaiser,  
14 Executive Officer; and Elsa Ybarra, Sarah Conley, Liz Constancio and Brooke Arneson,  
15 Board staff.

### 17 **3. Discussion and Possible Board Action Regarding Sunset Review Sub-Committee's 18 Recommendation on Issues to be Identified on the Sunset Review Report Pursuant 19 to Business and Professions Code (BPC) Section 2602**

#### 21 **(A) BPC Section 2688, raising statutory caps for fees**

23 Mr. Kaiser presented the Sunset Review Sub-Committee's recommendation to address  
24 this issue during the Board's Sunset Review process.

26 **MOTION: To accept the Sunset Review Sub-Committee's  
27 recommendation to include Agenda Item 3(A) in the Sunset  
28 Review Report**

30 **M/S: McMillian/Dominguez**

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**VOTE: 7-0 Motion carried**

**(B) BPC Section 2648.7, clarifying revisions to retired license status**

Mr. Kaiser presented the Sunset Review Sub-Committee’s recommendation to address this issue during the Board’s Sunset Review process.

**MOTION: To table discussion and Sunset Review Sub-Committee to continue to work on issues for further Board discussion at October 25, 2016, Board meeting**

**M/S: Watkins/Dominguez**

**VOTE: 7-0 Motion carried**

**(C) BPC Section 2653, addressing Coursework Tool 6 conflict**

Mr. Kaiser presented the Sunset Review Sub-Committee’s recommendation not to address this issue during the Board’s Sunset Review process.

**MOTION: To accept the Sunset Review Sub-Committee’s recommendation on Agenda Item 3(C)**

**M/S: Alviso/Watkins**

**VOTE: 7-0 Motion carried**

**(D) BPC Section 2620.5, specialty certification in Clinical Electrophysiology**

Mr. Kaiser presented the Sunset Review Sub-Committee’s recommendation not to address this issue during the Board’s Sunset Review process.

**MOTION: Not to include Agenda Item 3(D) in Sunset Review Report**

**M/S: McMillian/Dominguez**

**VOTE: 7-0 Motion carried**

70 **(E) BPC Section 2636, modification of the California Law Exam**

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72 Mr. Kaiser presented the Sunset Review Sub-Committee's recommendation not to  
73 address this issue during the Board's Sunset Review process.

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75 **MOTION: To remove Agenda Item 3(E) from Sunset Review**

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77 **M/S: Rabena-Amen/Drummer**

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79 **VOTE: 7-0 Motion carried**

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81 **(F) BPC Section 2689, technical corrections to a cross-reference**

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83 Ms. Arneson presented the Sunset Review Sub-Committee's recommendation to  
84 address this issue during the Board's Sunset Review process.

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86 **MOTION: To present Agenda Item 3(F) in Sunset Review**

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88 **M/S: Watkins/McMillian**

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90 **VOTE: 7-0 Motion carried**

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92 **4. Public Comment on Items Not on the Agenda**

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94 There were no public comments on items not on the Agenda.

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96 **5. Agenda Items for Next Meeting – October 25, 2016**

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98 The Board indicated it did not have any specific items at this time for the October 25,  
99 2016 meeting..

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101 **19. Adjournment**

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103 The Board concluded the meeting on Thursday, September 22, 2016 and adjourned at  
104 approximately 4:17 p.m.



Physical Therapy Board of California

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

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## Issue Paper

**Date:** October 7, 2016

**Prepared for:** PTBC Members

**Prepared by:** Brooke Arneson

**Subject:** English Proficiency Regulation Update

**Purpose:** To update the Board on the status of the proposed regulation

**Attachments:**

1. [Proposed language](#)
2. [Technical Memorandum: 2016 Update of the FSBPT TOEFL Standard: October 14, 2016](#)
3. [Summary Sheet: TOEFL Standard Setting for Licensing Physical Therapists and Physical Therapists Assistants August, 2016](#)

## **Background:**

- January, 2014 - SB 198 amended Business and Professions Code (BPC) § 2653 (b) of the Physical Therapy Practice Act (Act) to read:

*An applicant for a license as a physical therapist who has graduated from a physical therapist education program, that is not approved by the Board and is not located in the United States, shall do the following:*

(a) ...

*(b) Demonstrate proficiency in English by achieving a score specified by the Board on the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Services (ETS) or such other examination as may be specified by the Board by regulation.*

(c)...

- May, 2015 – The Board approved regulatory language after conducting a hearing and comments received considered.
- October, 2015 – State and Consumer Services Agency noted an error in the citation of the Code of Federal Regulations (CFR).

- November, 2015 - Erroneous CFR citation corrected with a 15 day Notice of Modified Text.  
Note: The modified text was thought to be non-substantive; therefore with the approval of the Board President, the Executive Officer made the correction to the text.
- January, 2016 –Rulemaking file submitted to the Department of Consumer Affairs, State and Consumer Services Agency and the Department of Finance for review.
- June, 2016 – Staff submitted the rulemaking file to the Office of Administrative Law (OAL) [after approval by the above control agencies].
- August 5, 2016 - the Board received a formal Decision of Disapproval of Regulatory Action from OAL indicating it disapproved the proposed regulations for minor procedural issues and failing to meet consistency, clarity and necessity standards as defined in Government Code section 11349.1. Amongst the issues for disapproval, OAL noted the text modified in November, 2015 was substantive and required the Board’s vote and adoption.
- August 24, 2016 –
  - 1) Board voted to adopt the November, 2015 modified text [correcting the erroneous CFR citation].
  - 2) Board voted to adopt the second modified text [in an attempt to address the concerns of OAL that BPC section 2653(b) does not contain any language permitting the Board to exempt specific applicants from demonstrating English proficiency; and, to address the updated TOEFL standards of the FSBPT set in 2015].

**WHERE WE ARE NOW:** The OAL attorney assigned to review the Board’s proposed rulemaking file had recent opportunity to further discuss with her management the Board’s proposal to specify a means of satisfying the English proficiency requirement without examination. OAL management counsel concluded the Board has no such authority since BPC §2653(b) provides for no discretion to waive an examination demonstrating English proficiency. OAL determined their conclusion was further supported by BPC §2653(c) which states; in part... “The board may in its discretion waive all or part of the required clinical service pursuant to guidelines set forth in regulation.” And, no such authority was specified by the legislature in BPC §2653(b).

Additionally, the Decision of Disapproval of Regulatory Action (Decision of Disapproval) indicated the Initial Statement of Reasons (ISOR) was deficient and the Board must prepare an addendum to the ISOR, addressing why it’s appropriate that the Board’s proposed minimum TOEFL scores enumerated in subdivision (a) of proposed section

1398.26.3 align with the FSBPT's recommended minimum TOEFL scores. Specifically, in the Decision of Disapproval; OAL states, "...the ISOR failed to provide sufficient information to explain why the FSBPT's recommended minimum scores should be adopted, as opposed to any other entity's recommended minimum scores".

This prompted staff to reach out to FSBPT for assistance. FSBPT replied with the attached "Technical Memorandum: 2016 Update of the FSBPT TOEFL Standard Oct. 14, 2016." It is hopeful the FSBPT's memorandum, coupled with the FSBPT's "Summary Sheet: 2016 TOEFL Standard Setting for Licensing Physical Therapists and Physical Therapists Assistants August, 2016" will satisfy OAL since they demonstrate, among other things that in March, 2016 due diligence was done and standard score setting minimum practices were followed; and, the only other known TOEFL scores are those of the United States Custom and Immigration Service (USCIS) does not apply to all foreign-educated candidates, only those seeking a specific type of healthcare workers visa and USCIS standard may be updated to reflect FESBPT's revised standard in the near future.

The consequence to the applicant is another point of consideration. If the Board's minimum standards differ from FSBPT's and the candidate scores less than what is required for qualifying for the NPTE, the applicant would be required to retake TOEFL.

#### **WHERE DO WE GO FROM HERE?**

The second modified text adopted by the Board at its meeting in August was never noticed since staff learned OAL would not approve it. Therefore, staff is proposing a third modified text striking 1398.26.3 subsection (b). Additionally, under Agenda Item 5, staff is proposing to identify as an issue for Sunset, amending section 2653(b) authorizing the Board to in its discretion waive the examination requirement.

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#### **Action Requested:**

Consideration of the following motion:

"I move that we approve the proposed regulatory language as modified at this meeting and direct staff to notice for 15-day public comment period. I delegate to the Executive Officer the authority to adopt the proposed regulatory changes, as modified, and delegate to the Executive Officer the authority to make technical or non-substantive changes that may be required in completing the rulemaking file."

## PHYSICAL THERAPY BOARD OF CALIFORNIA

### Second Modified Text

Changes to the originally proposed language are shown in single underline for new text.

Changes to the First Modified Text are shown in italics with underline for new text and strikeout for deleted text.

Changes to the Second Modified Text are shown in double underline for new text and double strikeout for deleted text – [adopted by the Board in August but never Noticed to the public.]

Changes to [this] Second Modified Text are shown in bold, double underline for new text and bold, double strikeout for deleted text.

### **§1398.25 Credentials Evaluation Services**

In accordance with Section 2653 of the code, the board will accept reports from credentials evaluation services which meet all of the following criteria:

(a) The service retains the services of a physical therapist consultant(s) who is licensed as a physical therapist in a state or territory of the United States and is used in an advisory capacity to review individual cases for comparability to the educational and training requirements of Section 2650 of the code for hours and content.

(b) The service is able to document the experience of its employees by producing positive letters of reference from other state licensing agencies, educational institutions or professional organizations.

(c) The service is able to submit a report to the board that shall be based on a review of original documentation of an applicant's credentials and shall document the following:

(1) The equivalent professional degree the foreign applicant would have received from an accredited physical therapist education program located in the United States.

(2) Whether completion of the foreign applicant's physical therapist education and training entitles the foreign applicant to practice as a physical therapist in the country where the education and training was completed.

~~(3) Whether the foreign applicant demonstrated English proficiency ~~achieved the minimum required scores within a single administration of the Test of English as a Foreign Language (TOEFL) in accordance with section 1398.26.3(a).~~ ~~or is exempt from such requirement pursuant 1398.26.3(b).~~~~

Note: Authority cited: Section 2615, Business and Professions Code. Reference: Sections 2650, 2651, and 2653, Business and Professions Code.

### §1398.26.3 English Proficiency

~~(a) In accordance with Section 2653 of the code, an applicant who graduated from a physical therapist education program that is not approved by the board and is not located in the United States ~~(a "foreign applicant")~~ must demonstrate English proficiency by either:~~

~~(a) achieving the following minimum scores within a single administration of the ~~Test of~~ English as a Foreign Language (TOEFL):~~

~~(1) Reading Section – ~~24~~ 22~~

~~(2) Listening Section – ~~18~~ 21~~

(3) Writing Section – 24 22

(4) Speaking Section – 26 24.

~~(b) A foreign applicant who meets the following criteria is exempt from the requirement in subsection (a) above:~~

~~(1) One who graduated **Graduating from a physical therapist education program from a college, university or professional training school in Australia, Canada, (except Quebec), Ireland, New Zealand, or the United Kingdom,** or the United States;~~

~~(2) One who is or would be exempt from TOEFL requirements pursuant to Title 8, Code of Federal Regulations, section 212.15, subsection (g)(2)(ii) (i)(3) as it currently exists or is hereafter amended.~~

Note: Authority Cited: Section 2615, Business and Professions Code, Reference: Sections 2650, 2651, and 2653, Business and Professions Code.; Title 8, Code of Federal Regulations, section 212.15.



**Technical Memorandum: 2016 Update of the FSBPT TOEFL Standard**  
**Oct. 14, 2016**

This memorandum is in response to a request from the Physical Therapy Board of California (CA Board) to provide additional information regarding the decision of the Federation of State Boards of Physical Therapy (FSBPT) to revise their recommended minimum TOEFL scores. Specifically, the CA Board requested information pertaining to why the CA Board should adopt FSBPT's minimum scores, as opposed to any other entity's standard (e.g., the United States Custom and Immigration Service [USCIS]).

FSBPT's previous standard was set in 2004 (and adopted in 2005), using a small panel of physical therapists alongside representatives of other healthcare professions.<sup>1</sup> The technical documentation relating to process for setting the standard is limited. Similarly, it is unclear how the standard was communicated at that time to licensing jurisdictions. We do know that some jurisdictions adopted a "Composite" score standard that consisted of the Listening, Reading, and Writing section scores (totaling 63), and a separate standard for Speaking (26). It is unclear whether the recommendation at this time came from FSBPT staff or elsewhere.

The derivation of the standard used by USCIS is also unclear, as it is not recorded in the Code of Federal Regulations (CFR), which was last updated in 2003.<sup>2</sup> It was likely adopted subsequent and pursuant to FSBPT's adoption of the 2004 standard, based on the timing of ETS's transition from a TOEFL CBT, which is computer-based, to the TOEFL IBT, which is administered live over the internet and is scored differently from the scores encoded in the CFR.<sup>3</sup>

Most, but not all licensing jurisdictions adopted the standard recommended by FSBPT. Some jurisdictions adopted a total minimum TOEFL score without requiring minimum section scores, some adopted different minimum section scores, and some adopted no standard at all. Additionally some jurisdictions have different rules for who is required to demonstrate proficiency in English. More details can be found in FSBPT's Licensure Reference Guide.<sup>4</sup>

In 2015, FSBPT determined that updating the TOEFL standard was necessary. Our decision was based on the following reasons.

- The TOEFL standard was going to be a requirement for all NPTE candidates in 2018.
- The NPTE Technical Advisory Panel (TAP) strongly suggested that we reconsider the TOEFL standard, given possible changes in the profession, candidate base, and the PT patient population. Given these potential changes, the TAP was concerned that the 2004 standard might not represent what is minimally required for safe and effective performance among

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<sup>1</sup> [http://www.fsbpt.org/download/forum\\_vol20\\_no2.pdf](http://www.fsbpt.org/download/forum_vol20_no2.pdf), see p.10

<sup>2</sup> <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-15905/0-0-0-16755.html>

<sup>3</sup> *Ibid.*

<sup>4</sup> [http://www.fsbpt.org/Portals/0/documents/free-resources/JLRG\\_FEPT\\_EnglishLanguageRqmts\\_201412.pdf](http://www.fsbpt.org/Portals/0/documents/free-resources/JLRG_FEPT_EnglishLanguageRqmts_201412.pdf)



current PTs. This situation could be in at variance with the *Standards for Educational and Psychological Testing*.<sup>5</sup>

- The 2004 standard did not explicitly consider whether a standard was appropriate for Physical Therapist Assistants (PTAs). Since that time, the number of foreign-educated candidates taking the NPTE-PTA has grown substantially. FSBPT staff wanted to have an expert panel consider whether an English proficiency standard was appropriate for the PTA exam.
- FSBPT staff believed that the standard would be more defensible if we included a larger, more diverse expert panel, representing PTs educated outside of the United States and a broad range of practice settings.

As a result of the March, 2016 TOEFL standard review, the standards adopted by FSBPT's Board of Directors are more defensible and relevant to current safe and effective practice than the 2004 standard. Key points in FSBPT's position are as follows.

- The Speaking section standard was updated to reflect current practice and impact concerns. The minimum score of 26 excluded an unreasonable proportion of candidates who were sufficiently proficient in English, and the patient population today is more familiar with and accepting of minor language issues.
- The Writing section standard was updated to reflect current practice. Electronic medical records have reduced the need for extensive writing. In many cases, PTs and PTAs are selecting from a list of options on a screen rather than making handwritten notes.
- The Reading section standard was updated to reflect current practice. The counter to the reduced need for writing was an increased need to read and integrate information.
- The Listening standard was, in the view of the panelists, set too low. Listening is as important as speaking in patient interactions, especially with a growing emphasis on PTs being a first point of contact and the growing proportion of medically complex patients.
- The new standards are well documented, and include a performance level description of minimum competence in English for safe and effective practice.
- The expert panel was broadly representative of licensing jurisdictions, practice settings, patient populations, and approximately half of the panel members were educated outside of the United States.

In addition to the previous points regarding the improved relevance and defensibility of the revised standard, there may be unintended consequences for jurisdictions that do not adopt the new FSBPT standard.

- Because the FSBPT standard will be a requirement for candidates taking the NPTE, jurisdictions that retain the previous standard will effectively be holding candidates to a much higher standard than either standard alone. Under California's current model, for example, the minimum score would total 93 scale score points (FSBPT minimums for Reading = 24, Listening = 21, and Writing = 22, and the CA Board's minimum for Speaking = 26).

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<sup>5</sup> American Educational Research Association, American Psychological Association, and the National Council on Measurement in Education (2014). *Standards for Educational and Psychological Testing*. Washington, DC: American Educational Research Association.



- USCIS’s standard does not apply to all foreign-educated candidates, only those seeking a specific type of healthcare workers visa. Jurisdictions that do not adopt the current FSBPT standard may be holding foreign-educated candidates to a standard that does not apply to them.
- The USCIS standard may be updated to reflect FSBPT’s revised standard. FSBPT is still making policy determinations about when the previous standard will no longer be accepted. We expect to inform USCIS of the changes once those policy decisions have been completed. We expect that USCIS will begin considering whether to update their policies at that time.

**Summary Sheet: 2016 TOEFL Standard Setting for Licensing  
Physical Therapists and Physical Therapists Assistants  
August, 2016**

**Purpose**

- The purpose of the 2016 TOEFL Standard Setting meeting was to review the recommended standard of the Federation of State Boards of Physical Therapy (FSBPT) for English proficiency for licensing Physical Therapists (PTs), and to consider whether such a standard is necessary for Physical Therapist Assistants (PTAs). The TOEFL is a widely used assessment of English language proficiency.
- Effective in 2018, the FSBPT recommendation will become a requirement to become eligible to take the National Physical Therapy Examination (NPTE) for PTs and PTAs who were educated in a country where the primary language of education is not English.
- The existing TOEFL standard was initially set in 2005 by a small panel of physical therapy experts in a meeting with representatives of other health care professions. The standard only applied to PTs, and was a recommendation to jurisdictional licensing boards (as opposed to an NPTE eligibility requirement). No standard was considered for the NPTE-PTA examination at that time.
- Given the amount of time that had passed since the PT standard was initially set, FSBPT's Technical Advisory Panel (TAP) recommended that we review and possibly reset this standard in recognition of possible changes in the PT field, changes to NPTE eligibility, and changes in the demographics of the NPTE examinee population.
- In relation to the potential need for an English proficiency standard for PTAs, only a small number of candidates educated outside of the US took the PTA exam when the initial standard was set. That number has grown significantly, making it both efficient and advisable to consider whether a standard would be appropriate for the PTA exam at this time.

**Process**

- FSBPT invited ETS, the publisher of the TOEFL, to lead a group of PTs and PTAs through a professionally acceptable process for determining cut scores, or standards, for the TOEFL.
- The 22 standard setting panelists represented a broad range of practice settings, areas of expertise, and geographic location. Approximately half of the panel were educated outside of the United States. Ten panelists supervised PTAs, and one panelist was a PTA. FSBPT made efforts to recruit more PTAs to participate but those efforts were not successful. The meeting took place in Alexandria, VA at the FSBPT offices on March 11-13, 2016.
- ETS led the panelists through a process orienting them to the TOEFL, providing examples of TOEFL questions from each of the four TOEFL sections: Reading, Writing, Listening, and Speaking.
- For each section, panelists reviewed performance examples, and then developed detailed descriptions of minimally acceptable English proficiency relevant to that section. The final versions of these descriptions are included in Appendix A.

- Using the description of minimal proficiency, panelists rated whether the each example from the TOEFL was consistent with the description or exceeded the definition of minimal proficiency. ETS collected these judgments, led a discussion of the differences, and allowed panelists to review and revise their initial ratings. ETS used this information to set initial cut score recommendations from the panel. During the first two days, panelists considered these standards for the PTs only; the PTA standard was not considered.
- Following the completion of the PT standard setting, ETS presented the provisional cut score recommendations from the panel: Reading = 22, Writing = 21, Speaking = 23, and Listening = 21.
- ETS collected evaluations of the standard setting process from the panelists. For Reading and Listening, 95% of the panelists reported being “very comfortable” with the standard. There was less agreement with the Speaking and Writing standards, with 62% being “very comfortable”, 19% being “somewhat comfortable”, and 19% reporting being either “somewhat uncomfortable” or “very uncomfortable.” The panelists who expressed discomfort with these standards commented that they did not believe FSBPT should lower the recommendation from the previous standard on these sections. However, other panelists noted that people were becoming culturally more accepting of minor language issues for Speaking, and that technology (e.g., electronic medical records, document templates) had decreased the need for high levels of skill in Writing.
- Following the standard setting for PTs, the eleven panelists with experience working with PTAs stayed to consider whether a standard was necessary for PTAs, and if so, whether it would be different from the PT standard.
- The panelists reviewed the description of minimal proficiency for each section to determine how it should differ for PTAs, if at all. The panelists were unanimous in their judgment that the definitions should be the same for PTAs: PTAs had the same conversations with patients, had to deliver the same information, maintain the same records, and read the same materials. As such, the panelists recommended using the same standard for PTs as was recommended for PTAs.
- At the conclusion of the meeting, ETS recommended that FSBPT review information relating to the impact of the standard before setting a final standard.
- After the meeting, FSBPT staff asked the Foreign-Educated Standards Committee (FESC) to review the definitions of minimal proficiency and provide any substantive comments they felt might have been overlooked by the panelists. The FESC noted that the topic of advocating a patient’s best interests to other health care professionals should be added. FSBPT staff added this concept to the definition of minimal proficiency for Speaking, and provided some additional editorial and organizational changes to the document for the sake of clarity.

### **FSBPT Board Review & Adoption**

- FSBPT provided a report of the standard setting to the TAP, along with options for a final standard for the FSBPT Board to consider. The TAP agreed that all of the options were reasonable and defensible given the standard setting process, evaluations, previous evidence of TOEFL validity for predicting performance on the NPTE, and impact on candidates.

- FSBPT staff recommended minor adjustments to the panels recommended standard to the FSBPT Board, taking into account the factors listed above and comments from the standard setting panelists. The final recommendation retains the same total minimum score for the TOEFL (89), but redistributes the sections scores more evenly and in line with the panelists' recommendations. The FSBPT Board adopted these standards in July, 2016.
- The final recommendations for minimum scores on each TOEFL section are:
  - Reading = 22,
  - Writing = 22,
  - Speaking = 24, and
  - Listening = 21.
- Consistent with the previous rules, each of these section scores must be attained within a single administration. There is no attempt limit for the TOEFL.
- FSBPT will publicize the final details regarding the implementation of the new standard soon, including when the previous cut scores will no longer be accepted.

**Appendix A: Description of minimal proficiency in language skills necessary for physical therapists and physical therapist assistants**

Skill	<p style="text-align: center;"><b>Description of Minimal Proficiency</b></p> <p style="text-align: center;"><b>** Minimally proficient communicators demonstrate all language skills without compromising patient safety. **</b></p>
<b>Writing</b>	<p>Always:</p> <ul style="list-style-type: none"> <li>• Writes with only minor flaws in spelling, grammar, and use of abbreviations; flaws do not interfere with the reader’s understanding</li> <li>• Provides adequate support when explaining an opinion or conclusion</li> <li>• Is aware of the audience, e.g., aware of differences between writing to a physician and writing to a patient</li> </ul> <p>Most of the time:</p> <ul style="list-style-type: none"> <li>• Organizes writing logically</li> <li>• Provides information that is accurate, clear, and concise</li> </ul>
<b>Speaking</b>	<p>Always:</p> <ul style="list-style-type: none"> <li>• Speaks fluidly; lapses or pauses do not interfere with the listener’s understanding</li> <li>• Uses basic vocabulary and grammar adequately and correctly; minor errors do not impact patient care</li> <li>• Is able to paraphrase (express a message using different words to achieve greater clarity)</li> <li>• Requires only a reasonable amount of effort by the listener to understand his/her message; does not confuse or frustrate the listener</li> <li>• Responds to questions with relevant information</li> <li>• Advocates for the patient’s best interests in discussions with other health care professionals using appropriate language and tone</li> </ul> <p>Most of the time:</p> <ul style="list-style-type: none"> <li>• Self-corrects errors in speaking</li> <li>• Conveys messages clearly and concisely</li> </ul> <p>Some of the time:</p> <ul style="list-style-type: none"> <li>• Adapts speech to the audience (e.g., gender, culture, role of the listener [patient, physician, etc.]</li> </ul>

Skill	<p style="text-align: center;"><b>Description of Minimal Proficiency</b></p> <p style="text-align: center;"><b>** Minimally proficient communicators demonstrate all language skills without compromising patient safety. **</b></p>
<b>Listening</b>	<p>Always:</p> <ul style="list-style-type: none"> <li>• Recognizes information that has urgent/emergency implications</li> </ul> <p>Most of the time:</p> <ul style="list-style-type: none"> <li>• Understands the speaker’s explicitly stated meaning and implicit meaning, including basic vocabulary, regardless of the speaker’s accent/dialect</li> <li>• Uses context clues and intonation clues to understand the speaker’s intended meaning or to understand unfamiliar words</li> <li>• Synthesizes and organizes key information in order to determine next steps/actions</li> <li>• Understands lengthy speech or discourse and picks out key information</li> <li>• Extracts and recalls relevant/essential information during conversations in all media (by telephone, face-to-face, etc.)</li> </ul>
<b>Reading</b>	<p>Always:</p> <ul style="list-style-type: none"> <li>• Adjusts reading strategy (e.g., pace) for different types of documents</li> <li>• Makes connections between different parts of documents</li> <li>• Understands basic vocabulary and simple grammatical structures</li> <li>• Identifies errors or inconsistencies in documents and infers the intended meaning</li> </ul> <p>Most of the time:</p> <ul style="list-style-type: none"> <li>• Comprehends the key points of documents (e.g., patient charts)</li> <li>• Understands the tone and perspective of documents’ authors</li> <li>• Infers implicit meaning of documents from stated information</li> <li>• Distinguishes important/relevant details from less important/relevant details</li> </ul> <p>Some of the time:</p> <ul style="list-style-type: none"> <li>• Understands less frequently used words and complex grammatical structures</li> </ul>



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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## Issue Paper

**Date:** October 12, 2016

**Prepared for:** PTBC Members

**Prepared by:** Brooke Arneson

**Subject:** Current Issue for Sunset Review – Amendment to BPC §2653(b)

### **Purpose:**

Section 11, *New Issues*, of the Background Information and Overview of the Current Regulatory Program solicits the Board to identify new issues. The specific purpose is to propose an amendment to BPC §2653(b) as a *New Issue* for the Sunset Review Report.

**Attachments:** [Proposed language as amended](#)

### **Background:**

The issue of demonstrating English proficiency was included in the proposed language of the “Revisions to the Practice Act in its Entirety,” 2012 Sunset Review Report, Section 11, New Issue #2. When this was incorporated into the Board’s 2012 Sunset Review Report it was never intended to create a barrier into practice of those who are instructed and tested in English such as those who have graduated from a physical therapist education program from a college, university or professions training school in Australia, Canada (except Quebec), Ireland, New Zealand, or the United Kingdom.

As stated in the Issue Paper under agenda item #4, the OAL attorney assigned to review the Board’s proposed rulemaking file, along with her management, concluded the Board has no authority to waive an examination demonstrating English proficiency. OAL determined their conclusion was further supported by BPC §2653(c) which states; in part... “The board may in its discretion waive all or part of the required clinical service pursuant to guidelines set forth in regulation.” And since no such authority was specified by the legislature in BPC §2653(b) OAL concludes no authority exists for the Board to propose regulation authorizing provisions for exemption.

### **Action Requested:**

Consider adding statutory amendments to BPC §2653(b) as a New Issue for the 2016/17 Sunset Review Report

## Proposed Revisions to Business and Professions Code Section 2653

### 2653.

An applicant for a license as a physical therapist who has graduated from a physical therapist education program that is not approved by the board and is not located in the United States shall do all of the following:

(a) Furnish documentary evidence satisfactory to the board, that he or she has completed a professional degree in a physical therapist educational program substantially equivalent at the time of his or her graduation to that issued by a board approved physical therapist education program. The professional degree must entitle the applicant to practice as a physical therapist in the country where the diploma was issued. The applicant shall meet the educational requirements set forth in paragraph (2) of subdivision (a) of Section 2650. The board may require an applicant to submit documentation of his or her education to a credentials evaluation service for review and a report to the board.

(b) (1) Demonstrate proficiency in English by achieving a score specified by the board on the Test of English as a Foreign Language administered by the Educational Testing Services or such other examination as may be specified by the board by regulation.

(2) An applicant is exempt from the requirements under paragraph (1) if the applicant has been awarded a bachelor's degree or higher from a college, university or professional training school in Australia, Canada (except Quebec), Ireland, New Zealand, or the United Kingdom.

(c) Complete nine months of clinical service in a location approved by the board under the supervision of a physical therapist licensed by a United States jurisdiction, in a manner satisfactory to the board. The applicant shall have passed the written examination required in Section 2636 prior to commencing the period of clinical service. The board shall require the supervising physical therapist to evaluate the applicant and report his or her findings to the board. The board may in its discretion waive all or part of the required clinical service pursuant to guidelines set forth in its regulations. During the period of clinical service, the applicant shall be identified as a physical therapist license applicant. If an applicant fails to complete the required period of clinical service, the board may, for good cause shown, allow the applicant to complete another period of clinical service.



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## Briefing Paper

Date: 10/11/16

Prepared for: PTBC Members

Prepared by: Brooke Arneson

Subject: Sunset Committee's Recommendation on BPC Section 2648.7, clarifying revisions to retired license status

### **Purpose:**

To update the Physical Therapy Board of California's (Board) Board Members

- Attachments:
1. [Proposed Revisions to BPC §2648.7](#)
  2. [Text of AB 2859\(2016\)](#)

### **Background:**

SB 198 gave the Board authority to exempt renewal fees for those entering into Retired License Status; however, it did not authorize an administrative fee for processing.

### **Analysis:**

At the September 2016 Board meeting, the Sunset Review Committee recommended three options to address the Board's authority for retired license status. The options that were presented were as follows:

#### Option 1: Repeal BPC §2648.7

Pro: Allows the Board to utilize the language in AB 2859 (2016), which establishes in the general provision of the Business & Professions Code authority to issue Retired License for all DCA Boards.

Con: Removes the only authority that the Board has currently. Requires promulgation of regulation.

#### Option 2: Amend Section 2648.7 incorporating language from AB 2859(2016).

Pro: Accomplish as part of the Board's Sunset Process with no regulation  
Con: There is a risk that it may not be completed through Sunset.

Option 3: Continue using the authority in BPC §2648.7

Pro: Continue to promulgate regulation as previously planned.

Con: It is questionable if there is a conflict with the general provision and our existing authority, or if the two can be used simultaneously.

The Board voted to table discussion and directed the Sunset Review Committee to continue to work on issues for further Board discussion at the October 2016 Board meeting. PTBC staff worked with legal counsel on amending BPC §2648.7 to incorporate language from AB 2859 (2016) per the recommendation of the Sunset Review Committee.

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**Committee Recommendation:**

The Sunset Committee recommends amending BPC §2648.7 per the proposed language presented and addressing this issue during the Board's Sunset process.

Proposed Revisions to Business and Professions Code section 2648.7

2648.7

- (a) The board may establish a retired license under which ~~A~~<sup>Aa</sup> licensee is exempt from the payment of the renewal fee and from meeting the requirements set forth in ~~Section 2649~~<sup>Article 4</sup> if he or she ~~has applied to the board for retired license status~~<sup>meets the following criteria:</sup> -
- (1) Holds an active or inactive license that is not suspended, revoked, or restricted by the board or the subject of disciplinary action.
  - (2) Submits an application to the board for retired license status.
  - (3) Discloses 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.
  - (4) Pays the retired license application fee <sup>pursuant to section 2688</sup>.
- (b) A license shall be considered retired upon approval of the request.
- (c) The holder of a license in retired status shall comply with the Physical Therapy Practice Act.
- (d) The board may upon its own determination, and shall upon receipt of a complaint from any person, investigate the actions of any licensee, including a person with a license that either restricts or prohibits the practice of physical therapy by that person, including, but not limited to, a license that is retired, inactive, canceled, revoked, or suspended.
- (e) 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.~~
- (f) In order to request restoration of a license from retired status to active status, the licensee shall:
- (1) Submit to the board a written request to restore the license to active status.
  - (2) Pay the license renewal fee pursuant to section 2688.
  - (3) Certify, in a manner satisfactory to the board, that he or she has not committed an act or crime constituting grounds for denial of licensure.
  - (4) Comply with fingerprint submission requirements <sup>pursuant to section 144</sup>.
  - (5) Satisfy continuing competency requirements pursuant to section 2649.
  - (6) Complete any other requirements as specified by the board by regulation.
  - (g) Failure to comply with this section constitutes unprofessional conduct.

**Text of AB 2859 (2016)**

Section 464 is added to the Business and Professions Code, to read:

**464.**

(a) Any of the boards within the department may 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.

(b) The regulation shall contain the following:

(1) A retired license shall be issued to a person with either an active license or an inactive license that was not placed on inactive status for disciplinary reasons.

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

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

(4) The board shall establish an appropriate application fee for a retired license to cover the reasonable regulatory cost of issuing a retired license.

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

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

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

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

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

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

(c) A board may upon its own determination, and shall upon receipt of a complaint from any person, investigate the actions of any licensee, including a person with a license that either restricts or prohibits the practice of that person in his or her profession or vocation, including, but not limited to, a license that is retired, inactive, canceled, revoked, or suspended.

(d) Subdivisions (a) and (b) shall not apply to a board that has other statutory authority to establish a retired license.