



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY - GOVERNOR EDMUND G. BROWN JR

# Physical Therapy Board of California

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March 3, 2011

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PHYSICAL THERAPY BOARD

Assemblywoman Mary Hayashi  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0018

Dear Assemblywoman Hayashi,

I'd like to thank you for your inquiry and the opportunity to address the activities of the Physical Therapy Board of California with respect to the employment of physical therapists by a corporation. I'd also like to clarify there were two separate considerations by the Board, as a result of two separate issues regarding corporate employment.

The first issue was a reaction to a challenge, regarding the 1990 Resolution, authorizing the forming of a general corporation employing physical therapists. The second issue related to the Legislative Counsel Opinion, regarding the employment of a physical therapist by a corporation organized to practice medicine under the Moscone-Knox Professional Corporation Act. While these activities coincided, one wasn't effectuated as a result of the other.

On September 29, 2010, the California Legislative Counsel issued a legal opinion in which it concluded a physical therapist may not be employed by a professional medical corporation formed under Section 13401.5 of the Corporations Code. The opinion stated, the only professional corporation, which may employ a physical therapist, is a professional physical therapy corporation or a naturopathic doctor corporation. The issue came to the forefront, when Section 13401.5 was recently amended by adding naturopathic doctor corporations to Section 13401.5 and listing physical therapists as a profession that may be shareholders, directors, officers, or employees of a naturopathic doctor corporation. Until that time, none of the other healing arts professions found under Section 13401.5, included physical therapists. This made it clear that the intent of the legislature was to preclude a physical therapist from being a shareholder, director, officer or employee of any other healing arts profession.

The Department of Consumer Affairs (DCA) subsequently held meetings with the Board's Executive Officer and individuals from interested parties to discuss these issues. Based upon the meetings, Acting Director Brian Stiger requested the DCA Legal Office provide an additional opinion on the matter. Until such time as this legal opinion is completed, the Board has agreed it will not send letters to its licensees, related to these issues. A meeting to discuss the findings of the DCA's legal opinion is scheduled for Friday, March 11, 2012.

At the meeting of the Board on November 3, 2010, the Board voted to rescind the 1990 Resolution, authorizing physical therapy services in a corporation, organized as a general corporation. The decision was based upon the Board's legal counsel's direction to regard the resolution as an underground regulation and a violation of Government Code section 11340.5(a). Although the Board voted to rescind the 1990 Resolution, the Board directed staff to forego initiating any action on those corporations which were formed, based on the 1990 Resolution.

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It should be noted that the Legislative Counsel Opinion was not solicited by the Board, nor did the issue originate with the Board. The issue began when a podiatrist, filing corporation documents with the Medical Board of California (MBC), was advised by MBC staff that authority doesn't exist for a physical therapist to be an employee, shareholder, director or officer in a podiatric corporation. This was later confirmed by legal counsel to the Board of Podiatric Medicine. Subsequently, the Legislative Counsel Opinion was sought by Assemblyman Pedro Nava in response to an inquiry by the American Physical Therapy Association.

While the Board is not at the root of the recent opinion, issued by Legislative Counsel, the Board recognizes its duty to enforce the findings. However, due to the rising conflict caused by the opinion, the Board has postponed taking any action at this time. However, the Board's intent is always to be thoughtful when implementing the law. Since the Board recognizes the necessity for allowing physical therapists employed by a corporation, (other than a naturopathic doctor corporation), to seek alternate employment, the Board is deliberately not being definitive of the time frame for concluding this transition. The Board intends to first determine the facts of each licensee's situation independently; and if warranted, the Board will request a plan of compliance by those physical therapists affected by the opinion.

In response to your specific questions included in your letter to the Board dated February 24, 2011,

1. *How many of these physical therapists seek to lose their jobs based on the decision by the Board to rescind the 21 year practice of allowing medical corporations to provide physical therapy services?*

The Board only has the authority to collect residence addresses and an alternate address of record to the residence address, such as a PO Box. Therefore, the Board has no means of determining the number of licensees who will be affected by either of the two decisions made by the Board.

However, it must be restated that the decision by the Board to rescind the 21 year practice, referred to in your question, was the result of the 1990 Resolution and only affected physical therapists who were employees of a *general* corporation, not a *medical* corporation. General corporations formed prior to the November 3, 2010, rescission of the resolution, should not be affected and should not be in danger of losing their jobs.

2. *How many patients and how much of their continuity of care will be disrupted?*

The Board has no authority to collect data on the number of California consumers of physical therapy or places of employment of the physical therapists providing care.

3. *How can this action by the Board be reconciled with their mission to promote and protect the interests of the people of California?*

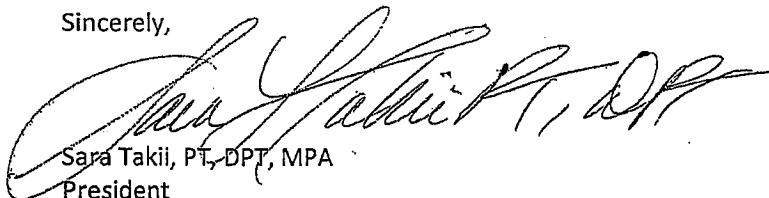
The Board is mandated to enforce the laws of the state of California set forth by the legislature; therefore, the Board's decisions are consistent with its mission. At this time, physical therapists are filing complaints with the Board, regarding unlawful practice against unlawfully employed licensees, whom they allege are creating an unfair marketplace, resulting in a negative impact to consumers of physical therapy.

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Hopefully you find this responsive to your requests. If we may offer any further insight into these issues, please feel free to contact us. I would welcome the opportunity to meet with you personally. You may contact me and I will arrange to come to Sacramento.

Again, I appreciate your concern for the citizens of California.

Sincerely,



Sara Takii, PT, DPT, MPA  
President  
Physical Therapy Board of California

Cc: PTBC members  
Brian Stiger, Acting Director, Department of Consumer Affairs