Joint Committee on Boards, Commissions, and Consumer Protection

BACKGROUND PAPER FOR HEARING
December 6, 2005

PHYSICAL THERAPY BOARD

BACKGROUND, IDENTIFIED ISSUES, AND QUESTIONS

BRIEF OVERVIEW OF THE PHYSICAL THERAPY PROFESSION AND THE PHYSICAL THERAPY BOARD

The Physical Therapy Board (Board) licenses approximately 19,391 Physical Therapists (PTs) and 4,808 Physical Therapy Assistants (PTAs). The Board was established in 1953 and is composed of 7 members – 4 licensees (including one PT involved in the education of PTs) and 3 public members. There are currently two public member vacancies, and one PT member vacancy.

Member's Name	Appointed By	Type	Term Started	Term Expires
Donald A. Chu, PhD, President (PT)	Governor	Professional	1/07/99	06/01/06
Julie Brandt	Senate Rules	Public	09/09/03	06/01/07
Lorraine K. Kimure, Vice President (PT)	Governor	Professional	11/13/03	06/01/06
Ellen Wilson (PT)	Governor	Professional	10/02/01	06/01/05
Vacant	Governor	Public		
Vacant (PT)	Governor	Professional		
Vacant	Assembly Speaker	Public		

The Board has an annual budget of approximately $2.2 million and a fund reserve (as of 6/30/05) of $596,000, or about 3 months. The Board's revenues and expenditures have been fairly stable over the past few years, with the notable exception of a significant drop in revenue (a little less than $500,000 per

year) from examination fees beginning in fiscal year 2002/03, which the Board explains was the result of candidates for licensure being able to pay fees directly to the examination contractor. The Board's annual revenues are approximately $1.7 million, with 80% coming from license renewal fees, 15% from initial licensing fees, and 5% from fines, cost recovery and interest revenue. As stated, the Board's annual expenditures are approximately $2.2 million, with 59% expended on investigating consumer complaints and taking disciplinary action against licensees, 24% spent on examinations, 15% spent on processing initial and renewal licenses, and 2% on the Board's Diversion Program.

To be licensed as a PT, an applicant must be at least 18 years old, not have committed any acts or crimes constituting grounds for denial under general licensing provisions of the Business and Professions Code, have successfully completed specified education approved by the Commission on Accreditation of Physical Therapy Education (CAPTE) including 18 weeks of full-time clinical experience (resulting in a masters or doctorate degrees), and passed both the National Physical Therapy Examination (NPTE) administered by the Federation of State Boards of Physical Therapy (FSBPT) and the California Law Exam. Prior to 2002, it was possible to obtain the necessary educational requirements at the bachelor degree level, but CAPTE will now only accredit those educational programs that grant a post-baccalaureate degree.

Graduates of an educational program that is not approved by the CAPTE from outside of the United States must have their education determined to be equivalent to that of an approved PT educational program, and must also complete a period of clinical service not to exceed 9 months under the direction and supervision of a California licensed PT.

The Board also certifies PTs to perform electromyography, which is used to test the health of muscles and nerves by measuring the electrical activity generated by muscles. To be certified as either a PT electroneuromyographer (EMG) or a PT kinesiological electromyographer (KEMG), a PT must complete regular or extension course work pertinent to electromyography from an accredited or approved public university, state college or private postsecondary institution, and pass a California certification exam.

To be licensed as a PTA, an applicant must obtain an associate degree in an approved physical therapist assistant program with both didactic and clinical work in and related to physical therapy, or have a combination of training and experience that is equivalent to that obtained in an approved education program, and pass the Physical Therapist Assistant Licensure Applicant (PTALA) exam.

Currently, there are no mandatory continuing education (CE) requirements for renewal of either a PT or PTA license.

PRIOR SUNSET REVIEW

The Board was last reviewed four years ago (2001-02). This current review is the third review of the Board. In 2002, the Joint Committee on Boards, Commissions, and Consumer Protection (JCBCCP) and the Department of Consumer Affairs (DCA) together identified a number of issues and made recommendations regarding those issues. The recommendations of the JCBCCP and DCA were to:

- Continue the licensing of PTs.

- Enhance the Board's public protection authority by the clarification and/or inclusion of PTs in certain statutes, including Business and Professions Code Section 805 reporting requirements.

  Status: Statutes were revised to (a) require PTs to document patient evaluation, goals, treatment plan and treatment summary in the patient's record; (b) include PTs in a provision of law requiring health care professionals to provide patient record access to patients; and (c) add the Board to Business and Professions Code Section 800 requiring boards to maintain a central file of all licensees with certain disciplinary and conviction information. However, an effort to add PTs to Section 805, which mandates the reporting of peer review disciplinary reports to the regulatory board, was unsuccessful due to the opposition of hospitals.

- Have the Board consider adopting the use of photo licenses to reduce license fraud.

  Status: The Board states that it retains the desire to adopt "permanent" photo licenses, but is awaiting DCA's assistance in this matter.

- Give the Board authority to provide a probationary certificate when there is evidence of prior criminal convictions during the initial licensure process.

  Status: The Board has implemented probationary licenses pursuant to authority established by legislation in 2002, and has issued, through June 30, 2005, three such licenses so far and is making progress reports to DCA.

- Have the Board designate a staff liaison to work with International Medical Graduates (IMGs) and programs that assist them.

  Status: The Board reports that it designated, as liaison to IMGs, the staff person assigned to license graduates of non-approved PT educational programs, and additionally invited a member of the Task Force on

Culturally and Linguistically Competent Physicians and Dentists to participate in an ad hoc committee review of the PT educational programs.

The JCBCCP and DCA also recommended that the Board not proceed with proposals by the Board to:

1) Require continuing education as a condition for licensure renewal. Instead, the JCBCCP and DCA recommended that the Board should first demonstrate a need for continuing education prior to adopting such a requirement. **The Board is once again proposing requiring continuing education, discussed in Issue #9.**

2) Eliminate the pathway for licensure for PTAs who do not graduate from an approved two-year PTA program by establishing that they have equivalent education and experience. **The Board is once again proposing to eliminate this pathway for licensure as discussed in Issue #6.**

3) Establish a "roll forward" funding mechanism pilot project for payment of fees to the Attorney General and the Office of Administrative Law, similar to the practice of keeping legal counsel on retainer as is done in the private sector. **The Board is once again proposing to establish this "roll forward" pilot program as discussed in Issue #7.**

4) Administer the California Law Examination via the Internet. **The Board states it is no longer pursuing this issue.**

Finally, the JCBCCP alone, without DCA, made three additional recommendations to:

- Have the Board consider revising its diversion program to require participants to pay for their monitoring costs, or eliminate the program entirely.

  Status: The Board states that it continues to believe that the diversion program should be retained, and has engaged in greater outreach to its licensees, which has resulted in a doubling of the number of participants (11 in the most recent fiscal year). However, the Board states that it agrees it should require participants to pay for their monitoring costs, and has proposed statutory language that would allow for this charge, which is discussed in greater detail under Issues Raised by the Board #13.

- Have the Board perform its own probation monitoring rather than having that function performed by peace officers of DCA's Division of Investigation.

  Status: The Board reports that it has established its own probation

monitoring program in response to the JCBCCP recommendation, and has reduced its monitoring costs by almost two-thirds.

- Require licensees to disclose misdemeanors and other criminal activity on their license renewal.

  Status: Legislation was enacted that required licensees to disclose misdemeanors and other criminal activity on their license renewal forms, and this has been implemented.

The following are areas of concern for the Joint Committee, along with background information concerning the particular issue. There are questions that staff have asked concerning the particular issue. The Board was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

ISSUE #1: Should the Board be continued?

Issue #1 question for the Board: *Is an appointed board the most appropriate regulatory entity for the physical therapy profession? Why or why not? Why is an independent board more appropriate than a bureau with more direct accountability to the Governor? Does the profession continue to necessitate regulation in the first place?*

Background: California Business and Professions Code Section 473.3 states that "Prior to the termination, continuation, or reestablishment of any board or any of the board's functions," the JCBCCP is required to hold public hearings, during which "each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare."

Additionally, Governor Schwarzenegger proposed in January of this year to eliminate 88 boards and commissions, including eliminating all of the boards within DCA and converting most of them to bureaus. This Government Reorganization Proposal was based partly upon recommendations from the Governor's California Performance Review (CPR), but went further in recommending board elimination than did the CPR. The Governor withdrew this proposal in February.

ISSUE #2: During the last review, it was recommended that PTs be added to Section 805 reporting requirements, which require peer review bodies to report any disciplinary action taken by a peer review body to the appropriate regulatory body. However, opposition from the hospitals led to this provision being removed from proposed legislation.

<u>Issue #2 question for the Board</u>: *Does the Board continue to believe that PTs should be subject to 805 reporting requirements? Why or why not? Do peer review bodies typically review the treatment of patients by PTs when something happens to the patient? Has anything changed in the past four years that makes it more or less appropriate for PTs to be included in peer review reporting requirements?*

<u>Background</u>: During the last sunset review, the Board suggested, and both JCBCCP and DCA joined them in recommending, that PTs be added to Business and Professions Code Section 805 peer review reporting requirements, along with other public protection changes. Section 805 requires all "peer review body" – including peer review committees in hospitals, medical groups, or health plans – to report to the appropriate regulatory entity when they have denied or revoked staff privileges or issued any disciplinary action based on medical cause. Medical professionals subject to 805 reporting requirements include physicians, podiatrists, clinical psychologists, marriage and family therapists, clinical social workers, and dentists.

Language was initially included in the physical therapist sunset review bill [SB 1955 (Figueroa) Chapter 1150, Statutes of 2002] to make PTs subject to 805 reporting, but opposition to that provision by the California Healthcare Association (CHA), representing hospitals, led to the provision being removed from the bill. CHA argued that in California, the only practitioners subject to the peer review reporting requirements known as "805 reports" are independent practitioners. CHA argued that PTs do not generally undergo peer review in the first place, so making them subject to 805 reporting didn't make sense.

<u>ISSUE #3</u>: During the last review, it was recommended that the Board research and pursue the use of photo licenses to reduce fraud. The Board reports that it is still interested in this issue, but is waiting assistance from DCA to pursue this issue?

<u>Issue #3 question for the Board</u>: *What assistance from DCA is the Board waiting for? What research on this issue, if any, has been done since the last review? What is the prevalence of fraud with the existing license system? Do any other DCA licensees use photo licenses, or have a more permanent license that the Board views as a potential model? What would be the fiscal impact of pursuing permanent licenses? Has the Board contacted the Department of Motor Vehicles (DMV) for assistance, as was suggested?*

<u>Background</u>: During the last sunset review, the Board was interested in pursuing legislation that would allow it to access DMV photos for use in creating photo licenses to reduce license fraud. Ultimately, the JCBCCP and DCA recommended that the Board do more research on the best option to provide licensees with more "permanent" licenses, including consulting with the DMV, the

Employment Development Department (EDD), and DCA to develop a more specific proposal and determine the cost of implementation. In its report to JCBCCP this year, the Board reports it is still interested in this issue, but is awaiting assistance from DCA.

ISSUE #4: The Physical Therapy Board's Fund Reserve is declining, and is projected to have less than one month of reserve funds by fiscal year 2007/08.

Issue #4 question for the Board: *Does the projected reserve level for 2007/08 reflect the recent regulatory action to increase the renewal fee to the statutory ceiling of $150? If not, what are the projected revenue and reserve levels with the recent fee changes? If the statutory ceiling is increased as the Board proposes, does the Board anticipate an additional increase via rule making of the renewal fee in the near future? Why did having licensees pay the exam contractor directly have such an effect on the fund? Didn't Board expenditures as related to the examination drop commensurate with the lost revenue? What caused the sharp increase in enforcement costs following fiscal year 2001/02?*

Background: During the last Sunset Review in 2001, the Board reported that it had a fund reserve of 9.7 months as of June 30, 2001, and projected that it would have a reserve of 9.7 months ($1,844,146) in 2004/05. However, by the end of 2004/05, the Board had only 3 months of reserve funds ($596,000), and is now projecting that by 2007/08 the reserve will drop to $183,000, which is less than a month of reserve. In explanation, the Board states that a few years ago, candidates for licensure started paying exam fees directly to the examination contractor rather than the Board, which caused the fluctuations in its revenues and expenditures. The Board recently approved a rulemaking change to make the following fee changes:

- Increase the renewal fee for both PTs and PTAs from $120 to the statutory limit of $150;
- Increase the delinquency fee from $60 to the statutory limit of $75;
- Increase the fee for PT and PTA applications from $50 to the statutory limit of $75;
- Increase the fee for foreign graduate applications from $100 to the statutory limit of $125; and,
- Reduce the initial license fee from $120 to $75, to reflect the fact that an initial license is often valid for less than the full two years of a renewal license.

All of the fee increases are effective January 1, 2006, while the initial license fee reduction was effective October 24, 2005.

The general requirement is for licensing boards to maintain a maximum of 6 months reserves. The Board states its goal is to have no less than a one month and no more than a six month reserve. The Board states that in addition to the recent fee changes, it has submitted a Budget Change Proposal requesting a net reduction of the budget in the amount of $169,000, effective with fiscal year 2005/06, which will reflect the change in expenditures based on the examination program changes.

According to the Board's expenditure report, while expenditures relating to examinations did drop considerably beginning in the 2002/03 fiscal year (dropping from $973,703 in 01/02 to 322,301 in 02/03), enforcement costs went up at the same time (increasing from 960,859 in 01/02 to $1,496,521 in 02/03). The reduction in examination expenditures, and the increase in enforcement expenditures, held steady through the most recent year (2004/05).

The Board is requesting that its statutory fee ceilings be increased, which is discussed in more detail under New Issues later in this report.

ISSUE #5: Should the Board seek legislation to revise its Physical Therapy Act to better reflect changes in the profession and education requirements of the physical therapy profession and to clarify language that has proven to be misleading?

Issue #5 question for the Board: *What is the rationale and justification for each of the Legislative changes brought by the Board? What would be the fiscal impact of these proposed changes? Can you provide the JCBCCP with a mock-up showing how existing law is proposed to be changed? Why is the scope of practice being substantially revised, and does it confer new authority for PTs? In what manner has the Board sought comment on these proposed changes? What is the rationale behind establishing training and certification requirements for physical therapy aides? Will this be an unnecessary barrier to entry as an aide? What is the purpose of requiring applicants to demonstrate proficiency in spoken English?*

Background: The Board states it conducted a major study and proposed revision of its Practice Act during the past year, partly based on the findings of previous Board studies of their education statutes and on the supervision of PTAs and the use of physical therapy aides. The Board states that it realized it needed to rewrite its practice act to reflect changes in the professional and education requirements of the physical therapy profession and to clarify current statutory language that has proven to be misleading. Among the many proposed changes are the following seven specific proposals that the Board felt were important enough to also propose as stand-alone sunset review issues

(described in greater detail in Issues #8 through #14), in case a broad revision to its practice act was rejected:

- Changing the composition of the Board from seven members to nine by adding a PTA position and another public member *(discussed in greater detail in Issue #8)*;

- Establishing continuing education and competency provisions for licensees of the Board *(discussed in greater detail in Issue #9)*;

- Clarifying the use of titles by physical therapists *(discussed in greater detail in Issue #10)*;

- Establishing the authority for a temporary permit to practice for individuals who are licensed in another state at the time of application and who provide Therapy in connection with teaching or for athletic teams *(discussed in greater detail in Issue #11)*;

- Mandating the Board to deny licensure to applicants who are required to register as a sex offender pursuant to Section 290 of the Penal Code *(discussed in greater detail in Issue #12)*;

- Clarifying a diversion program participation fee may be charged not to exceed the actual cost of administering the program *(discussed in greater detail in Issue #13)*; and

- Raising the ceiling on licensing fees to $200 *(discussed in greater detail in Issue #14)*.

In addition to the above changes, the proposals that the Board included in this major rewrite of its practice act include:

- Redefining the scope of practice of physical therapy;

- Clarifying the definition of “clinical supervisor;” revising the statute to standardize physical therapy terminology as used by the model American Physical Therapy Act; defining more clearly terminology related to physical therapy aides, PTAs, PTs, physical therapy technicians and physiotherapy; and, clarifying the intent of “direct and immediate supervision”;

- Clarifying the use of physical therapy aides;

- Establishing a code of professional conduct;

- Mandating demonstrated proficiency in English as part of the examination requirements;

- Redefining clinical service;

- Reaffirming a "progressive pathway" for applicants who satisfactorily completed a PT educational program that is not an approved program and is not located in the United States or whose courses are not equivalent to that required by permitting these applicants to apply for licensure as a PTA;

- Establishing that PT graduates from non-approved programs who apply for licensure as a PTA do not need to complete a period of clinical service;

- Clarifying that any action taken by another state is grounds for disciplinary action by the Board; and,

- Permitting students enrolled in an approved PT or PTA program to enter the Board's diversion program if they meet the diversion criteria.

The Board provided the JCBCCP a proposed draft incorporating all of these suggested statutory revisions into a new Physical Therapy Practice Act, which is substantially different than the existing practice act. While much of the existing language remains, it has been moved around, and new language was added, partially derived from the Federation of State Boards of Physical Therapy's Model Practice Act and the American Physical Therapy Association's Guide. Among the major revisions, aside from the issues described separately in Issues #8 through #14, are a substantially revised scope of practice, new training requirements for physical therapy aides, and a new requirement that PT applicants demonstrate proficiency in spoken English.

While many of the changes can be described as technical, many others of the proposed changes substitute completely new language in place of the old statutes, and it is unclear to the JCBCCP staff what effect some of these changes would have on the profession.

ISSUE #6: Should the Board eliminate licensure of PTAs based on equivalent education and experience? (This is proposal was rejected by JCBCCP and DCA during the last sunset review.)

Issue #6 question for the Board: *How many current licensees qualified for licensure in this manner? How many applicants have applied for licensure as a PTA based on equivalency in each of the past 3 years? How many of the applicants using this pathway are IMGs or graduates of non-approved schools, versus applicants who never attended a physical therapy educational program? Is their any disciplinary data to reflect a higher degree of incompetence on the*

part of licensees who were licensed in this manner? What is the cost to the Board of maintaining this pathway, despite the low number of applicants using this pathway and the low exam passage rate?

Background: During its last review, the Board also proposed eliminating the "equivalency" pathway to licensure for PTAs. However, the DCA and the JCBCCP recommended that the Board continue this pathway, stating that it provides an important pathway into the profession for many nontraditional licensees including International Medical Graduates and those who find pursuit of a two-year program cost prohibitive.

The Board is once again proposing to eliminate this pathway, stating that California is the only state in the nation that still provides for licensure of PTAs who do not graduate from an approved two-year (associate degree) PTA program by establishing that they have equivalent education and experience. The Board states that it has used its regulatory authority in the past to revise the definition of "equivalency" to include more comprehensive requirements (now it is a minimum of three years of full time experience under the supervision of a PT), but that the passage rate for equivalency applicants on the PTA licensure exam still remains approximately one third of the national passage rate. The passage rate for graduates of approved educational programs is approximately two-thirds of the national passage rate.

The Board argues that its proposal to allow applicants who have completed a non-approved PT education program in a foreign country to apply for licensure as a PTA without needing to complete a period of clinical service is a better alternative to the equivalency pathway.

ISSUE #7: Should the Board implement, as a pilot program, a system whereby the Attorney General and the Office of Administrative Hearings costs for PT license-related cases are "rolled forward" (as are costs for investigations performed for the Board by the Division of Investigation of DCA)? (This is proposal was rejected by JCBCCP and DCA during the last sunset review.)

Issue #7 question for the Board: *What is the specific problem that the Board is seeking to address with this pilot program? Has there been any change in circumstances since this proposal was rejected by the JCBCCP at the Board's prior sunset review in 2001/02? Has the Board explored the feasibility of this proposed change with DCA, the Attorney General and the Office of Administrative Hearings? What would be the Board's enforcement budget for these changes initially and what would the Board project for these budget items in the future? How often has the budgeted amounts for Attorney General and Office of Administrative Hearings services been exceeded?*

Background: The Board made this same recommendation during its initial review in 1998, and again in 2001. However, DCA and the JCBCCP recommended that the Board not proceed with this pilot project, stating that such a pilot would represent a significant departure from the existing practice of the DCA's regulatory programs. Further, DCA and JCBCCP stated that it was unclear what problem exists that the Board believes such a pilot program would address, and suggested that if the Board felt strongly about pursuing such a pilot program, input should be solicited from DCA, the Attorney General's Office, and the Office of Administrative Hearings prior to returning to the Legislature. The Board states that unfortunately, without a legislative mandate, there has been no interest from DCA in assisting the Board in developing a formal proposal.

The Board generally pays a pro-rata amount to the DCA each year for its provision of centralized administrative support services. However, payment for the investigative services of the DCA's DOI are done through a "roll-forward" method, whereby amounts incurred by the DOI investigations that exceed the amount paid by the Board in a particular year are "rolled forward" and added to the amount that will be charged the Board in future years.

Currently, the Board reimburses the Attorney General and the Office of Administrative Hearings on a fee-for-service basis from funds that are appropriated for those purposes in its annual budget. If no services are provided, no money is paid. If the cost of services provided exceed the appropriated amounts, then the Board must seek a deficiency appropriation from the Joint Legislative Budget Committee to make up the difference in the same budget year. If such increased expenditures were anticipated to occur in future budget years the Board could submit a Budget Change Proposal (BCP) to have its baseline budget increased for following budget years to increase the appropriation for such services. The Board does not indicate whether it has had to submit deficiency requests or if it has submitted any BCPs related to these services. The Board is recommending that the JCBCCP explore a roll forward funding system for these Board expenditures on a "pilot program" basis.

ISSUE #8: Should the Board include representation of a PTA on the Board and request an additional public member appointment to the Board?

Issue #8 question for the Board: *What is the fiscal impact of increasing the Board by two members? Couldn't the same thing be accomplished by changing one of the PT members to a PTA member, so that it would be three PTs, 1 PTA, and three public members? Did the Board consider this option?*

Background: The Board states that it would benefit the consumer and the profession if the composition of the Board was changed from seven members to nine by adding a PTA and another public member. The composition would then be as follows: four PTs (one of whom is involved in PT education), one PTA, and four public members. The Board notes that the PTAs who are currently licensed

by the Board have no direct representation and this is contrary to the concept of boards consisting of those that are regulated and members of the public.

ISSUE #9: Should the Board require continuing education of PTs as a condition of license renewal? (This is proposal was rejected by JCBCCP and DCA during the last sunset review.)

Issue #9 question for the Board: *Does the Board have any research to show that licensed professionals subject to mandatory continuing education perform more competently than comparably licensed professionals who are not subject to it? Does the Board have any data to show that harm is being caused to the public by its licensees as a result of them not having taken continuing education? Has the Board done any research regarding how many of its licensees currently participate in continuing education on a voluntary basis? What assurances would the Board have that continuing education will be targeted in a useful manner, such as common practice deficiencies or emerging techniques? What would be the fiscal impact to the Board of this proposed requirement?*

Background: The Board made a similar recommendation during its last review in 2001/02, requesting authority to adopt 50 hours of continuing education (CE) for PTs per two-year license renewal period, and 25 hours for PTAs. However, DCA and the JCBCCP did not support this recommendation, instead recommending that the Board should demonstrate a need for CE prior to the Board adopting such a requirement.

Currently, there are no mandatory CE requirements for renewal of either a PT or a PTA license. The Board is proposing to require PTs to obtain at least 30 hours of CE every two years. The Board is not proposing any CE for PTAs at this time. The Board states that since the last review, the Federation of State Boards of Physical Therapy (Federation) completed its nationwide study of continued competency, and issued standards of competence that were reviewed by licensing jurisdictions and clinicians. The standards are divided into professional practice and patient/client management, with each domain considered equally important. The Federation did not develop standards for PTAs because all jurisdictions require PTAs to work under the supervision of the PT, and it is the PTs responsibility to direct PTAs toward appropriate training and skill development to maintain and improve their knowledge and skills.

While government has struggled with the issue of what steps might be required to assure that licensed professionals maintain continued competency in their profession following initial licensure, generally where any action has been taken it has been to mandate continuing education. While on its face continuing education would seem to assure that practitioners are exposed to ongoing education related to their profession, the value of mandating continuing education has been questioned in the past. Professional associations often push for continuing education, but these associations also are often providers of

continuing education, and therefore financially benefit from a continuing education requirement. Other issues regarding the efficacy of mandating continuing education include the relevance of the courses, assurance of actual attendance, and whether a practitioner will actually participate and learn if compelled (rather than by voluntarily doing so by choice).

ISSUE #10: Should the Board seek legislation to permit physical therapists to use the prefix, suffix and affix of their academic degrees?

Issue #10 question for the Board: *Wouldn't allowing PTs to use the "Dr." description confuse consumers, making them believe the PT is a physician? What other occupational licensing boards in DCA permit the use of the title "doctor," when they have a professional doctoral degree in their field of practice, other than physicians? Given that most current licensees do not have doctoral degrees, will permitting the use of the title "doctor" to those with a doctoral degree imply a higher level of license, even though the license will be the same? What is wrong with the existing provision of law permitting the use of any initial or suffix awarded by an accredited institution?*

Background: The Board states that the academic levels of PT education have advanced from the baccalaureate degree to a doctorate level degree. The Board states that a significant number of students are now obtaining the "Doctor of Physical Therapy" degree. This trend is expected to continue and within the next five years, the majority, if not all students will graduate with a doctorate degree.

The PT practice act states that the PT license does "not authorize the sue of the prefix "Dr.," the word "doctor," or any suffix or affix indicating or implying that the licensed person is a doctor or a physician or surgeon." However, the practice act goes on to state that notwithstanding that prohibition, a licentiate "may use an initial or other suffix indicating possession of a specific academic degree" earned at an accredited institution "except that the initials "M.D." shall not be used unless the licentiate is licensed as a physician and surgeon in this state."

The Board states that some PTs are using the title "doctor," however their intent is to indicate they are a Doctor of Physical Therapy, not a physician and surgeon. The Board is proposing to seek legislation to permit licensees with the professional doctoral degree to be referred to as "doctor," and to require that "physical therapist" follow their name regardless of the type of communication (verbal, written, or name badge) to insure that there is an understanding that the person is a PT, not a physician.

ISSUE #11: Should the Board seek legislation to exempt from licensure those PTs and PTAs who are licensed in other states to enable them to teach education courses and provide treatment to competing athletes of visiting teams?

Issue #11 question for the Board: *Where did the time period of 60 days in a calendar year come from? Would there also need to be a limit for consecutive days shorter than the annual limit? How would the Board enforce this provision? How would the Board know when someone was practicing pursuant to this provision, and how long he or she had been in California in a given year? Would the PT or PTA licensed in the other state need to notify the Board when practicing in California? Should there be a specific restriction on treating California patients for a fee while practicing under this proposed exemption? If there was harm done to a patient in California by a PT or PTA practicing under this exemption,, what would be the patient's recourse, and would the home state licensing agency have jurisdiction to discipline the licensee?*

Background: The Board states that current law does not allow a PT or a PTA licensed in another state to provide any physical therapy care in California without first obtaining a license in California. The Board points out that many PTs who are recognized as experts travel to California to provide educational seminars and may demonstrate on patients as part of the seminar. This could be considered the unlicensed practice of physical therapy. Additionally, many athletic teams and performing arts companies employ PTs to provide care for the athletes while engaged in competitive events throughout the United States. When care is provided in California, this again would be considered unlicensed practice.

The Board is proposing that statutory authority be added to permit PTs, and PTAs when traveling with a PT, to provide physical therapy in connection with teaching or participating in educational seminars for a limited time period of 60 days in a calendar year, and allow them to provide physical therapy to individuals affiliated with or employed by established athletic teams, athletic organizations or performing arts companies temporarily practicing, competing or performing in California for no more than 60 days in a calendar year.

ISSUE #12: Should the Board seek legislation to deny licensure to applicants who are required to register pursuant to Section 290 of the Penal Code (sex offenders)?

Issue #12 question for the Board: *Given that license applicants are required to disclose convictions when seeking licensure, why doesn't the Board believe it could deny licensure if the applicant is required to register pursuant to Section 290? Does the Board believe that in all instances, regardless of when it happened, or the circumstances, those convicted of any offense listed in Section 290 should not be licensed as a PT or a PTA? Should the Board retain some discretion in evaluating the circumstances and the crime involved, rather than being required by statute to deny a license in all instances?*

Background: The Board states that it currently does not have statutory authority to deny licensure to applicants who are required to register pursuant to Section

290 of the Penal Code. The Board is seeking such authority because it believes that such individuals should not be engaged in the hands on practice of physical therapy for the safety of the California consumer.

Section 290 requires every person convicted of certain crimes of a sexual nature to register, for the rest of his or her life while residing or working in California, with the chief of police, or the sheriff if residing in an unincorporated area, within five working days of changing his or her residence. The crimes for which a person is required to register under Section 290 include most crimes of a sexual nature, include rape, lewd and lascivious conduct, sex with minors, etc. It also includes indecent exposure, which is generally a misdemeanor unless it is a second offense. However, in the proposed statute provided by the Board, misdemeanor indecent exposure convictions would be exempted from the requirement to deny licensure.

ISSUE #13: Should the Board seek legislation to clarify diversion program participation fees may be charged not to exceed the actual cost of administering the program?

Issue #13 question for the Board: *Why does the Board believe a diversion program is appropriate for this profession? To what extent does the Board track graduates of the diversion program? What percentage of diversion program graduates experience a relapse, or are later subject to discipline? How expensive will the monitoring costs be to the licensees?*

Background: The Board is statutorily authorized to administer a diversion program for licensees that are drug or alcohol impaired. The Board reports that it does not provide rehabilitative services but only provides assistance in obtaining such services and in monitoring licensees in such programs to ensure that they do not present a threat to the public. The Board contracts with a private provider, Maximus, Inc., to provide confidential intervention, assessment, referral, and monitoring services for rehabilitation of PTs and PTAs who are impaired due to dependency on alcohol or other chemical substances.

During its last sunset review, the JCBCCP recommended that the Board consider revising its diversion program to require licensee participants to pay for their monitoring costs, or eliminate the program entirely. The Board states that it currently has statutory authority to charge a fee not to exceed $100 for program participation. The Board agrees with the recommendation that statutory language be revised to require the program participant to pay monitoring costs.

The total number of participants in the program increased from 5 in each of fiscal years 2001/2 and 2002/03 to 13 in fiscal year 2003/04 and 11 in 2004/05. The total program costs for the program were $24,600 in 2003/04 and $19,482 in 2004/05, or roughly $1,800 per person.

ISSUE #14: Should the Board seek legislation to adjust fees to provide a sound financial base for the future?

Issue #14 question for the Board: *Given the recent rulemaking seeking to increase several fees to the statutory limit, does the Board anticipate needing to increase fees again in the near future? Do the new statutory limits the Board is proposing reflect an actual increase in the cost of those specific programs? How do these fees compare to other states? Does the professional association support this proposal? Without these increases to the statutory limit, when will the Board face a budgetary shortfall?*

Background: Current statute includes a fee schedule that provides the Board with statutory authority to collect fees in connection with licenses or approvals for the practice of physical therapy. The ceilings on the initial license and renewal fees were established in 1997. The fees the Board charges for services performed on the request of a licensee, replacement copies of a license, endorsement of licensure sent to another state, and so forth, were established a set amount more than 15 years ago. The Boards has just recently conducted rulemaking to raise the renewal fee to the statutory maximum, $150. The same rulemaking lowered the initial license fee to $75, based on the fact that the license period for the first license is 13 to 24 months as compared to a full 24 month period of licensure upon renewal.

The Board states that taking 8 years to raise the renewal fee to the statutory maximum demonstrates that the Board is fiscally responsible. The Board argues that the need to be fiscally responsible necessitates an increase in the ceiling for the renewal and initial license fees. The fees for administrative services and the processing of applications need to be set at an amount based on the cost of providing the service. Consequently, the Board is proposing that a statutory ceiling be set for these fees as well, along with a requirement that the actual fee be set in regulation based on the cost of providing the service.

Specifically, the Board is requesting the statutory ceiling be raised on the following fees, as follows:

- Application fee for PT and PTA licenses, from a maximum of $75 to a maximum of $150;

- Application fee for a PT applicant from a foreign, non-approved school, from a maximum of $125 to a maximum of $200;

- Initial license fee for PT and PTA licenses, reduced from a maximum of $150 to a maximum of $100;

- Renewal fee for PT and PTA licenses, from a maximum of $150 to $200;

- Duplicate wall certificate fee, from a maximum of $20 to a maximum of $50; and,

- Endorsement or letter of good standing fee, increased from $30 to $50.