

BACKGROUND PAPER FOR The Physical Therapy Board of California

**Joint Sunset Review Oversight Hearing, March 10, 2022
Senate Committee on Business, Professions, and Economic Development
and Assembly Committee on Business and Professions**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
REGARDING THE PHYSICAL THERAPY BOARD
OF CALIFORNIA**

BRIEF OVERVIEW OF THE PHYSICAL THERAPY BOARD OF CALIFORNIA

History and Function of the Board

The Physical Therapy Board of California (PTBC) is a licensing board within the Department of Consumer Affairs (DCA). The PTBC administers the licensing and enforcement programs for physical therapists (PTs), physical therapist assistants (PTAs), and unlicensed physical therapy aides.

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

In 1953 when the Act was created, PTEC regulated two forms of licensure. One required a physical therapist to work under the direction of a physician and was designated as a licensed physical therapist (LPT), while the other permitted a physical therapist to work independently and was designated as a registered physical therapist (RPT). SB 1006 (Alquist, Chapter 1284, Statutes of 1968) unified the two forms of licensure resulting in the PT license. This single license permitted all physical therapists to work independently without the direction of a physician.

The PTBC has also regulated PTAs since 1971 and has licensed PTAs since 1997. A PTA provides physical therapy care under the supervision of a PT. In 1973, PTs were also granted authority to utilize the services of a physical therapy aide, who is not required to be licensed. A physical therapy aide performs physical therapy tasks under the direct and immediate supervision of a PT.

The purpose of the PTBC is to protect consumers from incompetent, unprofessional, and fraudulent practice through regulation of practitioners. The PTBC also establishes and clarifies state-specific process and practice standards through administrative rulemaking. The laws governing the practice of

licensed PTs and PTAs and the administration of the PTBC are specified in statute in the Business and Professions Code (BPC) § 2600 *et seq.* and in California Code of Regulations (CCR) 16 § 13.2.

Currently, the Act provides the duties of the PTBC defines the physical therapy scope of practice, and specifies the licensing requirements, fees, and penalties for violations of the Act, including unlicensed practice. The Act makes it unlawful to practice, offer to practice, physical therapy for compensation, or claim to be a physical therapist unless licensed by the PTBC. As of Fiscal Year (FY) 2020/2021, the PTBC regulates approximately 27,990 PTs and 7,833 PTAs.

Generally, PTs provide services to individuals and diverse populations, across the lifespan, to develop, maintain and restore movement to maximize functional ability. This includes circumstances where movement and function are impacted by aging, injury, diseases, disorders, conditions or environmental factors.

PTs practice independently of other health care providers and also within interdisciplinary rehabilitation/habilitation programs, aiming to prevent movement disorders or maintain/restore optimal function and quality of life.

AB 1000 (Wieckowski, Chapter 620, Statutes of 2013) authorized a person (patient) to have direct access to and initiate physical therapy treatment from a licensed PT without first obtaining a medical diagnosis for up to 45 calendar days or 12 visits, whichever occurs first. If treatment continues beyond 45 calendar days or 12 visits, the patient must undergo an in-person examination from a physician who must also sign off on PT's plan of care.

The PTBC's current mission statement is:

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

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

The Board is composed of seven members. The current composition of the PTBC is four PT members, one of whom must be involved in physical therapy education, and three public members. The Governor appoints all licensed members as well as one public member; the Senate Rules Committee appoints one public member; and the Speaker of the Assembly appoints one public member.

The PTBC is required to meet at least three times each calendar year, with at least one meeting per year in the northern California and one in southern California. The PTBC meetings are subject to the Bagley-Keene Open Meeting Act, which requires public notice and to provide an opportunity for the public to comment on agenda items. As with other governmental entities, the PTBC has provided remote access to its meetings as a result of the COVID-19 pandemic.

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

| Board Member | Appointment Date | Term Expiration | Appointing Authority |
|---|------------------|-----------------|----------------------|
| <p>Alicia K. Rabena-Amen-PT, DPT, President, Professional Member, has been adjunct faculty at the University of the Pacific since 2014, a physical therapist at Infinity Care Services Inc. since 2011 and senior physical therapist at Kaiser Permanente South Sacramento since 1998. Rabena-Amen was a physical therapist at Global Healthcare Services from 2013 to 2014 and was a physical therapist at Lodi Memorial Hospital from 2007 to 2013.</p> | 02/14 | 6/24 | Governor |
| <p>Tonia McMillian, Vice President, Public Member, Ms. McMillian is the Owner/Provider of Kiddie Depot Child Care. She is a member and Co-Chair of Raising California Together Coalition and is the Treasurer of SEIU Local 99. She is also the Chair of the Local 99 African American Caucus.</p> | 03/16 | 6/23 | Senate Rules |
| <p>Dayle C. Armstrong, PhD, PT, MS, DPT, Professional Member, of San Dimas, has been a Physical Therapist at the Arcadia Unified School District since 2018 and owner of Armstrong Physical Therapy Practice since 1986. Armstrong is a member of the American Physical Therapy Association and Neuro-Developmental Treatment Association. She earned a Doctor of Philosophy degree in rehabilitation sciences from the University of Medical Sciences Arizona, a Doctor of Physical Therapy degree from the Western University of Health Sciences and a Master of Science degree in physical therapy from the University of Southern California. <i>*Dayle Armstrong's term expired on 6/1/2021 and since has been serving in a grace period.</i></p> | 01/21 | 06/21 | Governor |
| <p>Jesus Dominguez, PT, PhD, Professional Member, has been an assistant professor of clinical physical therapy and Director of Admissions at the University of Southern California Division of Biokinesiology and Physical Therapy since 2004. He is a member of the American Physical Therapy Association and the California Physical Therapy Association. Dominguez earned Doctor of Philosophy in Biokinesiology and Master of Science in Physical Therapy Degrees from the University of Southern California.</p> | 09/14 | 6/22 | Governor |
| <p>Daniel Drummer, PT, DPT, Professional Member, has been a physical therapist at the San Francisco General Hospital Department of Rehabilitation since 1995. He was a physical therapist at the Pennsylvania Hospital Department of Rehabilitation from 1994 to 1995. Drummer earned a Doctor of Physical Therapy from Temple University.</p> | 10/14 | 06/22 | Governor |
| <p>Katarina V. Eleby, M.A., Public Member, has been manager of operations at the African American Board Leadership Institute since 2012. She was a volunteer for Karen Bass for Congress in 2012 and executive co-chair for</p> | 05/13 | 06/24 | Governor |

| | | | |
|---|-------|-------|------------------|
| the International Studies Student Association at California State University, Long Beach in 2011. | | | |
| Jonathan Ervin, Public Member , of Lancaster, Ca was appointed to the Physical Therapy Board of California by the Speaker of the Assembly. | 11/20 | 06/23 | Assembly Speaker |

The PTBC does not have any statutorily required Committees. The PTBC reports that it has not identified a need to establish any permanent committees, but it establishes temporary committees as needed.

In September 2018, the PTBC established an Executive Officer (EO) Exempt Level Committee (EO Exempt Committee). The EO Exempt Committee was established to address the appropriate state government category and salary to meet the PTBC’s current organizational structure. The EO Exempt Committee delegated the authority to research the exempt level salary and bring findings to Board Members attention during scheduled board meetings. The Committee consists of two Board Members, one licensed and one public member.

The PTBC is a member of the Federation of State Boards of Physical Therapy (FSBPT). The FSBPT consists of member boards from each of the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The mission of FSBPT “is to protect the public by providing service and leadership that promote safe and competent physical therapy practice.” Each year the PTBC Board elects a member to be the California Delegate to the FSBPT Assembly of Delegates, which consists of delegates elected by each state/jurisdictional board. The delegate attends the FSBPT annual meeting as a voting member of the FSBPT Assembly.

The Board is a member of the Council on Licensure, Enforcement and Regulation (CLEAR) – CLEAR is an association of individuals, agencies and organizations that comprise the international community of professional and occupational regulation, providing a forum for improving the quality and understanding of regulation to enhance public protection. The Board’s CLEAR membership is part of The Department of Consumer Affairs (DCA’s) organizational membership and does come with voting privileges represented by one single organization vote.

Fiscal, Fund, and Fee Analysis

The PTBC is a special fund agency and, as such, does not receive any General Fund support. It is funded through the revenues the PTBC deposits into the Physical Therapy Fund from its applicants and licensees through initial licensure, license renewal, endorsements (license verifications) and administrative actions, i.e., citations, cost recovery, and probation monitoring. The PTBC fund is developed annually and is subject to legislative approval. The PTBC has no statutory reserve level requirement.

The PTBC has a reserve level of 10.2 months (FY 2020-21). Over each of the past 4 years, the PTBC reports it has had to over-expend its budget for personnel services. These over-expenditures are a result of changes in program requirements resulting in increased workload. To mitigate these costs, the PTBC advises it has been required to continuously redirect existing resources and obtain temporary help (limited-term) positions in efforts to meet its program responsibilities effectively. The PTBC continues to address its resource deficiencies through the Budget Change Proposal (BCP) process.

PTBC’s licenses are issued on a biennial renewal cycle. The expiration date is the last day of the licensee’s birth month (Business and Professions Code (BPC) § 2644 (a)). Over the past 10 years, the PTBC has increased its application and license fees one time in FY 2015-16. In FY 2015-16, the physical therapist application fee increased from \$125 to \$300, the foreign educated PT application fee increased from \$200 to \$300, the PT initial license fee increased from \$100 to \$150, the biennial renewal fee increased from \$200 to \$300, and the delinquent fees increased from \$100 to \$150 (BPC §2688 and 16 CCR §1399.50).

The PTBC program expenditures are comprised of the expenditure amounts and percentages, by program components: (1) Enforcement; (2) Licensing; and (3) Administration. PTBC’s PT and PTA fees are set at the statutory limit.

| Fund Condition | | | | | | |
|--|---------------|---------------|---------------|---------------|---------------|---------------|
| (Dollars in Thousands) | FY 2017/18 | FY 2018/19 | FY 2019/20 | FY 2020/21 | FY 2021/22 | FY 2022/23 |
| Beginning Balance | \$1,486 | \$2,078 | \$2,943 | \$4,095 | \$4,903 | \$5,181 |
| Revenues and Transfers | \$5,554 | \$5,685 | \$6,117 | \$6,357 | \$6,031 | \$6,378 |
| Total Revenue | \$7,040 | \$7,763 | \$9,060 | \$10,452 | \$10,934 | \$11,559 |
| Budget Authority | \$5,175 | \$4,983 | \$4,715 | \$5,543 | \$5,750 | \$6,493 |
| Expenditures | \$4,743 | \$4,983 | \$4,550 | \$5,126 | \$5,460 | \$6,492 |
| Loans to General Fund | \$0 | \$0 | \$0 | \$0 | \$-349 | \$0 |
| Accrued Interest, Loans to General Fund | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Loans Repaid From General Fund | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Fund Balance | \$2,078 | \$2,477 | \$4,073 | \$4,903 | \$5,181 | \$4,443 |
| Months in Reserve | 4.7 | 6.0 | 8.8 | 10.2 | 8.7 | 7.3 |

For the last four FYs, the PTBC’s total program expenditures have increased by \$856,000 or 18%. Personnel Services expenditures increased by \$355,000 (15.64%) and Operating Expenses & Equipment (OE&E) expenditures increased by \$501,000 (18.34%).

Because the PTBC is funded solely by revenues received from its applicants and licensees through initial licensure, license renewal, endorsements (license verifications) and administrative actions, i.e., citations, cost recovery, and probation monitoring, PTBC reports that it will need to pursue a fee increase within the next four years based on its projected decrease in the fund of 1.9 (months) in FY 2024-25 and deficit of 7 (weeks) in FY 2025-26. PTBC’s application and licensing fees are set at the statutory limit and increasing the fees would require a statutory change.

To date, the PTBC has contributed a total of \$1,851,880 to the BreEZe program. The DCA is finalizing this year’s (FY 2020-21) expenditure reports that identify the total BreEZe expenditures; however, the PTBC anticipates to fully expend its budget allotment of \$177,000. The PTBC’s anticipates contributing its projected budget allotment of \$163,000 to the BreEZe program in FY 2022-23 and ongoing.

Board Staff

The PTBC's current Executive Officer is Jason Kaiser. Per the PTBC's year-end organizational chart for FY 2020/21, the PTBC had 27.1 authorized positions and four Temp Help positions, totaling 31 staff members; and, three (3) vacancies. The increase in authorized positions resulted from the PTBC receiving position authority to establish two permanent positions through an approved Budget Change Proposal (BCP -1111-038) within its Administrative and Enforcement units in efforts to manage the increased workload in those program areas. The position within the Administrative unit was filled. In addition, the PTBC's increased its Temp Help positions in efforts to accommodate the increased workload within the Application unit. All Temp Help positions within the Application unit have been filled. The PTBC anticipates completing its recruitment process and fill its three vacancies within Enforcement and Regulatory functions by the end of the year (FY 2021-22).

PTBC utilizes internal training services provided by the DCA, Strategic Organization, Leadership and Individual Development (SOLID) Training Solutions. The SOLID provides a wide variety of courses with practical resources in efforts to provide opportunity for employee development and learning through various platforms, such as training with Microsoft Office products, budget process, effective writing, customer service, and BreEZe processes. The cost for these services is covered by PTBC's shared Pro Rata cost. The PTBC states that it will continue to explore avenues to enhance staff's training and development in support of its efforts to achieve the best business practices to better serve its applicants, licensees, and consumers.

Licensing

As of FY 2020/2021, the PTBC regulates approximately 27,990 licensed PTs and 7,833 PTAs.

In the last three FYs, the PTBC issued an average of 1,807 PT licenses and 621 PTA licenses per FY, for an overall average of 1751 licenses per FY. The raw total provided for all three FYs was 5,421 new PT licenses and 1,862 new PTA licenses.

The PTBC also issued an average of 13,901 PT renewals and 3,543 PTA licenses per FY, for an overall average of 17,444 renewals per FY. The raw total for all three FYs was 39,247 PT renewals and 10,630 PTA renewals.

Once the PTBC switched to BreEZe, it was required to update its performance targets. According to the PTBC, a license renewal submitted using BreEZe can be processed instantaneously, rather than the 6-8 weeks under the legacy system. So far, the PTBC has a performance target of 90 days for processing applications that arrive complete for a PT or PTA applying for examination and license.

The PTBC reports it is generally not meeting its performance measure targets because most applications are incomplete upon initial evaluation. While an incomplete application upon initial evaluation is not seen as negative, the PTBC will have the application in its possession longer. The PTBC makes every effort to assist applicants resolve application deficiencies and issue a license as quickly as possible.

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

The PTBC requires applicants to declare under penalty of perjury: whether they have been denied a professional license or had license privileges suspended, revoked or disciplined; and whether they have ever voluntarily surrendered a professional license in California or any other jurisdiction. These declarations are checked against the National Practitioner Data Bank and license verifications from other licensing jurisdictions.

Applicants were previously required to disclose under penalty of perjury whether they have ever been convicted of, pled guilty to, or pled no contest to any misdemeanor or felony; however, this question was removed from the initial license application in accordance with AB 2138 (Chiu, Chapter 995, Statutes of 2018). The PTBC now relies solely on Criminal Offender Record Information reports from the Federal Bureau of Investigation and the Department of Justice fingerprinting, (BPC § 144). The PTBC also checks all applicants against California's Megan's Law website in accordance with BPC § 2660.5.

In the past four years, the PTBC has denied three applications for licensure, in part for failure to disclose information on the application, including failure to self-disclose criminal history.

Both PT and PTA educational programs that are accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) or the Physiotherapy Education Accreditation Canada (PEAC) are deemed approved by the PTBC. Additionally, the PTBC has the authority to approve unaccredited schools under BPC §§ 2650-2651, but it states that it has not needed to exercise this authority yet. Currently, all PTBC-recognized schools are CAPTE accredited. The PTBC has not approved any international schools.

Unless an educational institution is exempt from the BPPE's oversight pursuant to California Education Code §§ 94874 or 94874.1, it must be approved by the Bureau for Private Postsecondary Education (BPPE). Physical therapy programs are offered at both exempt and non-exempt institutions.

Currently, there are over 250 accredited physical therapist education programs nationwide with 18 programs in California. There are over 350 accredited physical therapist assistant education programs nationwide with 19 physical therapist assistant education programs in California.

The PTBC currently requires passage of national licensure examinations as specified by BPC § 2636, which are developed, scored, analyzed, and administered by the FSBPT. The PTBC is only involved in the development, analysis, score setting, validation and administration of the National Physical Therapy Examination (NPTE) through its participation in the FSBPT committees, task forces, summits and Delegate Assembly. The NPTE consists of 250 multiple choice questions for PTs and 200 multiple choice questions for PTAs. The NPTE is offered four times per year at Prometric testing centers nationwide. The FSBPT charges \$485 for each examination. There are also various processing fees and fees charged by Prometric.

The national average pass rate for graduate PTs and PTAs taking the Physical Therapy Competency Exam (PTCE) in FY 2020/21 was 88.5% for PTs who were first-time test takers, and 80.2% for PTAs who were first-time test takers. While California's NPTE pass rate is consistent with the national average pass rates for PTs, it is inconsistent with respect to PTAs, where only 58.2% of PTAs passed the California jurisprudence exam in FY 2020/21.

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

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

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

Both PTs and PTAs are required to complete 30 hours of continuing competency activity in order to renew their licenses. Of the 30 hours, two hours must be in ethics, laws and regulations, and four hours in life support for health care professionals. Licensees must also maintain proof of each continuing competency activity for five years and agree to supply supporting documents upon the PTBC's request (16 CCR § 1399.97).

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

If a licensee fails a continuing competency audit, the licensee may be issued a warning letter or referred for enforcement action. Enforcement action may range from citation to formal discipline taken against the licensee.

In FY 2017/18, 2018/19 and 2019/20, the PTBC reports that it conducted a total of 1,462 continuing competency audits. There were 90 licensees deemed insufficient that failed with an overall failure rate of 6.2%; however, all came into compliance and licenses were renewed. On March 31, 2020, the Director of the DCA waived any statutory or regulatory renewal requirements pertaining to an individual's license which included any continuing competency requirements. Therefore, continuing competency audits have been temporarily placed on hold.

The PTBC does not approve individual continuing competency courses or providers. Continuing competency courses must be offered by an approved provider having met the requirements in 16 CCR § 1399.96 or by a PTBC recognized approval agency.

The PTBC established a continuing competency model in which the PTBC recognizes agencies that approve individual providers and courses; the PTBC does not directly approved providers or courses. Recognized approval agencies must meet and comply with criteria established by the PTBC in regulation.

The PTBC has not reviewed its policy for the purpose of moving toward performance-based assessment of licensee's continuing competency.

Enforcement

The PTBC has the authority to investigate violations of the Act, issue citations, deny or take disciplinary action against a license (e.g. probation, suspension, or revocation), and refer cases for criminal prosecution. As with other licensing boards, the PTBC relies on information it receives to initiate investigations, mainly complaints and information drawn from documents submitted by licensees or other agencies. Complaints also include cases which are opened internally rather than a complaint it has received.

PTBC reports that its enforcement cases are prioritized in accordance with the DCA's Complaint Prioritization Guidelines for Health Care Agencies. There are three levels of prioritization: "Urgent" (requiring the most immediate resources); "High" (the next highest priority); and "Routine" (minimal/no risk to the consumer). Each case is evaluated at the time of receipt to determine its initial priority. According to the PTBC, cases may be reprioritized during the course of the investigation, if warranted. Cases alleging sexual misconduct, patient death, patient injury and other urgent matters are immediately assigned to an analyst to review for an Interim Suspension Order, Penal Code § 23, or other interim action as warranted. All other cases are opened in the order received, assigned, and distributed to the designated analyst and investigated appropriately.

The PTBC reports that the number of complaints received has significantly decreased since the last review. The average number of days to close desk investigations increased slightly since the last review. Especially in FYs 2019/20 and 2020/21, this can be attributed to delays experienced due to COVID-related shutdowns such as business closures and mail-delivery delays. The number of accusations filed has remained relatively steady, correlating with the rise and fall of the number of complaints received, and the average days from referral to accusation filed has significantly decreased, due in part to PTBC working with the Office of the Attorney General to improve the level of evidence obtained prior to case referral.

The PTBC has established internal performance targets for its enforcement program. The target to complete complaint intake is ten days. The average over the past three years is ten days. The PTBC reports that it is currently meeting this goal.

The PTBC's overall target for completing investigations is 90 days from the time a complaint is received until the investigation is completed. The PTBC reports that over 50-56% of the cases were closed within the 90-day target within the last three years.

The PTBC's established goal for completing investigations which result in enforcement actions is 540 days. Based on data the PTBC provided in its 2021 Sunset Review Report, it has taken an average of approximately 700 days to complete a case with formal discipline over the last three years, which far exceeds the PTBC's goal.

Additionally, the PTBC receives mandatory reports about its licensees from a variety of sources. Although there are several mandatory reporting requirements that are designed to inform the PTBC of possible violations, PTBC states that there are no means to verify it receives all reports. The following are the reporting requirements that certain groups must provide to the PTBC:

- BPC §801(a) requires every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency specified in Section 800(a) to send a complete report to that agency as to any settlement or arbitration award over \$3,000 of a claim or action for damages for death or personal injury caused by that person's

negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report has to be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

- BPC §802(a) requires PTBC licensees, or his/her attorney, and the licensee's professional liability insurer to report any settlement, judgment, or arbitration award over \$3,000 of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services. This report must be submitted to the PTBC within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties.
- BPC §803(a) requires a California court clerk to report, within 10 days after judgment made by the court, any person who holds a license from the PTBC who has committed a crime or is liable for any death or personal injury resulting from a judgment for an amount in excess of \$30,000 caused by his or negligence, error or omission in practice or by rendering of unauthorized professional services.
- BPC §803.5 requires a district attorney, city attorney or other prosecuting agency to report to the PTBC any filing against a licensee of felony charges and the clerk of the court must report a conviction within 48 hours.
- BPC §803.6 requires the clerk of the court to transmit any felony preliminary hearing transcript where the total length of the transcript is under 800 pages and notify the PTBC of any proceedings where the transcript exceeds that length.
- BPC §805.8 - As of January 1, 2020, SB 425 (Hill) added section 805.8 to the BPC which requires health facilities and entities to report allegations of sexual abuse or sexual misconduct made against licensed health care professionals to the appropriate licensing agency within 15 days. In accordance with the law, the patient allegation must be made in writing to the health facility or other entity to trigger the reporting requirements. Additionally, the bill specifies that any failure to file the report is punishable by a fine not to exceed \$50,000 per violation, and a willful failure to file the required report is punishable by a fine not to exceed \$100,000 per violation.
- Penal Code section 11105 establishes a protocol whereby the AG reports to the PTBC whenever applicants, registrants or licensees are arrested or convicted of crimes. In such instances, the Department of Justice (DOJ) notifies the PTBC of the identity of the arrested or convicted applicant, registrant or licensee in addition to specific information concerning the arrest or conviction.
- Upon renewal, BPC §2644 requires licensees to self-report criminal convictions and disciplinary actions taken since their last renewal or issuance of license.
- FSBPT Disciplinary Database reports disciplinary actions from other State Boards.
- CCR, Title 16, Division 13.2, section 1399.24 requires licensees to self-report within 30 days: an indictment or information charging a felony; arrest of the licensee; conviction of a licensee;

disciplinary action taken by another licensing entity or authority of this state or another state or an agency of the federal government or the United States military; and any report required pursuant to BPC §802.

The PTBC receives subsequent arrest reports and subsequent conviction reports from the Department of Justice. PTBC reports that obtaining documents regarding arrest and court continues to be difficult due to factors such as a lack of response from the agencies, required upfront fees PTBC has to pay to obtain documents, and incomplete or non-certified documents.

As an alternative to an administrative hearing, licensees may opt to settle their disciplinary case through a stipulated settlement that provides the disciplinary terms and conditions and may include probation, license revocation, surrender of the license, or public reprimand. Although settlement negotiations are initiated by the Deputy Attorneys General (DAGs) on behalf of PTBC, the Executive Officer works closely with the Office of the Attorney General on the terms and conditions of discipline, conforming to the PTBC's *Guidelines for Issuing Citations and Imposing Discipline* in CCR Title 16, Division 13.2, section 1399.15.

The PTBC does not settle cases prior to the filing of a formal accusation. However, in lieu of filing or prosecuting a formal accusation against a licensee, the Executive Officer has authority, pursuant to BPC §2660.3, to issue a Public Letter of Reprimand after the PTBC has conducted an investigation. PTBC states that this delegation to the EO without Board Member involvement provides for better use of resources for those cases that do not warrant full discipline, such as probation. The PTBC states it may use a PLR for minor violations that warrant a higher level of action than a citation, but not necessarily probation. The PLR under this authority does not require the transmittal to the Office of the Attorney General since it is an agreement between the licensee and the EO; however, if the licensee does not agree to the PLR, the PLR does not get issued and the PTBC proceeds with filing of an accusation. PLR's are considered discipline and are disclosed to the public. The PTBC issued 12 PLR's within the last four fiscal years.

In terms of unlicensed activity, the PTBC provides information to consumers on its website relating to verification of an individual's license status. In addition, pursuant to 16 CCR § 1398.15, licensees are required to provide Form NTC 12-01 to each patient which provides the consumer information how to contact the PTBC to file a complaint and other relevant information regarding the services provided by a physical therapist, physical therapist assistant and physical therapy aide. The form is translated into Spanish, Tagalog, Hindi, Russian, Simplified Chinese).

Pursuant to BPC §680, licensees are required to disclose, while working, their name and license information on a name tag in at least 18-point type. Pursuant to 16 CCR §1398.11, supervising PTs are also required to ensure that their physical therapy aides, applicants and students performing patient-related tasks under their supervision wear a nametag in at least an 18-point type with their name and working title.

Complaints received related to unlicensed activity are investigated. Investigations confirming unlicensed activity may result in the PTBC issuing a citation and fine up to \$5,000 to the unlicensed individual. Unlawful advertising of physical therapy services or assistance may be handled by sending a cease-and-desist letter to inform unlicensed persons to remove or correct the advertisement; however, the PTBC may refer unlicensed activity cases to the DCA's Division of Investigation (DOI for formal investigation. Depending on the level of unlicensed practice, the PTBC may request DOI to conduct an undercover sting operation and if warranted, work with the local District Attorney for criminal prosecution.

The general provisions of the BPC authorize the entities within the DCA to establish a system for issuing citations. The PTBC may issue an administrative citation and fine pursuant to BPC §125.9 and CCR, Title 16, Division 13.2, section 1399.25, which authorize the PTBC to issue citation and fines to physical therapists and physical therapist assistants. The PTBC exercises this authority on a case-by-case basis when violations are not necessarily cause for discipline and a lesser form of action is warranted. Pursuant to 16 CCR section 1399.25, citation fines range from \$100 to \$5,000, and the specific fine per violation is determined by the PTBC based on the following factors as stated in the PTBC’s Guidelines for Issuing Citations and Imposing Discipline: 1) the degree of bad faith of the cited person; 2) the nature and severity of the violation; 3) evidence that the violation was willful; 4) a history of violations of the same or similar nature; 5) the extent to which the cited person has cooperated with the PTBC; and 6) the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation.

The PTBC continues to utilize cite and fine authority for less egregious cases. There have been no changes to the PTBC’s cite and fine regulations since the last Sunset Review. Common violations leading to a citation and fine include:

- Criminal Convictions - First offense conviction of a crime that is substantially related to the practice of physical therapy that may not have a direct effect on public protection or patient care.
- Practice Issues - Related violations, such as a single violation of documentation, regulations, supervision violations, and aiding & abetting of unlicensed activity or violations of the Practice Act.
- Discipline by Another State Board – Discipline taken in another State and the violation offense is a citable violation in California.
- Continuing Competency (CC) Violations – Failure to provide proof of CC requirements in audit, false statement on renewal form signed under penalty of perjury that the CC requirements were completed.
- Other simple departures of the Physical Therapy Practice Act, such as: Address Change Requirements - per 16 CCR 1398.6; Notice to Consumer – 16 CCR 1398.15

The PTBC has authority to seek cost recovery through the resolution of disciplinary proceedings before the PTBC and may request the Administrative Law Judge to direct the licensee to pay a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case. As part of the negotiation for settlement purposes, cost recovery is determined on a case-by-case basis between the Executive Officer and the licensee.

The following table shows the PTBC’s cost recovery amounts from Fiscal Year 2017/18 to Fiscal Year 2020/21.

| Cost Recovery | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 |
|-----------------------------------|------------|------------|-------------|-------------|
| Total enforcement expenditures | \$1,186,64 | \$872,713 | \$1,022,636 | \$1,489,884 |
| Potential cases for cost recovery | 77 | 65 | 67 | 51 |
| Cases recovery ordered | 16 | 25 | 26 | 17 |

| | | | | |
|---------------------------------|-----------|-----------|-----------|-----------|
| Amount of cost recovery ordered | \$178,428 | \$143,610 | \$220,203 | \$166,262 |
| Amount collected | \$120,738 | \$72,579 | \$66,625 | \$28,588 |

In cases of extreme financial hardship where cost recovery becomes a barrier in negotiations of settlement, the PTBC may consider waiving cost recovery to expedite a Stipulated Decision, which is in the best interest of the consumer. The PTBC may collect costs through the Franchise Tax Board (FTB) if the licensee fails to pay cost recovery. The PTBC currently has one pending case with the FTB to collect cost recovery in the amount of \$9,047.00. However, if cost recovery is not paid, the licensee is considered to be in violation of the terms of probation, and the PTBC may seek additional disciplinary action for violation of probation.

As a public agency, the PTBC is required to keep the public informed of board activities and provide the opportunity for engagement and input. The PTBC reports it currently utilizes the following social media platforms: Facebook, Twitter, YouTube, and LinkedIn. The PTBC also uses its website and an email blast service, Listserv. The PTBC posts all board information on all of these platforms to keep the public informed of all board activity.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The PTBC was last reviewed by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions (Committees) in 2017. During the previous sunset review of the PTBC, the Committees identified 17 issues for the PTBC to address. In January 2022, the PTBC submitted its required sunset report to the Committees. In this report, the PTBC described actions it has taken since its prior review to address the issues and recommendations made in 2017. Below are actions from the last five years aimed to address a number of the issues raised during the PTBC's prior sunset review.

- **The PTBC has clarified revisions to retired license status.** The PTBC considers this issue resolved. Since the last Sunset, BPC §2648.7 was repealed and therefore no further action is needed from the Committee. The PTBC is currently working to promulgate regulations to satisfy the requirements pursuant to BPC §464.
- **The PTBC has resolved the issue around the English Proficiency Exemption.** The PTBC considers this issue resolved. Since the last Sunset, statutory change was made through AB 1706 (Assembly Committee on Business and Professions, Chapter 454, Statutes of 2017) to include the exemption of the TOEFL for foreign license applicants who have graduated from a physical therapy program in a country whose primary language is English.
- **There is now a treatment plan of care for children covered under the Individuals with Disabilities Education Act (IDEA).** The PTBC considers this issue resolved. Since the last Sunset, statutory change was made through AB 2423 (Holden, Chapter 761, Statutes of 2018) to include the exemption to the 45-day/12 visit requirement to allow for children covered through IDEA to receive the appropriate services to meet their educational needs.
- **Additional changes were made in AB 1706 (Low, Chapter 454, Statutes of 2017)** to respond to the prior issues raised during sunset review oversight. AB 1706 deleted a restriction on PTBC's use of fees and deleted a requirement for PTBC to report to Legislature every time fees are increased.

The status of two additional items from the prior review discussions was erroneously not included in the PTBC's 2022 Report to the Legislature. It would be helpful for the Committees to understand if there is value in PTBC collecting workforce and demographic data and whether there is additional value to consumers and the public if PTBC is authorized to order restitution for harmed consumers.

CURRENT SUNSET REVIEW ISSUES FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA

The following are unresolved issues pertaining to the PTBC, or areas of concern that should be considered, along with background information for each issue. There are also Committee staff recommendations regarding particular issues or problem areas PTBC needs to address. PTBC and other interested parties have been provided this Background Paper and PTBC will respond to the issues and staff recommendations.

PTBC ADMINISTRATIVE ISSUES

ISSUE #1: (EXECUTIVE OFFICER CATEGORIZATION) PTBC has been working to raise the level in state government categorization for its Executive Officer and believes it needs to hire more staff.

Background: The PTBC believes its Executive Officer Exempt Level is not appropriately allocated in accordance with the organization structure. The PTBC's Executive Officer Exempt Level is allocated at level "N" and equivalent to the civil service class of a Staff Services Manager (SSM) II/III level. In 2020, the PTBC established and recruited an Assistant Executive Officer position, which is equivalent to the civil service class of a SSMII level.

The EO position was initially established on July 1, 1976, with the title of "Deputy, Physical Therapy Examining Committee, and Staff Consultant." The position was under the direction of the Medical Board of California (MBC) within the Department of Consumer Affairs (DCA). In FY 2011-12, the DCA initiated an EO Exempt Level Study and contracted with the California Department of Human Resources (CalHR) to conduct a salary study of all the EO positions, including PTBC's EO position, to determine if the salaries were appropriately allocated. At the time the study was conducted, the PTBC was authorized 18.0 positions, including the EO position, had a budget authority of \$3,472,038 and supported approximately a licensee population of 32,187. Using the DCA's previous EO Exempt Level Study Guidelines of May 2000, the PTBC would have met the allocation criteria for exempt level M. However, the study was limited due to budget constraints resulting in furloughs, vacancies, state-wide hiring freezes, etc. and increased resources, including exempt level increases were not permitted. As a result, the EO position exempt level remained at level "O," equivalent to the civil service Staff Services (SSM) II class.

During the December 10, 2021, Board meeting the Board Members voted unanimously in support of moving forward with submitting a request to the DCA Office of Human Resources for the EO Exempt Level Change Request to CalHR to reflect PTBC's desire to change the EO's Exempt Level to an appropriate level that meets the PTBC's current organizational structure.

Staff Recommendation: *PTBC should share the status of its request for its EO to be categorized to reflect the current Board size, goals, staffing levels, and workload.*

ISSUE #2: (STAFFING) Is the PTBC’s current staff adequate to meet its increased responsibilities?

Background: The PTBC is required to handle various responsibilities, including but not limited to processing licensing applications, enforcement proceedings, and making administrative changes. These tasks require appropriate staffing.

PTBC reports that over the past four years, program requirements have increased significantly. Specifically, the Application, Licensing and Administrative program areas workload has increased and lacks sufficient staffing levels to maintain the volume of workload requirements and meet its current mandates. In efforts to minimize operational deficiencies, the PTBC established two Temp Help positions in its application unit and one Temp Help position to conduct its regulatory functions. In addition, existing staff have been redirected on a rotational basis to alleviate further backlogs in licensing and other areas of concern throughout the board. All program staff are responsible for effectively performing their assigned essential functions efficiently in support of meeting the PTBC’s strategic mission goals and objectives. PTBC believes it must obtain permanent, full-time staff to accommodate the volume of workload.

It would be helpful for the Committees to understand efforts PTBC is undertaking to address these challenges and whether there are any patient and public impacts.

Staff Recommendation: *PTBC should inform the Committees on the status of workload projections and efforts to become adequately staffed to conduct its business.*

PTBC BUDGET ISSUES

ISSUE #3: (STATUTORY CAPS) Is the PTBC’s current fee structure sufficient to support the PTBC’s oversight responsibilities?

Background: The PTBC’s fees are specified in BPC § 2688. Currently, initial and renewal fees are set at \$150 and \$300, respectively. These application fees were increased last in FY 2015-2016.

The PTBC’s current initial license and renewal fees have met the statutory caps. As a result, the PTBC cannot increase its fees through the regulatory process. PTBC anticipates a diminishing fund condition starting in FY 2021/22 (7.7 months) and continuing each fiscal year with projected insolvency occurring FY 2025/26.

As a result of the PTBC’s most recent fee increase in FY 2015/16, the PTBC’s fund increased over the subsequent four FYs. However, the PTBC asks that the Committees consider raising its statutory fee cap as a proactive measure. In the event the PTBC is presented with unanticipated costs (e.g., litigation, enforcement costs, contract issues) the PTBC may be limited in its ability to act and may need to seek emergency legislation as a remedy. The PTBC is requesting the legislature increase the statutory caps of the initial license fee from \$150 to \$250 and the license renewal fee from \$300 to \$500. The PTBC wants to clarify this is not a request to increase fees. Should the PTBC require the need to increase its licensing fees to sustain ongoing operations, the PTBC would require a regulatory change through the rulemaking process.

During the prior review of the board, it was recommended that the PTBC discuss its fund projections, fee audits, and fee structure that went into effect, and that the PTBC should complete the Committees’

“Fee Bill Worksheet” for the statutory fee increases. Based on the Committee’s recommendation, the PTBC did not take further action on this issue.

Staff Recommendation: *PTBC should update the Committees on the status of fee increase discussions and provide any background, data, stakeholder feedback, and additional information on this issue. PTBC should advise the Committees on discussions with DCA and others about its projected revenue and expenditures.*

PTBC LICENSING ISSUES

ISSUE #4: (CALIFORNIA PTA EXAMINATION PASSAGE RATE) Is the California PTA examination too stringent for PTAs who wish to practice in the state?

Background: The examinations administered to become a PT or PTA in California differ from other state examinations.

The national average pass rate for graduate PTs and PTAs taking the NPTE in FY 2020/21 was 88.5% for PTs who were first-time test takers, and 80.2% for PTAs who were first-time test takers. While California’s NPTE pass rate is consistent with the national average pass rates for PTs, it is inconsistent with respect to PTAs, where only 58.2% of PTAs passed the California exam in FY 2020/21. According to data the PTBC submitted in its 2021 Sunset Background Report, this has been the case for the past several years.

According to PTBC staff, PTBC has already begun addressing this issue, with promising results, and it would be helpful for the Committees to better understand how those efforts are progressing.

Staff Recommendation: *PTBC should inform the Committees as to why California PTA examination passage rates are lower than PTAs throughout the nation, workforce impacts stemming from this, and the actions that have been undertaken to address this issue.*

ISSUE #5: (APPLICATIONS) Why are most applications incomplete?

Background: The PTBC generally has application performance measure targets set at 90 days for the US CAPTE-Accredited Program Graduate Exam, and 45 days for the US CAPTE-Accredited Program Graduate Endorsement.

The PTBC reports it is generally not meeting its performance measure targets because most applications are incomplete upon initial evaluation. PTBC attributes this to the fact that applicants apply prior to completing the required examinations, and therefore the applications remain incomplete until the applicant passes the examination. The PTBC makes every effort to assist applicants resolve application deficiencies and issue a license as quickly as possible. The PTBC staff notes that the application timeline could use some process improvements and indicates that some steps have been taken to address the problem of licensing timeframe challenges.

Staff Recommendation: *PTBC should update the Committees on outreach efforts to applicants in order to mitigate the impacts of deficient applications. PTBC should inform the Committees on any licensing efficiencies that have been achieved since it transitioned to the BreEZE system, as well as*

any further efficiency efforts being considered, such as receiving primary source verification directly from schools or other sources through a cloud to ensure information is provided as quickly as possible.

PTBC ENFORCEMENT ISSUES

ISSUE #6: (ANIMAL PHYSICAL THERAPY LICENSE) Should PTBC provide a special license for physical therapists to practice physical therapy on animals?

Background: Current law provides that “physical therapy means the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person....” (BPC § 2620).

Certain physical therapists would like to be able to practice physical therapy on animals. The PTBC and the California Veterinary Medical Board (CVMB) and representatives from both professions have discussed these issues at length over a number of years. As is the case with any new license type, there are many questions that arise around education, enforcement, and other implementation areas. Enforcement questions are particularly of note in this discussion. It would be helpful for the Committees to know the status of discussions.

Staff Recommendation: *PTBC should update the Committees on ongoing discussions related to physical therapy for non-human patients.*

ISSUE #7: (INVESTIGATIONS) Why is the PTBC unable to meet its target date with respect to investigations?

Background: Currently, the PTBC’s established goal for completing investigations which result in enforcement actions is 540 days. Additionally, PTBC’s current intake and investigation target performance goal is 90 days.

Based on data the PTBC provided in its 2021 Sunset Review Report, it has taken an average of approximately 700 days to complete a case with formal discipline over the last three years, which far exceeds the PTBC’s goal. Similarly, about 50% of the cases were closed within a 90-day target for the intake and investigation target performance.

Staff Recommendation: *PTBC should inform the Committees about delays in meeting enforcement timelines.*

TECHNICAL CHANGES

ISSUE #8: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE ACTS ADMINISTERED BY PTBC) There are various amendments that are technical in nature but may improve Board operations and the enforcement of the Act.

Background: In any practice act, there are technicalities that need to be changed. It is appropriate to review the practice act for any changes that need to be made to help the PTBC.

Staff Recommendation: *PTBC should inform the Committees of any outstanding technical issues. The Committees may wish to amend the various acts to include technical clarifications.*

COVID-19

ISSUE #9: (IMPACTS OF THE COVID-19 PANDEMIC.) Since March 2020, there have been a number of waivers issued through Executive Orders that impact PTBC operations, PTBC licensees, providers, and patients throughout the state. Do any of these waivers warrant an extension or statutory changes? How has PTBC addressed issues resulting from the pandemic?

Background: In response to the COVID-19 pandemic, a number of actions were taken by the Governor, including the issuance of numerous executive orders in order to address the immediate crisis. Many executive orders directly impact the state’s healthcare workforce. On March 4, 2020, the Governor issued a State of Emergency declaration which immediately authorized the Director of the Emergency Medical Services Authority (EMSA) to allow licensed healthcare professionals from outside of California to practice in California without a California license. Under BPC § 900, licensed professionals are authorized to practice in California during a state of emergency declaration as long as they are licensed and have been deployed by the Director of EMSA. Following that executive order, on March 30, 2020, the Governor issued Executive Order N-39-20 authorizing the Director of DCA to waive any statutory or regulatory professional licensing relating to healing arts during the duration of the COVID-19 pandemic – including rules relating to examination, education, experience, and training.

Some of the waivers impact PTBC’s work and physical therapy professionals. For example, BPC § 2620.1 (a)(4) prohibits a physical therapist from continuing to treat a patient beyond 45 calendar days or 12 visits, whichever occurs first, without receiving a dated signature on and indicating approval of the physical therapist’s plan of care from a state-licensed physician and surgeon or podiatrist. Approval of the physical therapist’s plan of care includes an in-person patient examination and evaluation of the patient’s condition, as well as testing by the physician and surgeon or podiatrist if indicated. DCA waiver DCA-20-09 Examination Requirement for Continued Physical Therapy Treatment temporarily waived the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an in-person patient examination and evaluation as required by BPC § 2620.1 (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. The waiver had been in place for the duration of the pandemic and terminated on December 31, 2021.

The PTBC states in its sunset report that it has not identified any consumer issues or vulnerabilities with respect to this waiver. It also reports that permitting patient examination via electronic means would allow for physical therapy services to continue past 45 days or 12 visits with the appropriate sign-off from an allowable healthcare provider, which it believes would facilitate access to care for physical therapy consumers while maintaining appropriate consumer protection.

Staff Recommendation: *PTBC should update the Committees on the impact to licensees and patients stemming from the pandemic. The Board should discuss the impact of waivers on patient safety and note any statutory changes that are warranted as a result of the pandemic.*

ISSUE #10: (WEBEX REQUIREMENT) Should the PTBC require to adding a WebEx meeting option to all of its Board Meetings?

Background: Due to the COVID-19 pandemic, the legislature granted temporary authority in AB 361 (Robert Rivas, Chapter 165, Statutes of 2021) for DCA Boards through January 31, 2022, to utilize online platforms in lieu of in person meetings.

The PTBC believes that requiring the use of modern-day technology such as an online platform would increase consumer and stakeholder access and participation; and is more effective than a teleconference. This recommendation is intended to be an additional point of access, not as a replacement or in lieu of, to the existing mandate. Currently, the PTBC is mandated to meet at least three times a calendar year, meeting at least once in Northern California and once in Southern California; adding an online option will provide the following benefits: greater stakeholder access; more cost effective; broader platform functionality and features. The PTBC recommends an amendment to BPC § 2611 that would require the Board to provide online access in addition to its existing mandates of in-person Board meetings. AB 1733 (Quirk, 2022), currently pending in the Assembly Committee on Business and Professions, also has a provision to include a meeting held entirely by teleconference under definition of “meeting” for the purposes of the Bagley-Keene Open Meeting Act.

Staff Recommendation: *PTBC should update the Committees on the status of these discussions, and whether there are efforts to broadly provide similar authority requested by PTBC to all programs within DCA.*

**CONTINUED REGULATION OF THE PROFESSION BY
THE PTBC**

ISSUE #11: (SHOULD THE PTBC BE CONTINUED?) Should the licensing and regulation of physical therapists, physical therapist assistants, and unlicensed physical therapy aides be continued and regulated by the Board?

Background: The welfare of consumers is best protected when there is a well-regulated physical therapy profession. Despite some of the issues impacting the PTBC, including but not limited to budget, staffing levels, COVID-19 clean-up, and enforcement timeline issues, the PTBC should be continued.

Staff Recommendation: *Physical therapists, physical therapist assistants, and unlicensed physical therapy aides, as defined under the Physical Therapy Act, should continue to be regulated by PTBC and PTBC should be reviewed again on a future date to be determined.*