

BACKGROUND PAPER FOR THE Physical Therapy Board

**(Oversight Hearing, March 19, 2013, Senate Committee on
Business, Professions and Economic Development and the Assembly
Committee on Business, Professions and Consumer Protection)**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE PHYSICAL THERAPY BOARD

BRIEF OVERVIEW OF THE PHYSICAL THERAPY BOARD

History of the Physical Therapy Board of California

The Physical Therapy Practice Act was established in 1953, Chapter 1823 (AB 17) and Chapter 1826 (AB 1001), Statutes of 1953, creating the Physical Therapy Examining Committee (PTEC) under the auspices of the Medical Board of California (MBC). The Physical Therapy Practice Act mandates the regulation of physical therapy by the Physical Therapy Examining Committee. A “practice act” safeguards the public by regulating a defined scope of practice vs. a “title act” which merely restricts action to revoking a title with no restriction of practice.

The evolution of PTECs’ structure is as follows: 1953, PTEC was comprised of three physical therapists, one physician, and one public member; 1968, increased its physical therapist member positions from three to four with one physician and one public member remaining; and, in 1976, changed to three professional and three public members eliminating the physician member position. Chapter 991, Statutes of 1998 (SB 1980) again increased the number of physical therapist members by one for a total of seven members. The current composition of the Board remains as four physical therapist members and three public members. As a result of the 1997 sunset review legislation, one of the physical therapist member’s is required to be involved in the education of physical therapists. The Governor appoints all professional 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 Board meets about four times per year. All Board meetings are subject to the Bagley-Keene Open Meetings Act. There is currently one vacancy on the Board.

The following is a listing of the current members of the Board:

Name and Short Bio	Appointment Date	Term Expiration Date	Appointing Authority	Professional or Public
<p>Debra J. Alviso, PT, DPT – President, Physical Therapist Member</p> <p>Dr. Alviso of Fresno received her reappointment to the Board in May 2010. Dr. Alviso has served on the Board since October, 2006. In 1990, she established New Horizon Physical Therapy where she practices as a physical therapist. She is a member of the American Academy of Orthopedic Manual Physical Therapy and has been a member of the American Physical Therapy Association since 1984. Dr. Alviso earned her Bachelor of Science degree in Physical Therapy from California State University, Fresno and a Doctorate in Physical Therapy from Rocky Mountain University in Provo, Utah. Dr. Alviso earned her designation as an Orthopedic Certified Specialist in 1994.</p>	5/25/2010	6/1/2013	Governor	Professional
<p>Martha Jewell, Ph.D., PT – Vice-President, Physical Therapist Member</p> <p>Dr. Jewell of Brentwood in Contra Costa County received her appointment to the Board in October, 2006. In addition to her degree in Physical Therapy from the University of Colorado, she holds a Ph.D. in Anatomy from the University of South Dakota. She is Professor Emeritus at Samuel Merritt College in Oakland, where she was the founding chair of the Physical Therapy program. Dr. Jewell had previously been on the faculty of Mount St. Mary's College, Stanford University, the University of Southern California and the Chicago Medical School. She was also a physical therapist in several settings including Ocean Park Orthopedic and Sports Therapy. She began her physical therapy career in Upland, California at San Antonio Community Hospital.</p>	12/22/2010	6/1/2014	Governor	Professional
<p>Donald A. Chu, Ph.D., PT, ATC, CSCS – Physical Therapist Member</p> <p>Dr. Chu is currently the Director of the Athercare Fitness and Rehabilitation Clinic in Castro Valley, California. He serves as adjunct faculty to the Ohlone College Physical Therapist Assistant program in Newark, California. He is a past President of the National Strength and Conditioning Association (NSCA) and has served on the Board of Directors of the National Athletic Trainers Association (NATA). He is a member of the Hall of Fame for the NATA, Strength and Conditioning Coaches, and California State University, Hayward Athletic Hall of Fame.</p>	10/28/2010	6/1/2012	Governor	Professional

<p>Sara Takii, PT, DPT – Physical Therapist Member</p> <p>Dr. Takii of Bakersfield in Kern County received her appointment to the Board in October, 2006. She is the owner of Southcoast Physical Therapy, established in 1983 in Bakersfield and Western Physical Therapy, established in 1981 in Taft, California. Dr. Takii received her Doctor of Physical Therapy degree from Temple University, and currently specializes in Aquatic Therapy and has vast experience in many areas of rehabilitation. She is also certified to perform Functional Capacity Evaluations and has been developing job descriptions for industry for over 20 years. Dr. Takii earned a Bachelor of Science degree in Physical Therapy from The Ohio State University and a Master of Public Administration degree from California State University, Long Beach.</p>	2/22/2010	6/1/2014	Governor	Professional
<p>James E. Turner, MPA – Public Member</p> <p>Mr. Turner of Rancho Murrieta received his appointment to the Board in June, 2007. Mr. Turner previously served as a Governor Appointed Board Member for the Board during 2003 and 2005. He has served in a number of capacities including: Senior Consultant to the California Assembly Committee on Governmental Organization; Assistant Chief Administrative Officer of the California State Assembly; Chief Consultant to the California State Assembly Committee on Education; and, as a Gubernatorial appointee as Executive Director of the California State Allocation Board. Mr. Turner received a Bachelor of Political Science Degree from the College of Wooster, Ohio and a Masters of Government/Public Administration Degree from the California State University, Sacramento.</p>	10/18/2011	6/1/2015	Speaker of the Assembly	Public
<p>Carol A. Wallisch, MA, MPH – Public Member</p> <p>Ms. Wallisch of Sacramento retired from state service in 2008 after serving for 14 years as Assemblymember, later Senator, Sheila Kuehl's chief of staff. Previously, she served as principal consultant to the Assembly Human Services Committee and as office manager in Assemblymember Tom Bates' district office. She also worked as a psychometrist in Humboldt State University's Testing Center and as a social worker for the elderly and disabled in Alameda and Contra Costa Counties. Ms. Wallisch received her AB degree in Anthropology from the University of California, Berkeley, her MA in Psychology from Humboldt State University, and her MPH in Health Policy and Planning from the University of California, Berkeley.</p>	9/1/2011	6/1/2015	Senate Committee on Rules	Public
<p>Vacant</p>			Governor	Public

In prior years, the PTBC established two committees; a Licensing Committee, and a Practice Issues Committee. The Licensing Committee was delegated the authority to make decisions on qualifications of applicants. The Practice Issues Committee was delegated the authority to address all practice related issues.

Both committees were disbanded at the May 2006 the PTBC meeting due to the number of Board member vacancies, and neither committee has been reinstated. The full Board now hears all issues relating to licensing, and physical therapy practice.

Initially, the PTEC regulated two forms of licensure; one required physical therapists to work under the direction of a physician, while the other permitted physical therapists to work independently. Chapter 1284, Statutes of 1968 (SB 1006) unified the two forms of licensure resulting in the physical therapist (PT) license. This licensure permitted all physical therapists to work independently.

Beginning in 1971, physical therapists were authorized to utilize assistive personnel if properly supervised by a physical therapist. That same year physical therapist assistants became licensed and were permitted to assist in the practice of physical therapy under the supervision of a licensed physical therapist. However, physical therapist assistants did not gain title protection until 1997. In 1973, physical therapists were also granted authority to utilize the services of a physical therapy aide, an unlicensed person who performs patient related tasks under the direct and immediate supervision of a physical therapist.

Several legislative amendments occurred between 1971 and 1996 transferring administrative oversight previously designated to the MBC to the PTEC. One of those amendments, Chapter 829, Statutes of 1996 (AB 3473), renamed the “Physical Therapy Examining Committee” the “Physical Therapy Board of California” (PTBC).

The PTBC took steps to remove itself from the oversight of the MBC. In 2004 the PTBC began utilizing the services of the DCA’s Division of Investigation (DOI) and subsequently absorbed its own probation monitoring responsibilities. In 2007, the PTBC, through a budget change proposal, was authorized staff for its cashiering function.

To date there is one remaining statutory provision in the Physical Therapy Practice Act linked to the Medical Practice Act. Business and Professions Code section 2660(h) states:

“Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act.”

This section authorizes the PTBC to cite violations of the Medical Practice Act in the absence of the authority within the Physical Therapy Practice Act.

Function of the Physical Therapy Board of California

The Physical Therapy Board of California (PTBC) protects the public from the incompetent, unprofessional, and fraudulent practice of physical therapy.

The mission of the Physical Therapy Board is to promote and protect the interests of the people of California by the effective and consistent administration and enforcement of the Physical Therapy Practice Act.

To meet this mission, the PTBC does the following:

- Promotes legal and ethical standards of professional conduct.
- Conducts background checks for all applicants.
- Promotes a national examination reflective of the current practice of physical therapy, in addition to a jurisprudence examination focused specifically on the laws and regulations of the State.
- Licenses physical therapists, and physical therapist assistants, and provides certification to qualified licensees to perform electromyography.
- Investigates complaints on physical therapists, physical therapist assistants, and unlicensed physical therapy practice.
- Takes disciplinary action and issues citations when appropriate.
- Conducts various outreach activities to provide the public, licensees, and potential licensees the most comprehensive and current information.
- Routinely develops a Strategic Plan to establish goals and objectives for the PTBC.

In 2009, the PTBC established a multi-year strategic plan identifying goals and objectives addressing issues and trends impacting the profession of physical therapy. At each meeting, the PTBC measures the progress achieved towards meeting their objectives. In anticipation of continued regulation of physical therapy by the PTBC, a strategic planning meeting was held on November 6, 2012.

Practice of Physical Therapy

Physical therapy provides services to individuals and populations, from pediatric to geriatric, to develop maintain and restore maximum movement and functional ability. This includes providing services in circumstances where movement and function are threatened by aging, injury, diseases, disorders, conditions or environmental factors. Functional movement is crucial to maintaining a healthy body.

Physical therapy is concerned with identifying and maximizing quality of life and movement potential within the spheres of promotion, prevention, treatment/intervention, habilitation and rehabilitation. This encompasses physical, psychological, emotional, and social well-being. Physical therapy involves the interaction between the physical therapist, patients/clients, other health professionals, families, care givers and communities in a process where movement potential is assessed and goals are agreed upon, using knowledge and skills unique to physical therapists.

Physical therapists are qualified and professionally required to:

- Undertake a comprehensive examination/assessment of the patient/client or needs of a client group.
- Evaluate the findings from the examination/assessment to make clinical judgments regarding patients/clients.
- Formulate a prognosis and treatment plan.
- Provide consultation within their expertise and determine when patients/clients need to be referred to another health care professional.
- Implement a physical therapist intervention/treatment program.

- Determine the outcomes of any interventions/treatments.
- Make recommendations for self-management.

The physical therapists' extensive knowledge of the body and its movement needs and potential is central to determining strategies for intervention. The practice settings will vary according to whether the physical therapy is concerned with health promotion, prevention, treatment/intervention, habilitation or rehabilitation.

Physical therapy is an essential part of the health and community/welfare services delivery systems. Physical therapists practice independently of other health care/service providers and also within interdisciplinary rehabilitation/habilitation programs that aim to prevent movement disorders or maintain/restore optimal function and quality of life in individuals with movement disorders.

Continuing Competency Requirements

The PTBC ensures continuing competency by requiring continuing competency hours. This program began October 31, 2010. Continuing competency hours must be obtained in subjects related to either the professional practice of physical therapy or patient/client management.

- (a) The professional practice of physical therapy includes but is not limited to professional accountability, professional behavior and professional development.
- (b) Patient/client management includes but is not limited to examination, evaluation and diagnosis and prognosis; plan of care; implementation; education; and discharge.

These requirements have been codified in the PTBC's regulations. Title 16 of the California Code of Regulations sections 1399.90-1399.99 requires licensees to accumulate 30 hours of continuing competency in each license cycle. Of these 30 hours, licensees are required to complete two hours of ethics, laws and regulations, or some combination thereof and four hours of life support for health professionals.

To verify continuing competency licensees are required to sign their renewal notice under penalty of perjury stating CC is complete (Bus. & Prof. §2676.) Licensees shall maintain documentation of each course and activity for five years. The PTBC also audits about 20% of those renewing their licenses. If audited, licensees must provide documentation verifying completion of 30 hours of CC upon request (16 CCR 1399.97 *et seq.*)

Fiscal and Fund Analysis

The PTBC is a special fund agency, and its funding comes from the licensing of physical therapists, physical therapist assistants and certification of electromyographers and biennial renewal fees of physical therapists, physical therapist assistants and electromyographers. Currently, the application fee for a physical therapist is \$125 (unless the applicant applies under Section 2653, the application fee is \$200) and the license fee is \$100, and both the application and initial licensing fee for a physical therapist assistant is \$125, and the application fee for electromyography certification is \$100 and renewal of the certification is \$50. The biennial renewal fee is \$200 for a physical therapist and a physical therapist assistant. The PTBC's license fees are between 50% to 75% of the statutory limit allowed by law. The PTBC does not anticipate increasing fees; however, the Board does indicate that

without a reimbursement of the General Fund loan made by the PTBC of 1.5 million from its reserves in FY 2011/2012, a fee increase may be necessary in FY 2013/14. It has been indicated to the PTBC that the 1.5 million will not be scheduled for repayment until the PTBC's fund becomes insolvent.

The total revenues anticipated by the PTBC for FY 2012/13, is \$3,185,000 and for FY 2013/14, \$3,183,000. The total expenditures anticipated for the PTBC for FY 2012/13, are \$3,231,000, and for FY 2013/2014, are \$3,286,000. The PTBC anticipates it will have approximately 3.2 months in reserve for FY 2012/13, and 2.7 months in reserve for FY 2012/13. (It is prudent for boards to have at least 3 to 6 months in reserve for unintended expenditures.) The Board spends approximately 66 percent of its budget on its enforcement program, 7 percent on its licensing program, and 23 percent on its administration. The following is the Fund Condition of the PTBC for the past five years and the projected revenues and expenditures for the next two fiscal years.

Fund Condition (Dollars in Thousands)							
Fiscal Years	2007/08	2008/09	2009/10	2010/11	*2011/12 Actual	**2012/13 Projected	**2013/14 Projected
Beginning Balance	\$375	\$575	\$1192	\$1,996	\$2,407	\$912	\$866
Revenues and Transfers	\$2,220	\$2,411	\$3,081	\$3,110	*\$1,746	\$3,185	\$3,183
Total Revenue	\$2,220	\$2,411	\$3,081	\$3,110	\$3,246	\$3,185	\$3,183
Total Resources	\$2,595	\$3,039	\$4,071	\$5,106	\$4,168	\$4,097	\$4,049
Expenditures	\$2,020	\$1847	\$2075	\$2695	\$3,256	\$3,231	\$3,286
Fund Balance	\$575	\$1192	\$1,996	\$2,411	\$912	\$866	\$763
Reserves	3.7	6.9	8.9	9.0	3.4	3.2	2.7

*The decrease in revenues and transfers is due to the PTBC's one-time cost encumbered for the 1.5 million dollars loan to the General Fund and \$188,000 cost to conduct an audit**FY 2012/13, ties to the Governor's Budget and reflects revenues/expenditures projected through fund analysis.

Staffing Levels

Currently, the PTBC is authorized 13.1 permanent positions, 2.8 permanent-intermittent positions (temporary staff) and no vacancies. However, the PTBC staffing levels have decreased significantly. Prior to this fiscal year, the PTBC was authorized 18 permanent positions, 8 permanent-intermittent positions and 2 Student Assistant positions. This was primarily due to the Department of Consumer Affairs (DCA) efforts to implement a new program titled the "Consumer Protection Enforcement Initiative" (CPEI) to overhaul the enforcement process of healing arts boards. According to the DCA, the CPEI was a systematic approach designed to address three specific areas: Legislative Changes, Staffing and Information Technology Resources, and Administrative Improvements. The CPEI proposed to streamline and standardize the complaint intake/analysis, reorganize investigative resources, and, once fully implemented, the DCA expected the healing arts boards to reduce the average enforcement completion timeline to between 12-18 months by FY 2012/13. The DCA requested an increase of 106.8 authorized positions and \$12,690,000 (special funds) in FY 2010-11 and 138.5 positions and \$14,103,000 in FY 2011-12 and ongoing to specified healing arts boards for purposes of funding the CPEI. As part of CPEI, the PTBC received approval for a budget augmentation for 5.0 authorized positions; .5 Special Investigator (non-sworn); 3.5 limited term Associate Governmental Program Analyst (AGPAs), which expired in 9/30/12; and, 1.0 Staff Services Manager. While the PTBC received position authority effective FY 2010/11, the funding

augmentation was authorized over two fiscal years. However, in 2012, the PTBC was required to significantly reduce its staffing levels. The PTBC lost the 3.5 AGPAs positions, the .5 Special Investigator and 2 Student Assistants. The PTBC is currently relying on a large pool of temporary employees and, as indicated by the Board, lacks sufficient staffing levels in order to meet its mandates. They state that unfortunately, as the workload continues to grow, backlogs continue to increase and the volume of workload per staff member is not feasible.

Licensing

The Physical Therapy Board regulates approximately 21,863 active Physical Therapist licensees and 5,381 active Physical Therapy Assistant licensees. The Board has issued over 40,000 Physical Therapist licenses and over 10,000 Physical Therapist Assistant licenses since its inception. The active licensee population has stayed somewhat constant for the past four years.

The requirements for licensure as a physical therapist generally includes graduation from a professional degree program of an accredited postsecondary institution or institutions approved by the PTBC and passing a national physical therapy examination and an examination provided by the PTBC to test the knowledge of the laws and regulations related to the practice of physical therapy in California (California Law Examination). The requirements for licensure as a physical therapist assistant includes graduation from a physical therapist assistant education program approved by the PTBC, or have training or experience or a combination of training and experience which in the opinion of the PTBC is equivalent to that obtained in an approved educational program, and successfully passing an examination provided by the PTBC. As to out-of-state and foreign applicants, the PTBC does have wide discretion in determining whether the applicant's education and training qualifies the applicant to become licensed in California. They must determine whether the training and/or education is either equal to or greater than that provided in California and that the examination taken by the applicant is comparable to the (national) examination required in California. They must also pass the California Law Examination. A physical therapist assistant must be under the supervision of a physical therapist and a physical therapist may generally not supervise more than two physical therapist assistants unless the PTBC determines otherwise. A physical therapist may also utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice under specified conditions.

The PTBC requires both primary source documentation of training and education and certification verification of documents to prevent falsification of licensing documents. To ensure authenticity, all documents verifying an applicant's training, examination status, out-of-state licensure, and disciplinary actions must be sent directly to the PTBC from the respective agency rather than from the applicant. As part of the licensing process, all applicants are required to submit fingerprint cards or utilize the "Live Scan" electronic fingerprinting process in order to obtain prior criminal history and criminal record clearance from the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). Licenses are not issued until clearance is obtained from both DOJ and FBI background checks. Additionally, since applicants are fingerprinted, the PTBC is able to obtain any subsequent criminal conviction information that may occur while the individual is licensed as a PT or PTA. [It should be noted that prior to 1996, the PTBC issued a license with clearance from DOJ and the FBI, but not by fingerprinting because of delays in obtaining a fingerprint. The PTBC is now seeking retroactive fingerprinting for those renewing their license.] The PTBC also queries the Federation of State Boards of Physical Therapy which reports disciplinary actions from the PTBC and other states to the National

Practitioner Data Bank to determine if prior disciplinary actions have been taken against licenses in other states.

The PTBC established performance targets/expectations for each aspect of its licensing program. However, there are specifically targeted expectations in its 2009 Strategic Plan for the licensing program. Goal 5 of the PTBC's 2009 Strategic Plan was set for the licensing program to achieve the highest level of efficiency and effectiveness. The average processing time from receipt of application to issuance of license for the last five fiscal years is 86 days (about 3 months) for physical therapists and 131 days (about 4.5 months) for physical therapist assistants. The total application processing time for foreign graduates for the past five fiscal years is 421 days (about 14 months). Foreign graduates are generally delayed due to the requirement for clinical service which takes up to 9 months to complete.

As an effective means of collecting information on areas in need of improvement in the application process, the PTBC conducted a survey of applicants regarding services provided by the Licensing Services program of the PTBC. Of the 108 responses received in 2011/2012, 91% indicated that the PTBC met and exceeded its mandated processing times.

As a result of staffing shortages, the PTBC has had to rely heavily on temporary staffing in order to manage the ongoing workload of its Licensing program. In the past, they have also had to shift staff from its enforcement program to assist in license processing to process applications in a timely manner and prevent any backlogs. However, the result is that this created a backlog in its enforcement program (Consumer Protection Services unit). The CPEI attempted to address this problem, and at least for a short time, the PTBC was able to address its enforcement backlogs. With the current staffing restrictions for the PTBC, and loss of temporary AGPA positions, it is once again relying heavily on temporary staffing and incurring backlogs of enforcement cases. The PTBC is requesting authorization for permanent staffing through the Budget Change Proposal (BCP) process to address this problem.

Enforcement

Although the PTBC had an ongoing process to evaluate and improve its enforcement program, or what is called its "Consumer Protection Services (CPS) program, in July 2009, the PTBC also implemented the CPEI with the expectation of reducing the average enforcement completion timeframe (from intake, investigation of the case and prosecution of the case by the AG resulting in formal discipline). The implementation of the CPEI and the additional staff provided improved performance levels of the CPS program. However, as earlier indicated, on September 30, 2012, 3.5 CPEI limited-term AGPA positions expired. According to the PTBC, this has resulted in a 33% reduction of staff hours and consequently, CPS is understaffed and is unable to meet its performance measures for the handling of disciplinary cases. The PTBC further states that the untimely staffing decrease significantly impacts the consumers of California as the workload for the CPS program has increased considerably and continues to grow each fiscal year, resulting in CPS not meeting the workload demand. The result is case backlog and increased processing delays and the inability of the PTBC to take prompt disciplinary action against a licensee, thus putting the consumer at risk. Due to the volume of workload and decrease staffing, the PTBC has redirected staff to address the highest priority caseload.

Consequently, the less egregious citation and fine cases are no longer a priority and have been placed on hold until authority for additional staff is received. The number of cases assigned to each analyst is

now extremely high, with 1,816 cases received annually and 386 cases pending. Current CPS analysts manage an annual caseload of over 500 cases. As indicated by the PTBC, this is fundamentally impossible and leaves an extremely high margin of error. The most pronounced inadequacy from the PTBC perspective is the lack of staff to ensure an appropriate distribution of cases per analyst and equally important, the lack of a staff person dedicated to begin the intake process of complaints and convictions. These inadequacies, according to the PTBC, stifle the PTBC's progress to achieve performance measures and at their current CPS staff level the PTBC believes that it doesn't have a chance of meeting these measures. The goal set for the PTBC, and all boards under CPEI was 12 to 18 months to complete the entire enforcement process for cases resulting in formal discipline. In 2010/2011, it took nearly two years (24 months) or more to complete a disciplinary action against a licensee by the PTBC. This improved, however, with additional staffing. By 2011/2012, the PTBC was able to decrease the timeframe to 19 months on average to complete a formal disciplinary action. [It should be noted that the investigation phase of the disciplinary case, which was handled by the Division of Investigation (DOI) of the DCA, also improved with the commitment of the DCA to complete an investigation within 365 days or sooner.] The chart below identifies the actual formal disciplinary actions taken by the PTBC for the past four years.

Fiscal Year	FY 2007/2008	FY 2008/2009	FY 2009/2010	FY 2010/2011	FY 2011/12
Accusations Filed	14	10	35	37	43
Revocation	0	5	4	8	11
Voluntary Surrender	2	0	3	4	3
Suspension	0	0	0	0	0
Probation with Suspension	0	1	0	5	0
Probation	2	0	5	18	13
Probationary Licenses Issued	4	2	6	2	6
Public Repeval	10	3	1	7	8

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The PTBC was last reviewed by the former Joint Legislative Sunset Review Committee (JLSRC) in 2005. At that time, the JLSRC identified 10 issues for discussion.

On November 1, 2011, the PTBC submitted its required Sunset Report to this Committee. However, because of an audit of the PTBC which was to be completed by the Bureau of Audits in 2012, it was decided to put over the review of the PTBC until the audit was finalized. The PTBC provided an update and Addendum to its original report to this Committee on December 1, 2012. In its 2011 report and its 2012 Addendum the PTBC described actions it has taken (including both regulatory and legislative) since its last sunset review. Below are the prior issues raised by the JLSRC in its Background Paper of 2005 and in its final recommendations, and the PTBC's responses to how the issues or recommendations of the JLSRC were addressed. (The prior "Physical Therapy Board Background Paper of 2005" which details these issues and the JLSRC Recommendations regarding the PTBC can be obtained from this Committee.)

- An issue was raised by the PTBC whether physical therapist assistants should only be granted a license if they have graduated from an accredited physical therapist assistant education program, or if the PTBC should continue with allowing a physical therapist assistant to become licensed if the PTBC determines that through a combination of education and experience (training) they have met the equivalency of having graduated from an accredited education program. It was decided by the JLSRC and the DCA to maintain the current law allowing licensure of physical therapist assistants based on equivalency. This had been a long standing practice of the PTBC since 1971.
- The PTBC raised the issue of whether the composition of the PTBC should be changed from seven members to nine members. The PTBC believed that consumers and the profession would benefit from greater representation. The DCA and the JLSRC both agreed that there should be no change due to budgetary considerations. The PTBC believes it is not necessary to pursue this issue because of budgetary considerations as well.
- The PTBC requested authority to issue temporary permits for out-of-state licensees to practice in California without obtaining a California license. The PTBC noted physical therapists traveling to California for the purpose of providing educational seminars cannot demonstrate on patients, this would be considered unlicensed practice of physical therapy. Additionally, physical therapists and physical therapist assistants employed by athletic teams and performing arts companies are prohibited from providing care for the athletes or performers while engaged in events in California. Both the JLSRC and the DCA recommended granting PTBC authority to issue temporary permits to out-of-state licensees; however, for reasons unknown, this authority was not included in Chapter 658, Statutes of 2006 (SB 1476). The PTBC is now seeking licensure exemption in lieu of issuing temporary permits. This licensure exemption is included in the proposed changes to be made to the Physical Therapy Practice Act. (See Discussion of Issue #3, Page 14 of this Paper.)
- The JLSRC raised the issue of whether the PTBC should be required to deny licensure to registered sex offenders. In 2005, the Joint Committee and the DCA recommended granting PTBC authority to deny licensure to applicants required to register as a sex offender pursuant to Penal Code 314. SB 1476, Chapter 658, Statutes of 2006, granted PTBC this authority. To date, the PTBC has denied two petitions for reinstatement of license from those petitioners who are registered sex offenders pursuant to Penal Code 314. While the application questions each applicant about registration, PTBC staff, upon receipt of an application, verifies each applicant against the Department of Justice's (DOJ) Megan's Law Website. This is in addition to the requirement of all applicants to submit fingerprints to both the DOJ and the Federal Bureau of Investigation (FBI). The PTBC also pursued authority for license revocation of licensees required to register as sex offenders. The PTBC adopted California Code of Regulations (CCR) Section 1399.23, specifically defining the required action by the PTBC if an applicant for licensure, licensee, or petitioner for reinstatement of a revoked license is required to register pursuant to Penal Code section 290 in addition to providing the circumstances exempt from this requirement. This regulation (CCR 1399.23) went into effect on August 16, 2012.
- The JLSRC raised the issue of whether participants in its Diversion Program should be required to pay the full cost of their participation. The JLSRC and the DCA recommended that if the diversion program is to continue, participants should be required to pay the full cost of their participation. Chapter 658, Statutes of 2006 (SB 1476) provided PTBC this authority.

Following the 2005 JLSRC recommendation, the PTBC exercised the authority and began requiring participants to pay the full cost of their participation in the diversion program. According to the PTBC, the monthly cost for each licensee participating in the program is approximately \$1800. In some cases, the licensee has opted for voluntary surrender of their license because participation is cost prohibitive. This is especially the case for a physical therapist assistant whose salary is generally less than that of a physical therapist.

CURRENT SUNSET REVIEW ISSUES

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

BUDGETARY ISSUES

ISSUE #1: (LACK OF STAFF AND FISCAL SOUNDNESS CONTINUE TO HAMPER THE PTBC'S PRODUCTIVITY.) The PTBC currently has inadequate staffing and will incur a budget deficit within two years.

Background: According to the PTBC, in order to fulfill its mission, the PTBC must have a workforce consistent with the workload resulting from its mandate. However, the largest challenge of the PTBC is inadequate budget allotment and position authority necessary to effectively fulfill its mandate.

Since the last Sunset Review, the PTBC has had a significant increase in workload as more physical therapists and physical therapist assistants have obtained licensure resulting in an increase in enforcement workload and a vast increase in Attorney General (AG) costs. Both of these are the cause of a recurrent budget deficiency.

The tables on the next page are a summary of PTBC's request for additional staffing and budget augmentation for increased Attorney General (AG) costs. Details regarding the workload, staffing and budgetary deficiencies have been discussed within this Background Paper. This Issue addresses the operational deficiencies specifically to those areas with the most critical need. In efforts to address the staffing deficiencies within these areas, the PTBC has been required to redirect staff to complete various functions on a rotational basis to avoid increasing backlogs. Meanwhile, the PTBC has been unsuccessful in its efforts in correcting these deficiencies through the Budget Change Proposal (BCP) process.

Staffing Deficiency

Program Area	*Current Authorized Staff (various classifications)	Current Temporary Staff (various classifications)	Projected number of staff needed (in addition to current staff)	Number of staff requested (various classifications)
Administrative Services	3.1	.7	2.9	1.5
Application & Licensing	1.8	.7	3	2
Continuing Competency	1.3	0	3	1
Consumer Protection (enforcement)	3.9	1.4	7	3
*Current authorized staff does not include (2) Manager's or (1) Executive Officer. There is 13.1 total authorized staff.				

Attorney General Deficiency

Fiscal Year	Complaints Received	AG Authorized Budget	AG Actual Expenditures (Year End)	Balance
FY 2008/09	1,075	264,717	138,946	125,771
FY 2009/10	1,455	285,668	115,908	169,760
FY 2010/11	1,812	285,668	406,570	(120,902)
FY 2011/12*	1,936	435,668	472,667	(36,999)
FY 2012/13**	710	285,668	551,352	(265,684)
*The authorized budget reflects a one-time augmentation for 150,000 through a deficiency request. **This data reflects projected workload and costs based on year-to-date (as of November 1, 2012) workload and expenditures.				

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

LICENSING ISSUE

Issue #2: (NEED FOR FICTITIOUS NAME PERMIT.) Should the PTBC be granted the authority to require a fictitious name permit for physical therapists similar to the Medical Board.

The PTBC recommends adding authority to the Physical Therapy Practice Act for the PTBC to issue fictitious name permits. A fictitious name permit is a tool by which the PTBC would be able to increase consumer protection through ensuring physical therapists are held accountable while offering services under a name other than that to which a license was issued. Examples of how fictitious name permits are essential to the regulation of the profession are:

- Locating a physical therapist if a complainant filed against the business not knowing the name of the individual who treated him or her.
- Prevention of physical therapist assistants working beyond their scope of practice.

Other boards have already implemented this type of program, such as the Medical Board. Business and Professions Code Section 2285 provides that it is unprofessional conduct for a licensee of the Medical Board to use any fictitious name without first obtaining a permit, and B&P Code Section 2415 sets forth the requirements to obtain a fictitious name permit.

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

REVISIONS TO THE PHYSICAL THERAPY PRACTICE ACT

ISSUE #3: (MAJOR CHANGES TO PHYSICAL THERAPY PRACTICE ACT.) Does the Practice Act for Physical Therapist need to be substantially revised?

Background: In 2004, the PTBC established the Physical Therapy Practice Act Review Task Force (Task Force). The Task Force's charge was to: 1) determine if the Act provided the foundation for the Board to fulfill its vision statement; 2) address applicability to the role of physical therapy professionals in the 21st century; and, 3) clarify the current language for the public and the Board's licentiates. After over a year of meetings, the Task Force presented recommendations to the Board, which were adopted, and the proposed revisions of the Physical Therapy Practice Act were included in the 2005 Sunset Review Report as a New Issue.

The establishment of the Task Force was prompted by a number of events. The Federation of State Boards of Physical Therapy (FSBPT) developed and published a Model Practice Act to encourage consistency for physical therapy licensure across all states; the American Physical Therapy Association substantially revised its Guide to Physical Therapist Practice, Revised Second Edition January 1, 2003; there continue to be references to the Medical Practice Act in sections of the Physical Therapy Practice Act despite the Board becoming autonomous in 1997, and conversely some of the PTBC's authority still resided in the Medical Practice Act; and finally, the PTBC wanted to address public and licentiate concerns that the Act is complex and difficult to use because similar subjects are not grouped together.

According to the PTBC, some of the proposed revisions have been codified; however, the PTBC has attempted each year, since 2006, to get all the revisions of the Act introduced without success. The PTBC continues to pursue this issue because the PTBC believes that the Act is such a crucial document, and as a consumer agency, it is essential for consumers to easily access and understand the functions of the Board; the scope and qualifications of physical therapists and physical therapist assistants; the requirements and restrictions of the profession; and, the consequences for violating the Act. Moreover, consumers also benefit from licentiates having a clear understanding of the Act.

As mentioned above, only some of the proposed revisions of the Act have been codified, and since the proposed revisions of the Act haven't been considered since 2006, the PTBC indicates that the proposals have substantially changed, but the PTBC's goal it states – consumer protection – has not. The PTBC has outlined the revisions to the Act as follows:

- Overall reorganizes, clarifies and updates current statute.
- Explicitly states the responsibilities of the Board.
- Specifically defines terms directly related to physical therapy care providers and clarifies the scope in Plain English.
- Adds who may qualify for licensure exemptions and defines the requirements of each qualifying method.
- Removes all specific details of the licensing, renewal and documentation requirements and processes with the intent of moving them to regulation.
- Adds license renewal exemptions for specified circumstances.
- Adds authority for the Board to determine ethical standards.
- Clearly defines specific violations which constitute unprofessional conduct.
- Provides authority for the Board to impose a fee on approval agencies to support the Continuing Competency Services program.
- Adds the authority for the Board to impose a fine for licensees refusing to produce records requested by the Board.
- Adds the Board to the list of agencies under the jurisdiction of the Department of Justice Health Quality Enforcement Section.
- Removes authority relating to physical therapy from the Medical Practice Act
- Adds authority to impose a condition requiring additional training and/or education when issuing a public letter of reprimand.
- Replaces the term “diversion” with “substance abuse rehabilitation program” to accurately describe the PTBC’s program, which does not divert from discipline.

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

CONTINUATION OF THE PHYSICAL THERAPY BOARD

ISSUE # 4: (SHOULD THE PHYSICAL THERAPY BOARD BE CONTINUED?) Should the licensing and regulation of the practice of physical therapy be continued and be regulated by the current Board membership?

Background: The health, safety and welfare of consumers are protected by a well-regulated physical therapy profession. The PTBC has shown over the years a strong commitment to improving the Board’s overall efficiency and effectiveness and has worked cooperatively with the Legislature and this Committee to bring about necessary changes. An audit of this Board was also recently conducted by the Bureau of State Audits. At the request of Assemblywoman Mary Hayashi, the Joint Legislative Audit Committee (JLAC) directed the Bureau of State Audits (BSA) to conduct an audit of the PTBC’s relationship with professional organizations and its handling of complaints against physical therapists. On June 26, 2012 the audit results were released in a report by the BSA. While there were minor findings by the BSA, which must be responded to by the PTBC (and DCA), there were no findings

substantiating the allegations of inappropriate relationships with professional organizations within the profession or its handling of complaints against physical therapists. Those findings were as follows:

- Explore the feasibility of establishing a state position to perform the duties of the in-house consultant.
- Develop a process for evaluating expert consultants including the in-house expert consultant.
- The Department of Consumer Affairs shall establish procedures to ensure that Board members attend Board Member Orientation and complete the required ethics training.
- Notify the Department of Consumer Affairs promptly when Board members are appointed or separated from office.

The Board should be continued with a four-year extension of its sunset date so that the Committee may review once again if the issues and recommendations in this Paper and others of the Committee have been addressed.

Staff Recommendation: *Recommend that the practice of physical therapy continue to be regulated by the current Board members of the Physical Therapy Board in order to protect the interests of the public and be reviewed once again in four years.*