

Physical Therapy Board of California

Although It Can Make Improvements, It
Generally Processes Complaints and Monitors
Conflict-of-Interest Requirements Appropriately

June 2012 Report 2011-119



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June 26, 2012

2011-119

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the Physical Therapy Board of California's (physical therapy board) adherence to conflict-of-interest and other state requirements and its process for investigating complaints against its licensees.

This report concludes that one of the physical therapy board's expert consultants has served as the in-house consultant since approximately 2003, performing cursory reviews of certain complaints before they may be referred to other expert consultants in the field. Although this individual has served in this capacity for approximately nine years, the physical therapy board has not tried to hire a state employee to fulfill this function at a reduced cost. We believe that the physical therapy board may be able to save approximately \$28,000 to \$35,000 annually if it can hire a state physical therapy consultant at existing state rates to perform the same work as its in-house consultant. The physical therapy board also lacks a process to formally evaluate its in-house or other expert consultants' performance, which limits its ability to demonstrate that it maximized the efficacy of the nearly \$95,000 it spent on expert consultants in fiscal year 2010-11.

In addition, we found that the Department of Consumer Affairs does not ensure that members of its boards participate in required board member orientation, nor does it ensure all necessary employees attend required ethics training. We also found that two former board members submitted their statements of economic interests significantly after state deadlines. When board members do not submit these statements in a timely manner, the public and the board members themselves may be unaware of potential conflicts of interest that may disqualify the board members from dealing with particular issues that come before the board.

However, our testing indicates that the physical therapy board appropriately investigates complaints and imposes discipline. In addition, we found that the physical therapy board's relationships with professional organizations are appropriate. Finally, we found that the physical therapy board complies with the agenda, public-comment, and closed-session requirements of the Bagley-Keene Open Meeting Act.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

The Physical Therapy Board of California (physical therapy board) uses licensed physical therapists, known as *expert consultants*, to provide expert opinions when it investigates certain types of complaints. One of these expert consultants has served as the physical therapy board's in-house consultant since approximately 2003, performing cursory reviews of these complaints before the physical therapy board may refer them to other expert consultants in the field. Although this individual has served in this capacity for approximately nine years, the physical therapy board has not tried to hire a state employee to fulfill this function at a reduced cost. We believe that the physical therapy board may be able to save approximately \$28,000 to \$35,000 annually if it can hire a state physical therapy consultant at existing state rates to perform the same work as its current in-house consultant. Conversely, if the physical therapy board continues to pay for the services of its in-house consultant at the current contract rate of \$75 per hour for another nine years, we estimate it will spend approximately \$251,000 to \$311,000 more than if it hires a state physical therapy consultant to perform the same services. The physical therapy board also lacks a process to formally evaluate its in-house or other expert consultants' performance, which limits its ability to demonstrate that it maximized the efficacy of the nearly \$95,000 it spent on expert consultants in fiscal year 2010–11.

Board members and other designated employees can also compromise the physical therapy board's effectiveness if they do not receive proper training about their responsibilities, especially those related to conflicts of interest. For this reason, state law requires the board members to attend a board member orientation. State law also requires board members and other designated employees to attend ongoing ethics training. However, the Department of Consumer Affairs (Consumer Affairs) does not ensure that members of its boards participate in required board member orientation, nor does it ensure that board members and other employees designated in its conflict-of-interest code attend ethics training. Although all current members of the board have attended the board member orientation, Consumer Affairs was unable to demonstrate that two current board members, a former board member, and the former executive officer received all required ethics training. Consumer Affairs also has no records of whether another former board member, who is now a member of the Board of Behavioral Sciences, attended any ethics training or board member orientation while serving as a member of the physical therapy board. Consumer Affairs relies on its boards to ensure that board members and other designated employees attend training

Audit Highlights . . .

Our review of certain practices of the Physical Therapy Board of California (physical therapy board) highlighted the following:

- » *One of its expert consultants has served as the physical therapy board's in-house consultant since approximately 2003, and the physical therapy board has not tried to hire a state employee to fulfill this function at a reduced cost and thus save the State up to \$35,000 per year.*
- » *It lacks a process to formally evaluate its in-house or other expert consultants' performance.*
- » *The Department of Consumer Affairs (Consumer Affairs) does not ensure that members of its boards—such as the physical therapy board—participate in required board member orientation nor ensure that board members and other employees designated in its conflict-of-interest code attend ethics training.*
- » *All current members of the board have attended the board member orientation, yet Consumer Affairs could not demonstrate that two current board members received all required ethics training.*
- » *Two former board members submitted their statements of economic interests exceptionally late.*

when required. However, Consumer Affairs retains ethics training certifications as well as the sign-in sheets for the board member orientations; therefore, we believe that Consumer Affairs is better suited than its boards to ensure that board members and other designated employees receive required training.

The Political Reform Act of 1974 (Political Reform Act) also requires employees designated in an agency's conflict-of-interest code, such as physical therapy board members, to disclose certain financial interests, which are specified in that code, in a document called a *statement of economic interests*, more commonly referred to as *Form 700*. The Political Reform Act requires each designated employee to file a Form 700 within 30 days of assuming or leaving office. However, two former board members submitted their Form 700s exceptionally late. Specifically, we found that one former board member submitted her Form 700 for assuming office over 130 days after the deadline, and another former board member submitted her Form 700 for leaving office more than a year late. When board members do not submit their Form 700s by the deadlines specified by law, the public and the board members themselves may be unaware of potential conflicts of interest that may disqualify the board members from dealing with particular issues that come before the board.

Our review does indicate that the physical therapy board appropriately investigates complaints and imposes discipline. We reviewed a total of 40 complaints lodged against physical therapy board licensees whom the physical therapy board investigated during fiscal years 2008–09 through 2010–11, and found that it followed the complaint process that it and Consumer Affairs established. In addition, we reviewed the physical therapy board's relationships with professional organizations and found these relationships to be reasonable and appropriate given its role in regulating the practice of physical therapy. Further, the physical therapy board's relationships with professional organizations are similar to those between other licensing boards and related professional organizations. Finally, we found the physical therapy board complies with the agenda, public-comment, and closed-session requirements of the Bagley-Keene Open Meeting Act.

Recommendations

The physical therapy board should explore the feasibility of establishing a state position to perform the duties of its current in-house consultant at a reduced cost.

To make certain that it provides effective services to consumers, the physical therapy board should develop a means of formally evaluating its expert consultants against performance measures and benchmarks. Furthermore, the physical therapy board should conduct these evaluations regularly and document them fully.

Consumer Affairs should establish procedures for ensuring that board members attend the board member orientation and that those individuals and other designated employees receive all required ethics training.

To ensure that board members disclose in a timely manner potential conflicts of interest on their Form 700s, the physical therapy board should notify Consumer Affairs' filing officer promptly when board members are appointed or when they indicate that they intend to leave office.

Agency Comments

Consumer Affairs and the physical therapy board agree with our findings and recommendations and provided an overview of the steps they have recently taken or plan to take to implement the recommendations.

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Introduction

Background

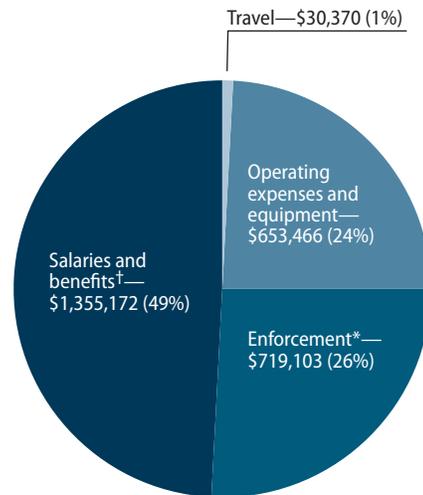
The mission of the Physical Therapy Board of California (physical therapy board) is to promote and protect the interests of the people of California through the effective and consistent administration and enforcement of the Physical Therapy Practice Act. This law defines the scope and practice of physical therapy within California, outlines licensing requirements, and specifies the causes for discipline. To carry out its mission, the physical therapy board provides three principal types of consumer services. Specifically, it provides information about the practice of physical therapy, verifies physical therapists' eligibility for licensure, and investigates complaints against and disciplines physical therapist and physical therapist assistant licensees (licensees).¹ According to the physical therapy board's Sunset Review Report (sunset report)² from November 2011, it had nearly 32,000 active and delinquent licensees during fiscal year 2010–11.

The physical therapy board consists of seven members, including three licensed physical therapists, a physical therapist involved in the education of physical therapists, and three public members. Board members serve four-year terms but may not serve for more than two consecutive terms. The governor appoints the physical therapist members, and the governor, the Senate Rules Committee, and the Speaker of the Assembly each appoint one public member. The governor's public member position has been vacant since June 2005, but a physical therapy board policy allows it to act with a majority of the members present at a board meeting.

The physical therapy board appoints an executive officer as its administrator to oversee staff and ensure that all programs function efficiently and effectively. According to its sunset report, the physical therapy board had 18 authorized staff positions in fiscal year 2010–11 in addition to temporary positions. These positions are organized into three programs: the Application and Licensing Services Program, the Consumer Protection Services Program, and the Administrative Services Program. As shown in Figure 1 on the following page, staff salaries and benefits constitute the largest category of the physical therapy board's annual costs. Funding for the physical therapy board comes from fees paid by licensees.

¹ The physical therapy board issues licenses to physical therapists and physical therapist assistants. Licensed physical therapists may practice physical therapy independently, while licensed physical therapist assistants work under the supervision of a licensed physical therapist.

² A sunset report is a complete agency report submitted as part of a sunset review, which is conducted by the Legislature's Joint Sunset Review Committee. It is an assessment of whether a state agency is necessary, effective, and efficient.

Figure 1**The Physical Therapy Board of California's Expenditures for Fiscal Year 2010–11**

Source: Unaudited expenditure data from the Department of Consumer Affairs (Consumer Affairs).

* *Enforcement costs* include costs for expert reviews by physical therapists, investigations by Consumer Affairs, and time spent by the staff of the Office of the Attorney General.

† *Salaries and benefits* includes \$26,500 in total per diem costs for Physical Therapy Board of California members.

Department of Consumer Affairs

The mission of the Department of Consumer Affairs (Consumer Affairs) is to protect and serve consumers and ensure a competent, fair marketplace. Consumer Affairs encompasses 40 regulatory entities that license various professions; these entities include such healing arts boards as the physical therapy board and the California Medical Board, which licenses physicians. Although these entities are responsible individually for activities related specifically to the professions they oversee, Consumer Affairs establishes general policies and provides administrative support to the entities. For example, Consumer Affairs processes payments for goods and services and travel reimbursements for its regulatory entities. In addition, Consumer Affairs performs some of the activities related to state conflict-of-interest requirements, including conducting board member orientations as well as collecting board members' financial disclosures.

The Physical Therapy Board's General Process for Handling Complaints Against Licensees

Consumer Affairs' regulatory entities are responsible for investigating complaints regarding their licensees and imposing discipline when necessary. For its part, the physical therapy board's process for initiating disciplinary proceedings against licensees involves several parties.

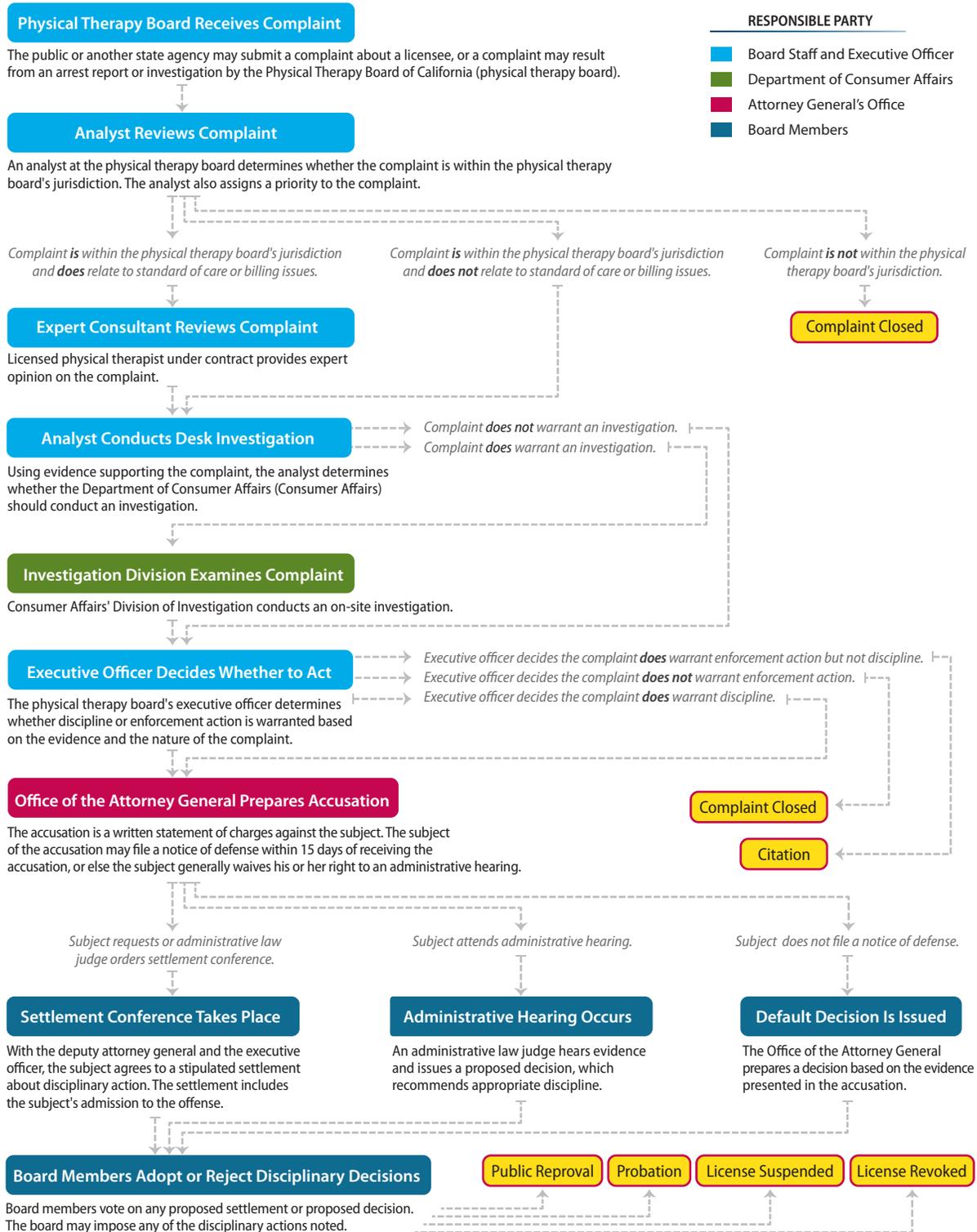
Figure 2 on the following page shows that in addition to the physical therapy board staff, a licensed physical therapist contracted by the physical therapy board may review the complaint, and Consumer Affairs' Division of Investigation (investigation division) and the Office of the Attorney General (attorney general) may investigate it. We believe that the physical therapy board's process for investigating complaints and imposing discipline, a process which is based on state laws, regulations, and internal policies, is sound.

External or internal sources can generate complaints about licensees. Externally generated complaints come from the public, other government agencies, and other sources while the physical therapy board itself generates internal complaints. As Figure 3 on page 9 shows, 70 percent of complaints come internally from the physical therapy board. According to the lead analyst in the Consumer Protection Services Program (lead analyst), change-of-address violations, in which a licensee fails to report a change of address, account for a high volume of these internal complaints. However, the executive officer explained that, despite the high volume of change-of-address violations, these complaints follow a streamlined process and require less time to resolve than an external complaint. In addition, internal complaints can develop during the course of another investigation. For example, while investigating a complaint against a physical therapist for unlicensed activity, the physical therapy board found evidence suggesting that the physical therapist may have committed record-keeping and other violations. The physical therapy board therefore opened a separate complaint to address those potential violations.

The physical therapy board assigns each incoming complaint to one of its analysts, who determines whether the complaint falls under the board's jurisdiction. If it does, the analyst prioritizes the complaint. Consumer Affairs provides general guidelines for determining the appropriate priority, but these guidelines state that the facts of a particular case may warrant a different priority than the guidelines suggest. Consumer Affairs' guidelines include three priority levels: *urgent*, *high*, and *routine*. Urgent cases may require immediate action. These cases allege acts that could possibly result in death, serious injury, or other types of abuse, such as a licensee practicing while under the influence of drugs or alcohol. According to the lead analyst, in urgent cases, the physical therapy board can work with the attorney general to obtain an interim suspension order or, when criminal charges are pending and the charges are egregious, a Penal Code 23 suspension order.³

³ Penal Code 23 states that in any criminal proceeding against a licensee of a state regulatory entity where the crime charged is substantially related to the qualifications, functions, or duties of the licensee's regulated profession, the licensing entity may voluntarily or be ordered by a court to provide pertinent information, make recommendations regarding probation conditions, or provide other necessary assistance.

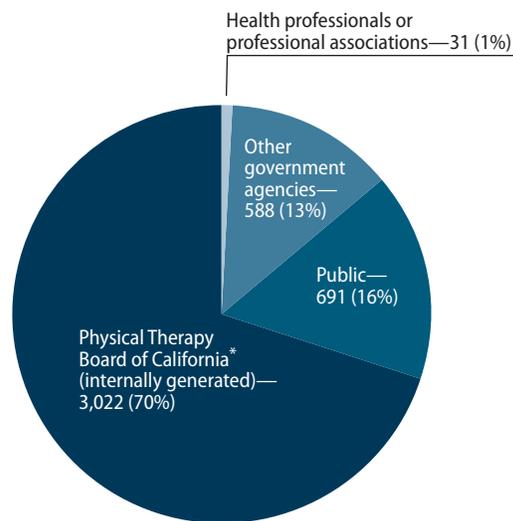
Figure 2
The Physical Therapy Board of California's General Process for Investigating a Complaint and Imposing Discipline



Sources: The California Government Code, the physical therapy board's regulations, as well as enforcement process overview, procedures, and other information provided by the physical therapy board.

Interim suspension orders and Penal Code 23 suspension orders restrict licensees from all or a specified part of their practice. For instance, in 2007, the Mendocino County Sheriff's Office notified the physical therapy board that a physical therapist was arrested on charges of lewd acts involving children and possession of child pornography. As these crimes specifically related to children, the physical therapy board obtained a Penal Code 23 suspension order that restricted the accused physical therapist from treating patients 18 years of age or younger.

Figure 3
Sources of Complaints Received by the Physical Therapy Board of California
Fiscal Years 2008–09 Through 2010–11



Source: Unaudited complaint data from the Department of Consumer Affairs.

Note: The figure does not include 10 complaints received by the Physical Therapy Board of California (physical therapy board) because the physical therapy board coded these complaints as *miscellaneous* or miscoded them.

* The physical therapy board's staff can generate new complaints based on various information. For example, if the physical therapy board's correspondence with a physical therapist cannot be delivered, board staff can generate a complaint for that physical therapist's failure to report a change of address.

The physical therapy board's analysts can assign licensed physical therapists, known as *expert consultants*, to review cases alleging quality-of-care or billing issues. The expert consultant's evaluations help the physical therapy board to determine whether the case warrants an investigation by the investigation division or should be closed. When an investigation is warranted, the case goes to the investigation division, where a Consumer Affairs' investigator may interview witnesses and conduct site visits.

If the analyst or the investigation division substantiates a complaint but the violation does not warrant discipline to protect the public, the executive officer may issue a citation, which may include an administrative fine (fine). The physical therapy board adopted *Model Guidelines for Issuing Citations and Imposing Discipline*, which contain specific guidelines for issuing citations and setting fines. The licensee receiving the citation may pay the fine or contest it in an informal conference with the executive officer or in an administrative hearing.

Substantiated complaints that do warrant discipline are referred to the attorney general, who prepares the accusation. That document details the facts of the case that support discipline and the statutes and rules allegedly violated. The subject of the accusation may file a notice of defense to request an administrative hearing overseen by an administrative law judge. After filing the notice of defense, the subject may contact the attorney general to request a settlement to agree to the terms of discipline. In the case of an administrative hearing, board members, if they do not adopt the administrative law judge's proposed decision, may reject the proposed decision and refer the case back to the judge to consider additional evidence. In addition, the board members may reject the proposed decision and decide the case themselves. However, according to the lead enforcement analyst, between fiscal years 2008–09 through 2010–11, board members did not refer any decisions back to an administrative law judge and they rewrote only two decisions. The physical therapy board votes on the proposed discipline when it is the result of a settlement or recommended by the administrative law judge. The board members may decide on a public reproof—a public reprimand issued by the physical therapy board—as well as probation, suspension, or revocation of a license, or a combination of these. The model guidelines contain information about what discipline is recommended as well as standard probation conditions. The board members may also request that the administrative law judge direct the subject to repay the costs of investigation and prosecution. However, with the exception of settlement agreements, the subject may request judicial review of the physical therapy board's decisions in court.

Recent Efforts to Reduce Complaint Processing Times

Consumer Affairs recently launched the Consumer Protection Enforcement Initiative (CPEI) to decrease the time that its healing arts boards spend to process complaints and enforce discipline. According to the sunset report, during fiscal year 2010–11 complaints that resulted in discipline could take nearly three years to resolve. However, as the previous section explains, in urgent cases, the physical therapy board can seek an interim suspension order to restrict the accused licensee's practice. The physical therapy

board reports that during fiscal year 2010–11, it took on average less than its target of 90 days to either close or refer complaints to the investigation division. On the other hand, the physical therapy board was unable to meet its goal of an average of 540 days to close cases that resulted in discipline in fiscal year 2010–11.⁴ For example, for the last quarter of fiscal year 2010–11, it reported that the entire discipline process took 982 days, or 2.7 years, on average. The physical therapy board noted in its sunset report that cases which result in discipline include processes outside the physical therapy board's direct control, including the activities of the investigation division and the attorney general. The sunset report noted other performance barriers, such as delays at the Office of Administrative Hearings, staffing shortages, and the time required to obtain documentation from licensees and other agencies.

The sunset report also explained that the physical therapy board's quarterly averages are affected by older cases that predate Consumer Affairs' recent efforts to reduce the time its healing arts boards take to investigate complaints and impose discipline. According to the sunset report, in July 2009, the governor responded to reports of unacceptable investigation and enforcement processing delays at the Board of Registered Nursing by directing the State and Consumer Services Agency to conduct an internal review of Consumer Affairs' healing arts boards' enforcement programs and the investigation division. As a result, Consumer Affairs launched the CPEI in fiscal year 2010–11 to overhaul the enforcement process at its healing arts boards through administrative improvements, increased staffing and IT resources, and legislative changes.

Once it has fully implemented the CPEI, Consumer Affairs expects these boards to reduce the average enforcement completion time from 36 months to between 12 and 18 months. The sunset report indicates that in response to CPEI, the investigation division and the attorney general have taken steps to reduce the time required to process cases. Specifically, it reported that the investigation division has set a goal to complete an investigation within a year of when a Consumer Affairs' board receives a complaint. In the past, the investigation division could take as long as three years to complete its investigation. Additionally, it reported the attorney general has made improvements in the timeliness of processing older cases while keeping up with new performance time frames. Finally, the physical therapy board reported that its analysts constantly monitor their cases by requesting status updates from applicable third parties at each step in the process.

⁴ The director of Consumer Affairs established this goal for all of Consumer Affairs' regulatory entities.

Changes in Consumer Affairs' Policy and in State Law Regarding the Physical Therapy Board's Use of Expert Consultants

Before November 2010 the physical therapy board—like other boards and bureaus within Consumer Affairs—enlisted its own licensees to act as expert consultants, and it did not require its expert consultants to enter into formal contracts. Instead, Consumer Affairs' boards entered into customized agreements with expert consultants because these agreements were quicker to execute than contracts. For its part, the physical therapy board simply required its expert consultants at the time to agree to certain criteria and expectations it had established. In November 2010 Consumer Affairs issued a memo to its boards and bureaus that explained it would begin requiring expert consultants to enter into contracts in accordance with state contracting requirements. The memo explained that Consumer Affairs would work with its boards and bureaus to develop a rollout plan to implement the changes. The physical therapy board subsequently executed the first contract with an expert consultant in June 2011.⁵

However, Senate Bill 541 (SB 541) became effective in September 2011, and it specifically addressed expert consultant contracts. It allows Consumer Affairs' boards and bureaus to enter into contracts with expert consultants to provide expert opinions on enforcement-related matters and other services, but it expressly exempts these contracts from requirements of the Public Contract Code, such as competitive bidding. A legislative analysis of SB 541 noted that Consumer Affairs indicated in June 2010 that difficulties in identifying, hiring, and training expert consultants were contributing to the delays in the enforcement process that CPEI was intended to address. The physical therapy board prepares contracts with expert consultants as their services are needed.

Recent Changes in State Law and Board Policy Affecting Complaints Against Licensees Working for Corporations

An amendment to the Physical Therapy Practice Act and the rescinding of a 1990 policy previously followed by the physical therapy board altered the ways in which the physical therapy board handles certain types of complaints about licensees. Specifically, Senate Bill 543 (SB 543) amended the Physical Therapy Practice Act in a way that temporarily affects the physical therapy board's ability to discipline licensees who may be working for certain types

⁵ Known as the *in-house consultant*, the expert consultant who first entered into a contract with the physical therapy board performs only cursory reviews of certain complaints. This report's Audit Results further explain the difference between his role and the roles of other expert consultants.

of *professional* corporations. In addition, the 1990 policy and its rescission affect the way in which the physical therapy board deals with complaints about licensees who work for *nonprofessional* corporations.

The Physical Therapy Practice Act specifies that a physical therapy corporation may provide services only if it and its shareholders, officers, directors, and employees rendering physical therapy services are in compliance with a state law called the Moscone-Knox Professional Corporation Act (Moscone-Knox). The Physical Therapy Practice Act specifies that it constitutes unprofessional conduct for a person to violate that act or Moscone-Knox. As a result, Consumer Affairs' deputy director of legal affairs stated that a licensee could face discipline for violating Moscone-Knox. Although Moscone-Knox generally limits a professional corporation to engaging in a single profession, it expressly allows certain types of professional corporations to engage in multiple professions if these corporations meet certain conditions regarding ownership of the corporations. For example, Moscone-Knox expressly authorizes a professional corporation that is a medical, podiatric, or chiropractic corporation to employ licensed psychologists, registered nurses, and licensed optometrists in addition to its principal professionals. However, Moscone-Knox expressly authorizes only a naturopathic doctor corporation—but not other professional corporations, such as medical, podiatric, or chiropractic corporations—to employ licensed physical therapists in addition to its principal professionals, naturopathic doctors.⁶

SB 543 amended the Physical Therapy Practice Act to prohibit the physical therapy board from disciplining a licensee for working for a medical, podiatric, or chiropractic corporation. The bill took effect on January 1, 2012, and it will remain in effect until January 1, 2013. As of April 2012 the physical therapy board has 269 open complaints alleging that a licensee is working for a medical corporation, and some of these complaints date back to 2010.⁷ In May 2011 the physical therapy board moved to send letters to notify the licensees who were the subjects of the complaints and to request plans for compliance. Because of pending legislation related to this matter, the physical therapy board decided in August 2011 not to conclude the investigations of those complaints, and it has not taken any enforcement action since SB 543 was enacted. The executive officer stated that the physical therapy board has not taken a position on whether the law should allow licensees to work for medical corporations. She stated that the physical therapy board is responsible for enforcing the law as it is written.

⁶ A naturopathic doctor is a health practitioner who uses a system or method of treating disease that employs no surgery or synthetic drugs but uses special diets, herbs, vitamins, and massages to assist the natural healing process.

⁷ The physical therapy board's records indicate that many of these complaints are redundant.

Under the advice of its legal counsel, the physical therapy board adopted a policy in 1990 stating that licensees are not prohibited from working for corporations that are not professional corporations. Effectively, the 1990 policy stated that although the Physical Therapy Practice Act established the requirements for physical therapy corporations, this law did not prohibit nonprofessional corporations from providing physical therapy services. However, in 2010 the physical therapy board rescinded the 1990 policy because the board's executive officer and legal counsel at the time advised them that the resolution was an underground regulation,⁸ and that the 1990 policy conflicted with existing law. The executive officer at the time recommended that the board adopt a new resolution stating that if ownership of a physical therapy nonprofessional corporation was obtained before the rescission of the resolution, the owner may retain his or her status and continue to operate the corporation. On advice of its legal counsel, the board did not move to adopt this resolution. However, the current executive officer stated that the board has not yet been tested on this issue; since the physical therapy board rescinded the 1990 policy, it has not yet received a complaint related to a licensee working for a nonprofessional corporation.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor to perform an audit of the physical therapy board's relationships with professional organizations and of the physical therapy board's handling of complaints. The analysis that the audit committee approved contained six separate objectives. Table 1 lists the objectives and the methods we used to address them.

To address audit objectives 4 and 5, we relied on computer-processed information that the physical therapy board provided. The U.S. Government Accountability Office, whose standards we follow, requires us to assess the sufficiency and appropriateness of computer-processed information. Table 2 on page 16 shows the results of that analysis.

⁸ An *underground regulation* is a rule issued or enforced by a state agency without its having adopted a regulation following the procedures established in the State's Administrative Procedure Act.

Table 1
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant state laws, such as the Physical Therapy Practice Act and the Political Reform Act of 1974, and regulations, such as those implemented by the Physical Therapy Board of California (physical therapy board) and the Fair Political Practices Commission.
2 Review and assess the physical therapy board's compliance with the applicable open meeting laws.	Reviewed nine of 18 physical therapy board meetings that occurred during fiscal years 2008–09 through 2010–11, and determined whether the physical therapy board noticed and conducted its meetings in accordance with the Bagley-Keene Open Meeting Act.
3 Determine the extent to which the physical therapy board monitors its compliance with, and adherence to, policies and procedures to prevent, identify, and address conflict-of-interest violations. This analysis should include the following evaluations: a. Reviewing the physical therapy board's policies and procedures related to conflicts of interest and assessing the extent to which it complies with current conflict-of-interest laws. b. Reviewing and assessing, to the extent possible, the nature and extent of executive officer and board member interactions with professional organizations representing physical therapy professionals and how those interactions compare with other professional licensing boards.	<ul style="list-style-type: none"> • Reviewed board member orientation training sign-in sheets and ethics training certifications. • Reviewed statements of economic interests submitted by board members and designated staff. • Reviewed the physical therapy board's policies and interviewed its management regarding the board members' memberships and participation in professional organizations. • Interviewed the Medical Board of California and the California Board of Chiropractic Examiners about their relationships with professional organizations and about their policies related to those relationships. • Reviewed the physical therapy board's expenditures for fiscal years 2008–09 through 2010–11 to determine whether it made payments to professional organizations.
4 For the most recent three-year period, determine whether the physical therapy board's expenditures, including travel expenses, were reasonable and consistent with state law.	<ul style="list-style-type: none"> • Selected 60 expenditures in fiscal years 2008–09 through 2010–11 to review. Specifically, we judgmentally selected transactions based on the nature of the expense, including travel reimbursements, board member per diem payments, and payments to expert consultants. • Reviewed supporting documentation for selected expenditures, such as travel expense claims, for appropriateness and compliance with applicable state laws and regulations. <p>We found that the expenditures were appropriate and consistent with applicable state laws and regulations.</p>
5 Review and evaluate the physical therapy board's enforcement policies and procedures with respect to opening, investigating, and closing complaints to determine whether they are consistent with applicable laws, rules, and regulations, as well as best practices. Using a sample of complaints from the most recent three-year period, determine if the board has consistently applied its policies related to prioritizing, investigating, and closing complaints. At a minimum, this assessment should include the following evaluations: a. How the board prioritized complaints. b. How it assigned complaints to investigators or experts. c. The criteria it used in selecting experts for case reviews. d. The consistency and reasonableness of the course of action taken when it substantiated a complaint. e. A review of complaints closed without an enforcement action taken to determine whether the complaints were closed in a manner consistent with state laws, regulations, and established policies and practices.	<ul style="list-style-type: none"> • Reviewed the physical therapy board's procedures for handling complaints and its Web site to determine how it publicized the complaint process and the outcome of complaints. • Selected 40 complaints that the physical therapy board investigated in fiscal years 2008–09 through 2010–11 to review. Specifically, we judgmentally selected complaints based on the outcomes of the investigations, such as whether the complaint was closed without an enforcement action, as well as whether the complaint was generated internally by the physical therapy board or submitted by an external entity. • Reviewed case files for the 40 complaints we selected to determine the reasonableness and consistency of the physical therapy board's actions.
6 Review and assess any other issues that are significant to the physical therapy board's ability to fulfill its statutory mandate.	Reviewed changes in the law caused by Senate Bills 541 and 543 and their impact on the physical therapy board's and the Department of Consumer Affairs' processes.

Sources: The California State Auditor's analysis of audit request 2011-119 and of information and documentation identified in the table column titled *Method*.

Table 2
Methods of Assessing Data Reliability

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
Department of Consumer Affairs and the California State Accounting and Reporting System Data for fiscal years 2008–09 through 2010–11	To select a sample of expenditures and to provide background information.	Our purpose did not require a data reliability assessment. Instead, we needed to gain assurance that the population was complete. We did so by comparing the total expenditures for each fiscal year to the records of the State Controller’s Office. We found that they agreed.	Complete for the purposes of this audit
Department of Consumer Affairs’ Consumer Affairs System Data for fiscal years 2008–09 through 2010–11	To select a sample of complaints and to provide background information.	Our purpose did not require a data reliability assessment. Instead, we needed to gain assurance that the population was complete. We were able to verify the complaints data were complete by tracing samples of records from supporting documentation to the data. We found no errors in this testing.	Complete for the purposes of this audit

Source: Data collected from the Physical Therapy Board of California and the Department of Consumer Affairs.

Audit Results

The Physical Therapy Board Should Explore Hiring a State Employee to Perform the Duties of Its In-House Consultant and Better Monitor Its Experts

The Physical Therapy Board of California (physical therapy board) uses licensed physical therapists, known as *expert consultants*, to provide expert opinions when it investigates certain types of complaints. One of these expert consultants has served as the physical therapy board's in-house consultant since approximately 2003, performing cursory reviews of these complaints before the physical therapy board may refer them to other expert consultants in the field. Although this individual has served in this capacity for approximately nine years, the physical therapy board has not tried to hire a state employee to fulfill this function at a reduced cost. We believe that the physical therapy board may be able to save approximately \$28,000 to \$35,000 annually if it can hire a state physical therapy consultant at existing state rates to perform the same work as its in-house consultant. The physical therapy board also lacks a process to formally evaluate its in-house or other expert consultants' performance, which limits its ability to demonstrate that it maximized the efficacy of the nearly \$95,000 it spent on expert consultants in fiscal year 2010–11.

The Physical Therapy Board Could Achieve Significant Savings if It Can Hire a State Employee to Perform the Function of Its in-House Consultant

The physical therapy board has not recently determined whether it could hire a state employee to perform the work of its current in-house consultant, and, as a result, it may be missing an opportunity to save approximately \$28,000 to \$35,000 annually. When the physical therapy board receives a complaint, one of its analysts performs an initial review of the complaint. In some cases, the analyst then routes complaints regarding quality of care, negligence, incompetence, or billing issues to a physical therapist, known as the physical therapy board's in-house consultant, who conducts cursory reviews of those complaints in the physical therapy board's Sacramento office. Depending on the in-house consultant's preliminary findings, these complaints may be referred to expert consultants located throughout California for a more detailed review, as described in the next subsection.

The in-house consultant is not a state employee but provides his services under contract. California Government Code, Section 19130 (Section 19130), permits agencies to contract for personal services, but they must demonstrate that the cost of the contracted services will be less than that of state civil service

employees providing the same services or justify why such services cannot or should not be performed by a state civil service employee. Although Senate Bill 541 provides the boards of the Department of Consumer Affairs (Consumer Affairs) with the ability to contract for expert consultant services, it explicitly states that expert consultant contracts are subject to the standards described in Section 19130. According to the lead analyst in the physical therapy board's Consumer Protection Services Program, the in-house consultant has served in this role since approximately 2003.

We believe that the services of the in-house consultant could be provided at a lower cost by a state employee. According to the terms of the in-house consultant's contract, which expires in March 2013, he may work up to 58 hours per month at the rate of \$75 an hour. The State's civil service system has a class for physical therapist I and II as well as for a physical therapy consultant. The minimum qualifications for the state physical therapy consultant class are generally comparable to those the physical therapy board established for its expert consultants, including a requirement that candidates possess a physical therapy license and have several years of experience. In addition, state physical therapy consultants may be hired on a permanent intermittent basis whereby such employees can work up to 1,500 hours per calendar year. As shown in Table 3, the physical therapy board's cost for a state physical therapy consultant position would range from \$25 per hour to \$35 per hour, including social security and Medicare taxes, which is significantly lower than the \$75 an hour that the in-house consultant is currently paid. As described in the footnotes of Table 3, the physical therapy board would not incur any additional costs for health, dental, and vision or retirement benefits because a permanent intermittent physical therapy consultant working up to 58 hours per month would not qualify for these benefits. The U.S. Department of Labor's Bureau of Labor Statistics also estimates that physical therapists in California, on average, earned about \$42 per hour in May 2011, further suggesting that the physical therapy board could hire a state employee to provide physical therapy consulting services at a reduced cost.

We compared the estimated annual costs of a state physical therapy consultant position to the costs of the physical therapy board's in-house consultant. Our comparison assumes a work schedule of 58 hours per month since that is the maximum allowable number of hours in the existing contract. As Table 3 shows, we estimate that a state physical therapy consultant working for the physical therapy board as a permanent intermittent employee would save the physical therapy board approximately \$28,000 to \$35,000 annually compared to the current cost of the physical therapy board's in-house consultant. Because the in-house consultant is an established part of the physical therapy board's internal complaint

We estimate that a state physical therapy consultant working for the physical therapy board as a permanent intermittent employee would save the State approximately \$28,000 to \$35,000 annually.

process, these savings would continue to accrue over time. If the physical therapy board continues to pay for the services of its in-house consultant at the current contract rate of \$75 per hour for another nine years, we estimate it will spend approximately \$251,000 to \$311,000 more than if it hired a state physical therapy consultant to perform the same services.

Table 3
Comparison of Estimated Costs to the Physical Therapy Board of California Between Its In-House Consultant and a State Physical Therapy Consultant

ESTIMATED COST TO THE PHYSICAL THERAPY BOARD OF CALIFORNIA (PHYSICAL THERAPY BOARD)	COST OF IN-HOUSE CONSULTANT UNDER CURRENT CONTRACT	COST OF A PERMANENT INTERMITTENT STATE PHYSICAL THERAPY CONSULTANT*	
	HOURLY RATE FOR RECORDS REVIEW AND OTHER SERVICES	BASED ON MINIMUM SALARY	BASED ON MAXIMUM SALARY
Wages per hour	\$75.00	\$23.54	\$32.42
Health, dental, and vision benefits [†]	NA	-	-
Retirement [‡]	NA	-	-
Social security and Medicare taxes [§]	NA	1.80	2.48
Total cost per hour	\$75.00	\$25.34	\$34.90
Total cost per month (at 58 hours per month)	\$4,350	\$1,470	\$2,024
Total cost per year	\$52,200	\$17,640	\$24,288
		<i>Potential savings per year to the physical therapy board of hiring a permanent intermittent state physical therapy consultant</i>	
		\$34,560	\$27,912

Sources: The physical therapy board's contract with the in-house consultant and the State's agreement with the American Federation of State, County, and Municipal Employees covering health and social services professionals (bargaining agreement).

Note: This comparison quantifies significant items of ongoing costs related to hiring a permanent intermittent employee. Other additional expenses related to state employment, such as costs for vacation and other leave, would have an immaterial effect on our savings calculation.

NA = Not applicable.

* According to the bargaining agreement, a permanent intermittent physical therapy consultant position would not be guaranteed a minimum number of hours and would be limited to 1,500 hours per calendar year. We considered the physical therapy consultant class in our comparison because the minimum qualifications for that class are generally comparable to the qualifications the physical therapy board established for its expert consultants.

† According to the bargaining agreement, a permanent intermittent physical therapy consultant would not be eligible to receive health, dental, or vision benefits if they worked less than 480 hours between January 1 and June 30 and between July 1 and December 31 of each calendar year. The in-house consultant is contractually limited to 58 hours per month; therefore, a state physical therapy consultant hired to perform these duties would not reach this threshold.

‡ The State does not contribute to the retirement of permanent intermittent employees who work less than 1,000 hours per fiscal year. Again, at 58 hours per month, a state physical therapy consultant hired to perform the duties of the physical therapy board's current in-house consultant would not reach this threshold.

§ Employers are generally required to withhold social security and Medicare taxes from their employees' wages and pay the employer's share of these taxes. These taxes are based on percentages of the employees' wages. Employers are typically responsible for paying 6.2 percent for social security and 1.45 percent for Medicare.

According to the executive officer, the physical therapy board considered hiring a state physical therapist II in the past but dismissed the idea at the time because it assumed it would not be possible to hire an employee with the requisite skill set at the associated state salary level. Further, she stated that the physical therapy board did not believe that the physical therapist II class met the job specifications necessary for its in-house consultant. However, she stated that the physical therapy board was not aware

of the State's physical therapy consultant class at that time. In addition, she acknowledged that the in-house consultant position would best be filled with a state physical therapy consultant if there is a cost savings and the requisite skill set is met. However, she stated that the physical therapy board is dependent on the support of Consumer Affairs, the Department of Finance, and other entities to establish the position. Nevertheless, if the physical therapy board determines that the existing state physical therapy consultant class does not precisely meet its needs, it could pursue revising the classification or establishing a new classification that would better meet its needs. Given the relatively high cost of the current in-house consultant, we believe that the physical therapy board could still achieve significant ongoing savings.

The Physical Therapy Board Lacks a Formal Process to Evaluate the Work of Its In-House Consultant and Other Expert Consultants

The physical therapy board does not formally evaluate the performance of its in-house consultant or other expert consultants. As described in the previous subsection, the in-house consultant may initially review complaints alleging quality of care, billing issues, etc. Depending on his preliminary findings, the physical therapy board may refer these complaints to expert consultants in the field for further review. Those expert consultants review complaints, medical records, and other supporting documentation, and they typically receive cases based on their geographic proximity to the subject of the complaint. They submit a report documenting their findings. If the cases involve disciplinary proceedings, these expert consultants may also be called upon to testify regarding their findings at an administrative hearing. The physical therapy board requires all of its expert consultants to have been licensed as physical therapists in California for the preceding five years and to have no history of disciplinary action, and they must not have any conflict of interest regarding the cases assigned to them. If a conflict exists, the expert consultant must promptly notify the physical therapy board.

The physical therapy board spent nearly \$95,000 in fiscal year 2010–11 on expert consultant services, approximately \$41,000 of which was paid to its in-house consultant. As described in the prior subsection, we believe the physical therapy board should explore the feasibility of establishing a state position to perform the duties of its current in-house consultant at a reduced cost. However, in the interim the physical therapy board should begin formally evaluating the in-house consultant's performance. The in-house consultant's contract states that the physical therapy board will evaluate his performance and document that evaluation. However, the in-house consultant's contract only requires that

The physical therapy board should begin formally evaluating the in-house and other expert consultants' performance.

he be evaluated at the end of the contract. The other expert consultants' contracts do not include any provision for evaluating their performance, and we believe it would also be prudent for the physical therapy board to begin formally evaluating those consultants on an ongoing basis as well.

Among other tasks, these expert consultants receive payments for hours spent reviewing records—work that is done away from the physical therapy board's office and without direct supervision by physical therapy board staff. The physical therapy board could assess its expert consultants' performance based on the average number of hours or days it takes them to complete a review, whether the hours spent on a particular case are reasonable when compared to other consultants, and the quality of the report they submit. Without a policy or process to conduct these evaluations, the physical therapy board limited its ability to demonstrate that it maximized the efficacy of the nearly \$95,000 it spent on expert consultants in fiscal year 2010–11. Moreover, the physical therapy board risks having its expert consultants in the field continue to receive cases and be paid for reviews that are of substandard quality, decreasing the physical therapy board's overall effectiveness in protecting the public.

The executive officer agreed that evaluating the physical therapy board's expert consultants is important. In fact, the physical therapy board is in the process of developing a draft policy and procedures to begin formally evaluating its expert consultants. The executive officer explained that the evaluations will be based on performance and not the expert consultant's opinion itself, to avoid the appearance of witness tampering. She stated that the physical therapy board anticipates implementing the new policy and procedures by July 2012.

Consumer Affairs and the Physical Therapy Board Could Better Ensure That Board Members and Other Designated Employees Comply With Conflict-of-Interest Requirements

Just as the physical therapy board needs to develop procedures to formally evaluate its expert consultants, Consumer Affairs and the physical therapy board need to strengthen their procedures to ensure that board members and other designated employees adhere to conflict-of-interest requirements. Specifically, Consumer Affairs does not ensure that all those who are required to participate in mandated ethics training and board member orientations do participate. We also found two instances where former board members submitted their statements of economic interests disclosures well after the deadline imposed by Consumer Affairs' conflict-of-interest code.

By not evaluating its expert consultants, the physical therapy board limited its ability to demonstrate that it maximized the efficacy of the nearly \$95,000 it spent on expert consultants in fiscal year 2010–11.

Consumer Affairs Does Not Ensure That Members of Its Boards and Other Designated Employees Receive All Required Training

Consumer Affairs does not verify that members of its boards participate in the required board member orientations, or that board members and other designated employees participate in the ethics training that state laws require. The Political Reform Act of 1974 (Political Reform Act) generally requires employees who may make or participate in government decisions that could have a material effect on the employee's financial interests to disclose those interests and to refrain from making, participating, or influencing such decisions. Consumer Affairs' conflict-of-interest code identifies all physical therapy board members, the executive officer, and the assistant executive officer as designated employees who must disclose certain financial interests. State law requires that all of these designated employees attend ethics training within six months of assuming office and once every two calendar years thereafter. State law requires that records of attendance of ethics training be retained for five years. State law also requires that every newly appointed board member complete a board member orientation within one year of assuming office. Because Consumer Affairs does not ensure that its board members attend required training, it risks the possibility that they may be uninformed about their roles and responsibilities. Moreover, if board members and other designated employees do not attend the ethics training, they may not be aware of conflict-of-interest laws that prohibit them from participating in government decisions when they could reasonably foresee that such decisions would have a material financial effect on their economic interests.

Because Consumer Affairs does not ensure that its board members attend required training, it risks the possibility that they may be uninformed about their roles and responsibilities.

Consumer Affairs directs board members and other designated employees to the Office of the Attorney General's (attorney general) Web site for the required ethics orientation and for subsequent biennial ethics training. All designated employees are to certify that they completed the ethics training, and they are also to forward those certifications to Consumer Affairs. Additionally, Consumer Affairs provides the required board member orientations for newly appointed members of its boards three times a year. Consumer Affairs' training officer has maintained the sign-in sheets from these trainings for the last five years as records of attendance.

We asked Consumer Affairs for evidence that current and former designated employees (from 2008 to May 2012) attended applicable ethics training and that board members attended board member orientations during roughly the last five years. We found that all current members of the physical therapy board had attended board member orientations. However, Consumer Affairs was unable to demonstrate that one current board member had attended the initial ethics orientation. State law requires Consumer Affairs

to maintain these records for at least five years, and this board member had been in the position for less than five years when we asked Consumer Affairs for evidence that he had received this training. In addition, Consumer Affairs could not demonstrate that another current board member had attended all required biennial ethics training over the last five years. According to Consumer Affairs' training officer, in the past it maintained ethics certifications for only the most recent training; however, the training officer stated that Consumer Affairs is now retaining ethics certifications for five years, as required by state law.

Furthermore, Consumer Affairs was unable to demonstrate that the former executive officer received all required biennial ethics training before leaving office. According to a certification maintained by Consumer Affairs, the former executive officer attended ethics training in December 2008. Consumer Affairs does not have any record that he attended the training again before leaving office in July 2011, despite the fact that he was required to repeat the training by the end of 2010. Similarly, Consumer Affairs does not have any record that a former board member, who was appointed in December 2005, attended the ethics training before leaving office in June 2009. Although state law requires that Consumer Affairs keep these records for five years, we expected that it would have records indicating this board member attended at least one ethics training since early 2007, which is approximately five years before we conducted our review.

Finally, Consumer Affairs has no records that another former board member attended any ethics training or that this individual attended the board member orientation within one year of assuming office on the physical therapy board. This individual served as a member of Consumer Affairs' Board of Behavioral Sciences from July 1999 to July 2006, served as a member of the physical therapy board from June 2010 to March 2011, and then was reappointed to the Board of Behavioral Sciences in April 2011. This individual may have attended the board member orientation during her first appointment to the Board of Behavioral Sciences. If this were the case, we did not expect Consumer Affairs to have a record of this board member's attendance because the training would have occurred more than five years before our review. Consumer Affairs' records indicate this board member attended the board member orientation training in April 2012.

Although Consumer Affairs maintains attendance records for board member orientation and ethics training for all designated employees for each of its boards, it does not ensure that physical therapy board members and other designated employees receive this required training. Consumer Affairs instead relies on its boards to ensure that these individuals meet these training requirements.

Consumer Affairs has no records that a former board member attended any ethics training or that this individual attended the board member orientation within one year of assuming office on the physical therapy board.

The training officer stated that Consumer Affairs sends reminders of the training requirements to the boards' executive officers periodically, and the training officer said that the individual boards are responsible for ensuring that board members receive orientation and ethics training and that other designated employees receive ethics training. However, Consumer Affairs retains the ethics training certifications as well as the sign-in sheets for the board member orientation, and it is also best situated to know when board members have previously served on another one of its boards; therefore, we believe that Consumer Affairs is better suited than its boards to ensure that board members and other designated employees receive all required training.

Two Former Board Members Were Late in Submitting Their Statements of Economic Interests

Not only do board members for the physical therapy board need to attend ethics training that covers conflicts of interest, they also need to file formal statements with Consumer Affairs about their financial interests by certain deadlines. However, two former members of the physical therapy board filed their statements of economic interests significantly after the filing deadline. The Political Reform Act requires that each employee designated in an agency's conflict-of-interest code disclose certain financial interests, which are specified in that code, by filing a statement of economic interests, commonly referred to as a *Form 700*. Completed *Form 700*s are available to the public for review. The Political Reform Act requires that all designated employees submit *Form 700*s within 30 days of assuming or leaving office. Additionally, under Consumer Affairs' conflict-of-interest code, designated employees must submit *Form 700*s for each calendar year, which are due in April the following year. Although state agencies have certain obligations related to collecting and maintaining these forms, designated employees themselves are ultimately responsible for meeting the requirements of the Political Reform Act, and they can be subject to fines and penalties for failing to comply. When board members do not submit their *Form 700*s in a timely manner, the public and the board members themselves may not be aware of potential conflicts of interests that require the board members to disqualify themselves from related matters that come before the board.

When board members do not submit their statements of economic interests in a timely manner, they may not be aware of potential conflicts that require them to disqualify themselves from related matters that come before the board.

The Fair Political Practices Commission (FPPC) has primary responsibility for administering the Political Reform Act. The FPPC's guidelines require that each agency have a filing officer and FPPC regulations require that an agency's filing officer receive and retain *Form 700*s submitted by the agency's designated employees. Consumer Affairs' filing officer tracks and collects

Form 700s for all of its entities. The filing officer notifies board members and designated employees of their obligation to file an annual statement at least 30 days prior to the deadline. When the filing officer becomes aware that a board member has assumed or is leaving office, he sends the member a Form 700 to complete. The filing officer stated that he monitors the governor's Web site for new board appointments and is also alerted to new board appointments by Consumer Affairs' board and bureau relations staff. However, the filing officer also relies on the boards' staff to inform him when a designated employee has assumed or is leaving office.

We reviewed Form 700s submitted by physical therapy board members and other designated employees for 2008, 2009, and 2010, and we found that all board members and designated employees submitted their annual Form 700s by the yearly deadline, and all board members and other designated employees submitted their statements for assuming or leaving office. However, we found that one former board member submitted her Form 700 for assuming office more than 130 days after the deadline, and another former board member submitted her Form 700 for leaving office over a year late. Although board members are ultimately held responsible for promptly submitting their Form 700, the physical therapy board may be able to increase the timeliness of Form 700 submissions by promptly alerting the filing officer when a board member has been appointed or intends to leave office. Doing so would alert the filing officer to notify the board member of his or her obligation to submit a timely Form 700. In fact, when the two former board members were eventually notified that they needed to file their Form 700, they both submitted their forms within 30 days.

One former board member submitted her disclosure form for assuming office more than 130 days after the deadline, and another former board member submitted her disclosure form for leaving office over a year late.

The Physical Therapy Board Appropriately Investigates Complaints and Imposes Discipline

We reviewed a total of 40 complaints lodged against physical therapy board licensees whom the physical therapy board investigated during fiscal years 2008–09 through 2010–11 and found that it followed the complaint process that it and Consumer Affairs had established. Specifically, we examined how the physical therapy board prioritized complaints, the appropriateness of its actions in closing complaints it could not substantiate, and the reasonableness and consistency in how it issued citations and imposed discipline for complaints it did substantiate.

The physical therapy board appeared to assign a priority appropriately based on Consumer Affairs' guidelines and the information available at the time the complaint was initiated. Of the 40 cases, the physical therapy board prioritized four as *urgent*—the highest priority level. For example, one urgent case

we reviewed concerned a physical therapist disciplined by another state's physical therapy board for sexual misconduct with patients. Consumer Affairs' guidelines suggest that sexual misconduct with a patient be prioritized as urgent.

Of the 40 complaints that we reviewed, 11 were closed without enforcement action. We believe these complaints were closed in a manner consistent with the physical therapy board's established process for investigating complaints, which is in part based on state laws and regulations. When the physical therapy board cannot substantiate a complaint, or when the subject of a complaint is not a licensee of the physical therapy board, the physical therapy board closes the complaint without enforcement action. The physical therapy board closed two cases because the subjects had already cancelled their licenses in California, and it closed nine because its investigations concluded that enforcement actions were unnecessary. In three of these nine cases, the licensees submitted change-of-address forms more than 30 days but less than 60 days after the licensees moved. The physical therapy board's regulations state that a licensee must report a change in address within 30 days of moving. However, because it considered these violations minor, the physical therapy board did not issue citations. Instead, it chose to send letters to these licensees reminding them of its requirements for address reporting. The six remaining complaints were investigated to varying degrees before being closed: the investigation division investigated two complaints, an expert consultant in the field reviewed one, and the in-house consultant or an analyst or both reviewed three of the six complaints after obtaining a written explanation from the licensee. The physical therapy board was generally unable to substantiate these complaints due to insufficient evidence or it determined that the alleged conduct of the subject of the complaint was not severe enough to require enforcement actions.

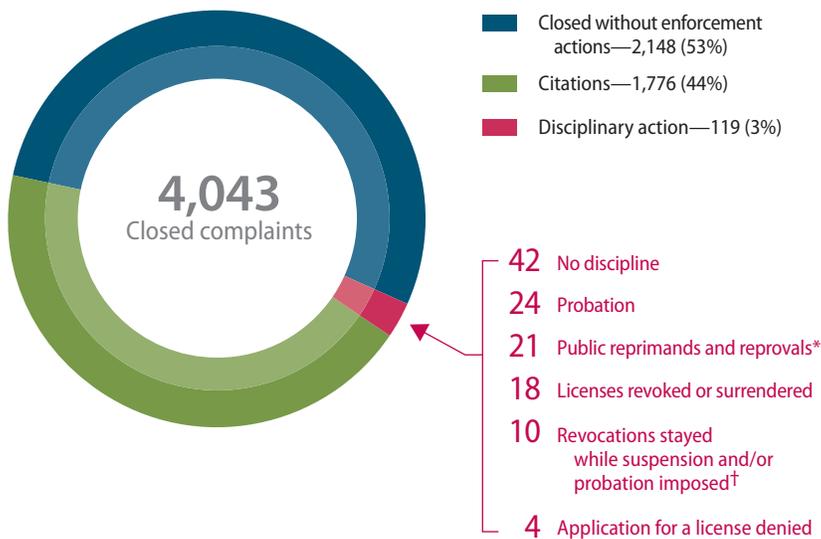
Seven of the 40 complaints that we reviewed resulted in citations. The physical therapy board may issue citations for minor violations that do not necessarily warrant discipline to protect the public; these may include administrative fines ranging from \$100 to \$5,000. For instance, a licensee was assessed a \$200 citation for two change-of-address violations, whereas another citation we reviewed for excessive treatment and insufficient documentation included a fine of \$2,000. We found that the citations were issued in accordance with the physical therapy board's *Model Guidelines for Issuing Citations and Imposing Discipline*.

The physical therapy board issued the citations we reviewed in accordance with its guidelines.

Not only does the physical therapy board have the power to issue citations, but it also has the authority to impose discipline. The physical therapy board can revoke a physical therapist's license, suspend a license up to a year, or place a licensee on probation. Additionally, the physical therapy board can revoke a license but

immediately stay, or postpone, the revocation in conjunction with probation. However, if the disciplined licensee violates the terms of his or her probation, the physical therapy board can revoke the license. As shown in Figure 4, Consumer Affairs' data suggest that the physical therapy board seeks discipline in only a small proportion of cases and issues citations or closes most of its cases without taking enforcement actions.

Figure 4
Outcomes of Complaints Closed by the Physical Therapy Board of California
Fiscal Years 2008–09 Through 2010–11



Source: Unaudited complaint data from the Department of Consumer Affairs.

* The Physical Therapy Board of California (physical therapy board) can issue a public letter of reprimand upon agreement with a licensee instead of filing an accusation. Alternatively, after discipline proceedings, the physical therapy board can publicly reprove a licensee for any act that would constitute grounds for suspension or revocation.

† After revoking a license, the physical therapy board can stay, or postpone, the revocation in conjunction with probation, and may also impose suspension. If the licensee violates the terms of his or her probation, the physical therapy board can revoke the license.

The executive office believed that discipline was warranted in 12 of the 40 complaints that we reviewed, and it referred these cases to the attorney general. The attorney general prepared formal accusations against each of these licensees. We attempted to determine whether the physical therapy board imposed discipline reasonably and consistently among these 12 complaints. One of these complaints was still pending at the time of our review. The physical therapy board revoked the license of the subject of another complaint who was convicted of second degree murder in another state. The remaining 10 complaints were classified either as sexual misconduct, unprofessional conduct, or criminal conviction.

However, as shown in Table 4, the facts of each case, even within a particular category, vary. Therefore, it is not surprising that the board imposed reasonable yet varying levels of discipline within each category. For example, although we reviewed four complaints related to licensees convicted of driving under the influence of alcohol, each case had a different outcome. In three of these cases, the physical therapy board adopted a proposed settlement that was agreed to by the attorney general, the physical therapy board, and the licensee during a settlement conference. Such settlements can reasonably result in different degrees of discipline even for similar types of cases. In two of the three settled cases, the licensees agreed to probation with a stayed revocation of their licenses, but in the third case, the licensee agreed to surrender his license. The fourth licensee did not file a notice of defense in response to the accusation prepared by the attorney general, which resulted in a default decision that the physical therapy board adopted to revoke the license.

The Physical Therapy Board's Relationships With Professional Organizations Are Appropriate

We reviewed and assessed the nature and extent of the physical therapy board's interactions with professional organizations representing physical therapy professionals, and we analyzed how those interactions compare to those of other licensing boards. Based on our review, we believe that the physical therapy board's relationships with such professional organizations are reasonable and appropriate given its role in regulating the practice of physical therapy. Further, we believe the physical therapy board's relationships with professional organizations are similar to those between other licensing boards and related professional organizations.

Although all four board members who are physical therapists are also members of various associations, none currently serve in any leadership position or hold any office with these associations.

According to the physical therapy board's executive officer, all four board members who are physical therapists are also members of the California Physical Therapy Association, the American Physical Therapy Association, or both. These associations represent the interests of physical therapists. However, according to the executive officer, no board members currently serve in any leadership position or hold any office with these associations. Further, the executive officer stated the physical therapy board does not pay dues to these associations on behalf of any of its board members, and board members and staff have not attended a conference or other event sponsored by one of these associations since 2010. The executive officer stated that at that time, the California Physical Therapy Association provided the physical therapy board with booth space at a conference and board staff were stationed at the booth but

Table 4
Details of 10 Disciplinary Actions Taken by the Physical Therapy Board of California

COMPLAINT NUMBER	TYPE OF LICENSE*	SUMMARY OF GROUNDS FOR DISCIPLINE	PHYSICAL THERAPY BOARD OF CALIFORNIA ACTION
Type of Violation: Sexual Misconduct			
1	Physical therapist	Subject convicted of continuous sexual abuse of a child.	Adopted default decision [†] —license revoked and subject ordered to pay investigation and enforcement costs of \$9,218.
2	Physical therapist	Subject had a sexual affair with a patient for two years.	Adopted proposed decision [‡] —license revocation stayed, license suspended for 60 days, and five-year probation imposed. [§]
3	Physical therapist	A physical therapy board in another state concluded that the subject engaged in sexual misconduct with seven patients.	Adopted proposed decision—license revoked and subject ordered to pay investigation and enforcement costs of \$2,686.
Type of Violation: Criminal Conviction			
4	Physical therapy assistant	Subject convicted for the second time of driving under the influence of alcohol.	Adopted proposed settlement [#] —license surrendered.**
5	Physical therapy assistant	Subject convicted of driving under the influence of alcohol and causing bodily injury.	Adopted default decision—license revoked and subject ordered to pay investigation and enforcement costs of \$1,995.
6	Physical therapist	Subject convicted for the second time of driving under the influence of alcohol.	Adopted proposed settlement—license revocation stayed, probation imposed for longer of five years or until subject completes rehabilitation program, and subject ordered to pay investigation and enforcement costs of up to \$3,000.
7	Physical therapist	Subject convicted of driving under the influence of alcohol.	Adopted proposed settlement—license revocation stayed and probation imposed for longer of three years or until one year after subject completes rehabilitation.
Type of Violation: Unprofessional Conduct			
8	Physical therapy assistant	Subject altered evaluation and documentation of supervising physical therapist and made treatment decisions without consulting with supervising physical therapist.	Adopted proposed settlement—subject publicly reprovved, ordered to pay \$900 within 90 days or reimburse the Physical Therapy Board of California (physical therapy board) \$3,100 for its investigation and enforcement costs, and required to pass written examination of laws and regulations governing physical therapy practice.
9	Physical therapist	Subject verbally abused and sexually harassed two patients and patient's child.	Adopted proposed decision—license revocation stayed, three-year probation imposed, and subject ordered to pay enforcement costs of \$4,964.
10	Physical therapy assistant	Subject performed a physical therapy evaluation on a patient and forged the signature of a physical therapist.	Adopted proposed settlement—license revocation stayed, five-year probation imposed, and subject ordered to pay \$300 within 90 days or reimburse the physical therapy board \$1,800 for its investigation and enforcement costs, and to pass written examination of laws and regulations governing physical therapy practice.

Sources: Accusations, adopted settlements, decisions, and other physical therapy board documents.

* The physical therapy board issues licenses to physical therapists and physical therapist assistants. Licensed physical therapists may practice physical therapy independently, while licensed physical therapist assistants work under the supervision of a licensed physical therapist.

† A default decision is issued when a licensee fails to respond to the accusation prepared by the Office of the Attorney General (attorney general).

‡ After an administrative hearing, an administrative law judge prepares a proposed decision that recommends what discipline, if any, should be imposed.

§ The physical therapy board can stay, or postpone, revocation of a license in conjunction with probation, and may also impose suspension. In this situation, if the licensee violates the terms of his or her probation, the physical therapy board can revoke the license.

|| California Business and Professions Code, Section 141, provides that a disciplinary action taken by another state for any act substantially related to the practices regulated by the California license may be grounds for disciplinary action by the respective California licensing board.

A proposed settlement is the result of a settlement conference and is agreed to by the licensee, the attorney general, and the executive officer of the physical therapy board. In doing so, the licensee admits to the violation.

** When a licensee agrees to relinquish his or her license as part of a settlement, the physical therapy board considers the license surrendered.

We did not find evidence that the physical therapy board made any payments to the two professional associations during fiscal years 2008–09 through 2010–11.

did not attend any of the conference events. Although in the past the physical therapy board paid for the board staff's travel expenses to attend events hosted by these associations, we reviewed the physical therapy board's expenditure records for fiscal years 2008–09 through 2010–11 and did not find evidence that the board made any payments to these associations.

The board is also a member of the Federation of State Boards of Physical Therapy (federation), which is an association of state physical therapy boards. The federation develops and administers the National Physical Therapy Examinations, which physical therapists and physical therapist assistants must pass to be eligible for a license. According to the executive officer, the physical therapy board pays annual dues, totaling \$2,500 in fiscal year 2010–11, to the federation and also pays the federation to provide tests that comply with the Americans with Disabilities Act when requested. We reviewed the Form 700s for board members and other designated employees for 2008, 2009, and 2010 and found that they did not disclose any inappropriate payments from professional organizations.

Although the physical therapy board lacks a specific policy governing board member and employee interactions with professional associations, we found that such a policy was not a common practice among similar boards. Consumer Affairs' deputy director of board and bureau relations indicated that its boards and bureaus are generally governed by Consumer Affairs' incompatible work activities policy and state law. Among other restrictions, Consumer Affairs' incompatible work activities policy prohibits its employees from receiving or accepting gifts or other things of value from anyone whose activities are regulated or controlled by the employee's appointing authority under circumstances from which it could reasonably be substantiated that the gift was intended to influence the employee in his or her official duties. The policy also prohibits Consumer Affairs' employees from accepting items of value intended to reward an official action performed by the employee, and prohibits its employees from using the prestige or influence of the State or the appointing authority for private gain or advantage. Moreover, state law prohibits a state officer or employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, or in conflict with his or her duties as a state officer or employee.

We inquired with two other boards that license health care practitioners and found that they were similar to the physical therapy board in how they interacted with professional organizations. Specifically, we contacted the Medical Board of California (medical board), which is part of Consumer Affairs but is larger than the physical therapy board in terms of number of licensees and

annual expenditures, and the California Board of Chiropractic Examiners (chiropractic board), which does not operate under Consumer Affairs.

Both the medical board and chiropractic board appear to have limited interactions with professional associations. The executive director of the medical board stated that its board members do not attend conferences of professional associations in their official capacities, unless formally invited to speak. She also stated that many current and past board members have served in leadership positions for different professional associations but not for the California Medical Association, the main membership organization for physicians. The executive officer of the chiropractic board stated that board members are free to attend conferences as members of the profession but not as a representative of the chiropractic board without its approval. He further stated that two current board members are also members of professional chiropractic associations, but they do not actively serve in any leadership positions or on any committees for those associations.

Neither of these boards had any policies related specifically to interactions with professional organizations. In addition, both boards had the same conflict-of-interest policies as the physical therapy board. Because the medical board also operates under Consumer Affairs, it is governed by the same conflict-of-interest policies as the physical therapy board. Although the chiropractic board is not under Consumer Affairs, the executive officer stated that it has adopted Consumer Affairs' conflict-of-interest policies, including Consumer Affairs' incompatible work activities policy, and its board members attend Consumer Affairs' board member orientation as well as ethics training.

The Physical Therapy Board Complies With Applicable Open Meeting Laws

We found that the physical therapy board complies with the agenda, public-comment, and closed-session requirements of the Bagley-Keene Open Meeting Act (Bagley-Keene). According to California public policy, public agencies exist to aid in the conduct of the people's business, and the proceedings of public agencies are to be conducted openly so that the public may remain informed. Bagley-Keene establishes open meeting requirements for each state body, which is generally defined as multi-member state boards and commissions that are created by statute or executive order. For example, Bagley-Keene requires state bodies, such as the physical therapy board, to publicly announce their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized by Bagley-Keene to meet in

Both the medical board and chiropractic board appear to have limited interactions with professional associations.

closed session. Bagley-Keene also prohibits serial meetings, which involve communications outside an open meeting among a majority of board members to develop a collective concurrence regarding action on board items.

We reviewed nine of the 18 board meetings that took place during fiscal years 2008–09 through 2010–11 for compliance with Bagley-Keene. The meetings included at least two meetings from each of the three fiscal years, as well as two teleconference meetings and one meeting held primarily in closed session. For these meetings, the physical therapy board appropriately posted agendas and allowed public comment on board matters. In the agendas we reviewed, the physical therapy board limited closed session items to personnel and disciplinary matters, and discussions regarding the validity and security of the National Physical Therapy Examination, all of which are permitted by Bagley-Keene.

Recommendations

The physical therapy board should explore the feasibility of establishing a state position to perform the duties of its current in-house consultant at a reduced cost.

To make certain that it provides effective services to consumers, the physical therapy board should develop a means of formally evaluating its expert consultants against performance measures and benchmarks. Furthermore, the physical therapy board should conduct these evaluations regularly and document them fully.

Consumer Affairs should establish procedures for ensuring that board members attend board member orientation and that those individuals and other designated employees receive all required ethics training. In addition, Consumer Affairs should adhere to the record retention period of five years specified by law for the certificates documenting that designated employees received ethics training.

To ensure that board members disclose in a timely manner potential conflicts of interest on their Form 700s, the physical therapy board should notify Consumer Affairs' filing officer promptly when board members are appointed or when they indicate that they intend to leave office.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: June 26, 2012

Staff: Michael Tilden, CPA, Audit Principal
A.J. Meyer
Alicia Anne Beveridge, MPA
Olivia Northcott

Legal Counsel: Scott A. Baxter, JD

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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(Agency comments provided as text only.)

June 12, 2012

State and Consumer Services Agency
915 Capitol Mall, Suite 200
Sacramento, CA 95814

Elaine Howle*
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: Bureau of State Audit's Draft Report 2011-119--Department of Consumer Affairs, Physical Therapy Board

Pursuant to the above audit report, enclosed are the Department of Consumer Affairs comments pertaining to the above draft audit.

The State and Consumer Services Agency would like to thank the BSA for its comprehensive review. The results provide us with the opportunity to better serve our clients and protect the public.

Sincerely,

(Signed by: Anna M. Caballero)

Anna M. Caballero, Secretary
State and Consumer Services Agency

Enc.

* California State Auditor's comments appear on page 41.

(Agency comments provided as text only.)

MEMORANDUM

DATE: June 12, 2012

TO: Anna Caballero, Secretary of the State and Consumer Services Agency

FROM: Denise Brown, Director, Department of Consumer Affairs

SUBJECT: Responses to the BSA Audit Findings for the Physical Therapy Board

We appreciate the opportunity to respond to the BSA draft report no. 2011-119 for the Physical Therapy Board (board). The department and the board agree with the findings. We will continue to work to resolve the findings and to implement changes that may be necessary in order to be in compliance with laws and regulations. Furthermore, we will explore all options to ensure that we use resources in the most efficient manner possible.

Responses to the 4 identified findings are attached. If there are questions, please contact Reichel Everhart, Deputy Director, Board and Bureau Relations, at 574-8214.

Attachments

Finding:

The Physical Therapy Board could achieve significant savings if it can hire a state employee to perform the function of its in-house consultant.

Recommendation:

The Physical Therapy Board should explore the feasibility of establishing a state position to perform the duties of its current in-house consultant at a reduced cost.

Response:

In approximately 2002/03 the Physical Therapy Board of California (board) conducted research regarding the feasibility of retaining a physical therapist consultant as a civil service employee; however the board identified the following barriers:

- The Physical Therapist I and II class specifications did not meet the job specifications.
- The average hourly rate difference was significant at the time.
- A Physical Therapist Consultant class (8270) specification was not identified at the time.

None the less, the board most recently conducted further research regarding the feasibility of retaining a physical therapist consultant as a civil service employee and identified three options, which are as follows:

1. Establish a new class: This process could take approximately 1-2 years, with the approval of oversight agencies, including; the Department of Consumer Affairs (DCA), Department of Personnel Administration (DPA) and State Personnel Board (SPB).
 - The board would be required to submit a request to DCA, Office of Human Resources with the following information:
 - Identification of appropriate class
 - Draft of class specifications
 - A concept proposal, position analysis, salary analysis and justification.
2. Revise the existing Physical Therapist Consultant class (class code 8270): This process could take approximately 4-6 months, with the approval of oversight agencies; Department of Consumer Affairs, Department of Personnel Administration and State Personnel Board.
 - The board would be required to submit a request to DCA, Office of Human Resources providing the same information required establishing a new class, with the exception of the salary analysis; however, since the board views the salary as problematic this option would need to be explored further.

3. Borrow Physical Therapist Consultant class (class code 8270): This process could take approximately 3-4 months, with the approval of oversight agencies; Department of Consumer Affairs and Department of Personnel Administration.
- The board would be required to submit a request to DCA, Office of Human Resources; and, if approved the board could utilize the class on a temporary basis until the establishment of a new class is completed. Again, the board views this option to be problematic on many levels since the existing class doesn't remotely meet the specifications required of the board's physical therapist expert consultant. The salary remains an issue as well.

Since the board recognizes the potential cost savings this action could provide, the board agrees to explore the feasibility of employing a civil service physical therapist expert consultant. However, as previously addressed there are some anticipated obstacles which could make recruitment for this position problematic, such as: the board's limited work schedule of approximately 8 hours per week barring any entitlement to health benefits; specification for the existing Physical Therapy Consultant class was established in 1961 and last updated in 1968; existing Physical Therapy Consultant class specification's definition, typical tasks, minimum qualifications nor knowledge and abilities meet the requisite skill set of the board's physical therapist expert consultant; and, the hourly pay range of the existing Physical Therapy Consultant class begins at \$27.50 per hour versus California's average of \$42.91 per hour according to the State of California Employment Development Department.

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Finding:

The Physical Therapy Board lacks a formal process to evaluate the work of its in-house consultant and other expert consultants.

Recommendation:

To make certain that it provides effective services to consumers, the physical therapy board should develop a means of formally evaluating its expert consultants against performance measures and benchmarks. Furthermore, the Physical Therapy Board should conduct these evaluations on an ongoing basis and document them fully.

Response:

The board agrees and has developed a performance evaluation tool for evaluation of performance of its outside expert consultants. The tool is to be applied after receipt of each expert report. The evaluation tool developed for performance evaluation of the in-house expert consultant will be applied annually which is consistent with the civil service performance evaluation requirements.

To complete a performance evaluation of an outside expert consultant, board analysts, the board's in-house expert consultant and Deputy Attorneys General will each be required to assess the performance of the expert consultant as it pertains to predetermined criteria specific to their area of participation in the

assigned enforcement case. If substandard reviews are detected, the Consumer Protection Services Manager will determine whether services of the expert consultant will be terminated.

The performance evaluation tool will be used to assess the following:

- 1) Productivity—meeting timelines, appropriate handling of records and documents, etc.;
- 2) Communication—accessibility to board staff, Division of Investigation and Deputy Attorneys General;
- 3) Report Writing—clarity, completeness and factual accuracies; and,
- 4) Knowledge of Case—familiarity of case during interviews with Deputy Attorneys General, investigator or board.

It is anticipated the board will implement use of the evaluative tool by July 1, 2012.

Finding:

Consumer Affairs does not ensure that members of its boards and other designated employees receive all required training.

Recommendation:

The Department of Consumer Affairs should establish procedures for ensuring that board members attend board member orientation and that those individuals and other designated employees receive all required ethics training. In addition, Consumer Affairs should adhere to the record retention period of five years specified by law for the certificates documenting that designated employees received ethics training.

Response:

The Director of the Department of Consumer Affairs agrees that the Department is best positioned to ensure that board members and advisory committee members receive the mandatory board member orientation and ethics training. The certifications for each mandatory training will be placed in the individual's board member file within the Executive Office for a period of no less than 5 years.

The executive office and the personnel office within the Department has developed and enacted procedures to track and notify board members of required training, including:

- Board member orientation training
- Ethics training
- Sexual harassment prevention training
- Fair Political Practices Commission Form 700

Additionally, at the Director's request, the Deputy Director for Board and Bureau Relations is creating a special training for board executive officers and bureau chiefs that will focus on several issues, one of which is conflict-of-interest laws, as highlighted in the summary of the audit. The first training is tentatively scheduled for August 30, 2012.

Finding:

Two former board members were very late in submitting their statements of economic interests.

Recommendation:

To ensure that board members disclose in a timely manner potential conflicts of interest on their Form 700's, the Physical Therapy Board should implement a process to notify Consumer Affairs' filing officer promptly when board members are appointed or when they indicate that they intend to leave office.

Response:

The board notifies the Department of Consumer Affairs' Office of Human Resources when a board member assumes and separates from office. Historically, the Board relied on the Department of Consumer Affairs' Office of Human Resources to notify the Department of Consumer Affairs' filing officer when board members are appointed and separated from office. However, as a safeguard the board established and implemented written procedures requiring board staff to provide notification to both the Department of Consumer Affairs' Office of Human Resources and the Department of Consumer Affairs' filing officer when a board member is appointed or separating from office.

- ② In December 2011, the board implemented a written process identified as "Board Member Reporting, Assuming and Separating from Office" within its Administrative Procedure Manual. The process includes the Board notifying the Department of Consumer Affairs' filing officer as well as the Department of Consumer Affairs' Office of Human Resources within 10 days of board member appointment or separation from office.

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE STATE AND CONSUMER SERVICES AGENCY, DEPARTMENT OF CONSUMER AFFAIRS

To provide clarity and perspective, we are commenting on the response to our audit report from the Department of Consumer Affairs (Consumer Affairs). The numbers below correspond to the numbers we placed in the margin of Consumer Affairs' response.

As we state on pages 17 and 18, California Government Code, Section 19130, requires state agencies to demonstrate that the cost of contracted services will be less than that of state civil service employees providing the same services or justify why such services cannot or should not be performed by a state civil service employee. We believe that the services of the Physical Therapy Board of California's (physical therapy board) in-house consultant could be provided at a lower cost by a state employee. As the physical therapy board acknowledges in Consumer Affairs' response, and as we state on page 20, if it determines that the existing state physical therapy consultant class does not precisely meet its needs, it could pursue revising the classification or establishing a new classification that would better meet its needs. Given the relatively high cost of the current in-house consultant, who is paid \$75 an hour, we believe the physical therapy board could still achieve significant ongoing savings.

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During our audit, we reviewed the physical therapy board's *Board Member Reporting, Assuming and Separating From Office* procedures that it issued in December 2011. We noted that the procedures directed its personnel liaison to notify Consumer Affairs' filing officer after the physical therapy board is notified that an individual will be assuming office as a board member, but did not specify a time frame for doing so. Moreover, the procedures did not instruct the physical therapy board's personnel liaison to notify the filing officer when a board member is leaving office. We discussed these concerns with the physical therapy board's executive officer, who stated that it was her intent that these requirements be included in the procedures when they were issued in December 2011. The physical therapy board has now updated the procedures to include these requirements.

②

cc: Members of the Legislature
Office of the Lieutenant Governor
Little Hoover Commission
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press