



The Texas Physical Therapy Association (TPTA) thanks the Sunset Advisory Commission (SAC) staff for their efforts to improve the efficiency of the Executive Council of Physical Therapy and Occupational Therapy Examiners (ECPTOTE) and the Texas Board of Physical Therapy Examiners (TBPTE), while ensuring the agency’s ability to protect the public.

The TPTA would like to comment on the following recommendations made by the SAC Staff Report on the ECPTOTE and TBPTE:

Recommendation 1.1 – Discontinuation of Facility Registration

While the TPTA disagrees with the TBPTE’s previous disciplinary action policy for therapists practicing in an unregistered facility, TPTA has concerns that Recommendation 1.1 will result in patient service facilities being completely unregulated. The TPTA does support the second portion of the recommendation that grants the TBPTE the authority to expunge administrative violations from a licensee’s record.

The TPTA supports recent changes made by the TBPTE to modify the level of disciplinary actions taken against therapists practicing in an unregistered facility. Previous sanction actions created an undue burden on therapists, facilities, and their patients. However, TPTA has concerns that the discontinuation of facility registration is a “step-too-far” in facility deregulation.

The SAC Staff Report states that “facility registration simply adds to the bureaucratic burden for no apparent purpose”; however, oversight ensures that the public is protected and that fraud and abuse issues are addressed swiftly.ⁱ Other state licensing entities, like the Texas Department of Aging and Disability Services (DADS), utilize registration for this purpose. For example, DADS licenses home health agencies (HHAs) that provide physical therapy services. While TPTA is not recommending that facility registration be as complex as it is for licensed HHAs, the association recognizes that facility registration can serve a useful purpose and, if properly structured, could be used as an effective public protection tool.

TPTA recommends that, if facility registration is continued, the ECPTOTE utilize the data collected to ensure that the facility registration process is used to enhance public protection.

The TPTA does support granting the TBPTE the authority to expunge administrative violations from a licensee’s record, including facility-related violations. This recommendation was included in the ECPTOTE’s Self-Evaluation Report, and should be adopted.ⁱⁱ

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Recommendation 2.1 – Adoption of the Physical Therapy Licensure Compact

The TPTA supports the adoption of the Physical Therapy Licensure Compact as stated under Recommendation 2.1.

The 2011-2016 Texas State Health Plan states that "...Texas supply ratios [of physical therapists] have consistently lagged behind the U.S. average..." and "[i]n 2009, 49 counties did not have a PT."ⁱⁱⁱ The number of physical therapists practicing in Texas has not kept pace with the state's population expansion, which presents a significant challenge.

The Physical Therapy Licensure Compact would potentially address this issue, allowing licensees in a compact member state to utilize "compact privilege" to practice in Texas more easily without having to obtain and maintain a Texas license. All licensees practicing in Texas would be subject to Texas' regulations. The ECPTOTE recommended the adoption of the compact in their Self-Evaluation Report.^{iv}

Texas currently participates in compacts for three other healthcare professions – nurses (1999), advanced practice registered nurses (2006), and emergency medical services personnel (2015). Adoption of this recommendation would help address the inadequate number of physical therapists in Texas.

In addition, timely adoption of this recommendation would potentially allow Texas to participate in setting the standards for the compact. The Physical Therapy Licensure Compact will be enacted once ten states adopt the compact. Those states will be invited to draft the regulations governing the compact, and Texas would be well-served if it were amongst the ten.

TPTA recommends the adoption of the Physical Therapy Licensure Compact, in addition to the TBPTE's recommendation for the granting of authority to disclose a licensee's Social Security Number to a national physical therapy database.^v This information disclosure is a requirement for participation in the compact.

Recommendation 3.2 – Remove the TBPTE's Authority to Delegate Continuing Competence Approval

The TPTA disagrees with the SAC Staff Report comments over the "improper delegation" of continuing education approval by the TBPTE and opposes the removal of the TBPTE's authority to delegate continuing competence approval as stated under Recommendation 3.2.

The TBPTE has been criticized by the SAC staff as having "inappropriately delegated continuing education approvals" by having a "sole approval authority" (TPTA) administer the program. TBPTE and TPTA worked together in 1999 to develop the CCAP program, which was designed to meet the specific needs of the TBPTE and its licensees, and was reviewed and approved by the Texas Attorney General's office prior to finalizing and implementing the program.

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Prior to the TBPTE assignment of the CCAP program to the TPTA, *a TBPTE administrative clerk with no relevant education or training approved all continuing education courses without clinical review.* This process resulted in some courses being approved that did not meet relevant clinical standards, and compromised the agency's statutory mandate for ensuring public protection.

Since 2000, the CCAP program has ensured that continuing competency courses meet Board-designated standards by utilizing 109 highly-qualified physical therapy reviewers in 22 specialty areas that evaluate each proposed continuing competence course. This process allows for each course to be reviewed by physical therapists who specialize in that particular subject area, and who can verify that the course meets applicable clinical standards as outlined by TBPTE Rules. By doing so, CCAP provides for public protection by ensuring that licensees' knowledge and clinical skills are kept current with professional standards.

The current statutory language (law) allows for the TBPTE to designate continuing competency entities. The TBPTE has considered other continuing competence accrediting bodies but specifically chose the TPTA because of its ability to provide licensees with relevant, best-practice information and clinical skill updates in a cost-effective manner.^{vi} For example, at the January 19, 2012, TBPTE Education Committee Meeting, the Federation of State Boards of Physical Therapy (FSBPT) presented their continuing competency program to the TBPTE. The Committee discussed the benefits of the program; however, it found that licensee needs were not met with sufficient rigor and thus not added as a continuing competency approval authority.^{vii} As a member board of the FSBPT, the TBPTE regularly receives updates on the program and can thus make a decision to potentially add the FSBPT as an approval authority if the program were to meet the criteria set by the TBPTE. This example demonstrates that the TBPTE has considered other continuing competency programs; however, based on TBPTE standards, they were not approved.

It is important to note that CCAP is administered by TPTA on behalf of the TBPTE and with the TBPTE's oversight. TPTA provides quarterly reports to the TBPTE on the program, and the program is run with consistent, regular feedback from the TBPTE board and staff. The TBPTE has a process to audit the TPTA CCAP program, in addition to a dispute resolution process to maintain oversight control of the approval process.

TPTA was criticized by the SAC staff as having an anticompetitive program that “gives the association undue advantage over competitors” given TPTA’s role as a “course provider”; however, this is incorrect and misleading.^{viii} CCAP is run as a separate program from TPTA’s professional association activities, with the program being administered by TPTA on behalf of the TBPTE. No preferential treatment is given to TPTA members who submit courses or to association programs seeking approval for their courses. In fact, TPTA’s course provider status is reviewed and decided by TBPTE and not by CCAP reviewers. TPTA has successfully navigated the “dual roles” – as the CCAP administrator and as a professional association offering continuing competence activities – for more than 16

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years. In that time, no questions or complaints have been raised as to whether TPTA has an “undue advantage” as the CCAP administrator.

In addition, the TBPTE Rules allow licensees to meet their required number of continuing competence units without completing a course approved by CCAP. From 2012 to 2014, the TPTA worked directly with the TBPTE to expand the qualifying continuing competence activities. Many categories of pre-approved activities were adopted by the TBPTE, including the recommendation from TPTA that physical therapy post-professional courses be pre-approved and no longer require CCAP approval.

The SAC Staff Report appears to recommend that the TBPTE take back the CCAP program; however, the TBPTE lacks the resources, infrastructure, and clinical expertise to do so. CCAP requires substantial resources to administer the program. Two TPTA staff members are directly assigned to CCAP; however, all office staff spend a significant portion of their time answering CCAP-related questions and assisting with the review process. This is in addition to the thousands of hours spent by the 109 CCAP reviewers, ensuring that courses meet TBPTE clinical standards.

It is common practice for continuing competence/education approvals to be outsourced by Texas licensing boards. Very few Texas healthcare boards directly manage their own CC/CE approval processes. It should also be noted that this model is utilized by other states for physical therapy continuing competency course approval. In addition, it is common practice for agencies to outsource appropriate program functions to non-governmental organizations, including to a sole authority. For example, many Texas healthcare licensing entities, including the TBPTE, outsource their national licensing exams to a single entity.

TPTA recommends that the TBPTE retain its current statutory authority to delegate the continuing competency review and approval to entities that meet their standards requirement as provided for under their current statutory language. The TBPTE has already established criteria to ensure that any approved approval entities meet the needs of licensees while protecting the public, and the TBPTE already considers new approval entities as they come forward. TBPTE’s history of oversight of the TPTA’s administration of the CCAP program demonstrates that the TBPTE is committed to protecting the public through judicious administration of licensees’ continuing competence requirements.

Recommendation 4.1 – Continue the ECPTOTE, TBPTE, and TBOTE for 12 Years

The TPTA strongly supports the continuation of the ECPTOTE, TBPTE, and TBOTE as an independent agency structure, as stated in Recommendation 4.1.

Patients throughout Texas rely on the state to ensure that therapists conform to the standards and boundaries of their practice acts, to fully investigate any alleged violations of those acts, and, where applicable, to apply appropriate sanctions against “bad actors.”

The ECPTOTE has done a superior job of attending to its statutory responsibilities for investigating and resolving public complaints filed with the agency. In the 2013-2014 biennium, the Texas Board of Physical Therapy Examiners (TBPTE), which is under the

direct oversight of the ECPTOTE, received 788 public complaints related to violations of the PT practice act and resolved 786 of them – a resolution rate of well over 99%.^{ix} Complaints received by ECPTOTE are resolved on a timely basis, exceeding the targets set by the Legislature.^x

In addition, the ECPTOTE has a history of being a fiscally prudent and efficiently run state agency, as demonstrated by the ECPTOTE 2010-2015 performance measures. The cost for completing an ECPTOTE license has been below the Legislature’s targeted amount each year. In 2015, the cost for an individual license was, on average, 25% below the targeted amount, saving the state an average amount of \$10.78 per license.^{xi} With the agency licensing 38,415 total PT and OT healthcare professionals in FY2015, and processing 51% of those as new or renewing licenses, the savings are substantial.^{xii} When compared with other Texas healthcare licensing boards, the ECPTOTE is one of the most cost-effective state agencies. In the charts below, referencing data from the 2016-2017 Appropriations Bill, the average operating cost per licensee is the third lowest among the listed healthcare agencies.^{xiii} The data does not account for the 4,400 facilities the ECPTOTE is expected to register. With the facility registration data included, the ECPTOTE would be the most cost-efficient healthcare licensing board in Texas.

The ECPTOTE has a demonstrated track record of success in providing for public safety, fiscal effectiveness, and professional oversight, all the while being completely transparent to the state legislature and public. The State is well served in leaving this agency’s current organizational and governance structure intact and “as is.”

Recommendation 4.2 – Apply Standard Sunset Across-the-Board Requirements

While the TPTA supports the majority SAC Staff recommendations under this item, TPTA believes the recommendation of requiring the governor to designate the presiding officer of the TBPTE is redundant and unnecessary.

Each member of the TBPTE is already appointed by the governor, and this process alone ensures the accountability recommended by the SAC Staff Report. Allowing the TBPTE board to select their presiding officer ensures the selection of an individual who is known by the entire board as being capable of speaking on their behalf, since the board will be much more familiar with that individual’s recommendations on PT-related issues. Maintaining this established process allows for continued efficiency and streamlined processes.

Recommendations 2.2, 2.4, 3.1, 3.3, 3.4, 3.5 and 3.8

The TPTA supports the following recommendations as stated in the ECPTOTE SAC Staff Report:

- *Recommendation 2.2 - Granting statutory authority for licensure by endorsement;*
- *Recommendation 2.4 – Removing provisions prescribing educational requirements beyond completion of an accredited program or substantially equivalent to an accredited program;*

- *Recommendation 3.1 – Clarifying statutes to reflect current standards and conditions;*
- *Recommendation 3.3 – Requiring TBPTE to conduct fingerprint-based criminal background checks of licensure applicants and licensees;*
- *Recommendation 3.4 – Requiring TBPTE to develop a disciplinary matrix;*
- *Recommendation 3.5 – Removing the “good moral character” standard as a criterion for foreign-trained licensure applicants; and*
- *Recommendation 3.8 – Directing the TBPTE to develop a formal process to refer non-jurisdictional complaints to the appropriate agency.*

The TPTA has no comments on Recommendations 2.3, 3.6, and 3.7, which solely focus on occupational therapy.

The TPTA would also like to comment on additional recommendations made by the ECPTOTE and TBPTE in their Self-Evaluation Report that were not addressed by the SAC Staff Report:

ECPTOTE Self-Evaluation Issues 1 & 4 and TBPTE Issues 1, 2, 3, 4, 9, 10, 11, 13, 14, 15, 16, 17, & 19

The TPTA supports the following recommendations as stated in the ECPTOTE and TBPTE Self-Evaluation Report:

- *ECPTOTE Issue 1 Recommendation – Change the name of the ECPTOTE to the “Executive Council of Physical Therapy and Occupational Therapy Boards”;*
- *ECPTOTE Issue 4 Recommendation – Delete the administrative function of administering written examinations;*
- *TBPTE Issue 1 Recommendation – Change the name of the TBPTE to the “Texas Board of Physical Therapy”;*
- *TBPTE Issue 2 Recommendation – Update statutory references to include current examination information;*
- *TBPTE Issue 3 Recommendation – Update Sec. 453.001 “Definitions” to reflect current terminology and standards;*
- *TBPTE Issue 4 Recommendation – Update Sec. 453.005 “Practice of Physical Therapy” to reflect current terminology and standards;*
- *TBPTE Issue 9 Recommendation – Grant TBPTE the authority to expunge administrative violations from a licensee’s record and changes to investigation and disposition procedures (please also refer to comments above under SAC Staff Recommendation 1.1);*
- *TBPTE Issue 10 Recommendation – Update Sec. 453.203 “Qualifications for Licensure” to reflect current standards;*
- *TBPTE Issue 11 Recommendation – Update Sec. 453.204 “Foreign-Trained Applicants” to reflect current requirements;*
- *TBPTE Issue 13 Recommendation – Adopt “Licensure by Endorsement” language;*
- *TBPTE Issue 14 Recommendation – Add “Retired Status” to Sec. 453.211;*
- *TBPTE Issue 15 Recommendation – Add facility registration fee exemption language to Sec. 453.213;*

- *TBPE Issue 16 Recommendation – Allow TBPE to disclose a licensee’s Social Security Number to a national physical therapy database for use in the licensure compact (please also refer to comments above under SAC Staff Recommendation 2.1);*
- *TBPE Issue 17 Recommendation – Grant statutory authority for participation in the Physical Therapy Licensure Compact (please also refer to comments above under SAC Staff Recommendation 2.1); and*
- *TBPE Issue 19 Recommendation – Add a section to the Physical Therapy Practice Act regarding an applicant’s submission of fingerprints for a background check.*

The TPTA has no comments on ECPTOTE Self-Evaluation Report Issues 2, 3, and 5 and TBPE Issues 5, 6, 7, 8, 12, 18. The TPTA also has no comments on the identified TBOTE issues.

TBPE Self-Evaluation Issue 20 – Repeal of the Referral Requirement for PT Treatment

TPTA supports the repeal of the referral requirement for physical therapy treatment identified under TBPE Self-Evaluation Issue 20.

Texas is one of just three states that require a referral for physical therapy treatment, while allowing treatment from a chiropractor, podiatrist, massage therapist, acupuncturist or a personal trainer for injuries without a referral.

Under state law, Texans are prohibited from receiving physical therapy treatment unless they first obtain a referral from a designated provider, such as a physician, chiropractor, physician assistant, podiatrist, or dentist. This is despite the fact that state law already requires that all patients be evaluated and assigned a diagnostic classification by a physical therapist at the start of their care. The referral requirement is an arbitrary and unnecessary restriction to patient access, which does nothing more than limit a patient’s healthcare provider decisions while increasing their wait times and expense.

Physical therapy treatment without a referral is proven to be safe. Currently, 47 states allow PT initiation of treatment without a referral. In addition, physical therapists in the U.S. Military have been able to treat soldiers, and their beneficiaries, without referral since 1973. Time and again this practice has been shown to be a safe and effective way to return soldiers to duty in less time.

CNA Insurance Company, a leading liability insurer of physical therapists, states “...direct access is not a risk factor that we specifically screen for in our program because it has not negatively impacted our claims experience in any way. In addition, we do not have a premium differential for physical therapist[s] in direct access states, nor do our competitors – a strong testament to the fact that direct access to physical therapy services has not increased the risk exposure presented by physical therapists.”

In addition, studies have shown the cost effectiveness of direct patient access to physical therapy services. A 2011 study shows decreased patient costs associated with direct patient access. The average cost for direct access patients was \$347 compared to \$420

on average for physician-referred patients.^{xiv} Another report studied an approach taken by the Virginia Mason Medical Center, in conjunction with Aetna and employers such as Starbucks, to reduce the cost for low back pain treatment. As a result of having the patient meet immediately with a physical therapist and physician, the average cost for treatment was reduced from \$2,100-\$2,200 to \$900-\$1,100.^{xv} Finally, an analysis of Blue Cross-Blue Shield claims showed that the total paid claims for physician referral episodes to physical therapy was 123% higher than the paid claims for direct access episodes. In addition, physician referral episodes were 65% longer and resulted in 60% more office visits than direct access episodes.^{xvi}

The repeal of the referral requirement would not change the scope of practice for a physical therapist (PT) – PTs would still be limited to the same provisions under the Physical Therapy Practice Act. Physical therapists would NOT replace physicians, and PTs would still be prohibited from practicing medicine. Insurance companies would NOT be mandated to reimburse for treatments without a referral, nor would it change payment regulations for Worker’s Compensation or Medicaid. The repeal, however, would allow patients to access a physical therapist without incurring additional costs or unnecessary delays in treatment, which would benefit all Texans.

The TPTA welcomes the opportunity to provide additional information upon request.

ⁱ “2016-2017 85th Legislature Staff Report: Executive Council of Physical Therapy and Occupational Therapy Examiners, Texas Board of Occupational Therapy, Texas Board of Physical Therapy.” Sunset Advisory Commission. Austin, TX: 10.

ⁱⁱ “Self-Evaluation Report.” Executive Council of Physical Therapy and Occupational Therapy Examiners. Austin, TX: 84.

ⁱⁱⁱ “2011-2016 Texas State Health Plan: A Roadmap to a Healthy Texas.” Statewide Health Coordinating Council. Austin, TX: 80-84.

^{iv} “Self-Evaluation Report.” Executive Council of Physical Therapy and Occupational Therapy Examiners. Austin, TX: 92.

^v “Self-Evaluation Report.” Executive Council of Physical Therapy and Occupational Therapy Examiners. Austin, TX: 91.

^{vi} Texas Occupations Code Section §453.254 “Continuing Competence.”

^{vii} Texas Board of Physical Therapy Examiners Education Committee. Meeting of the Texas Board of Physical Therapy Examiners Education Committee. 19 January 2012.

^{viii} “2016-2017 85th Legislature Staff Report: Executive Council of Physical Therapy and Occupational Therapy Examiners, Texas Board of Occupational Therapy, Texas Board of Physical Therapy.” Sunset Advisory Commission. Austin, TX: 21.

^{ix} “Self-Evaluation Report.” Executive Council of Physical Therapy and Occupational Therapy Examiners. Austin, TX: 54.

^x “Outcome Measures – 4th Quarter, Fiscal Year 2015.” Executive Council of Physical Therapy and Occupational Therapy Examiners. Provided upon request, 3/9/16.

^{xi,iv} “Performance Measures 2010-2015.” Executive Council of Physical Therapy and Occupational Therapy Examiners. Provided upon request, 3/9/16.

^{xiii} “General Appropriations Act for the 2016-17 Biennium.” State of Texas Legislative Budget Board. Accessed at: http://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2016-2017.pdf, 3/9/16.

^{xiv} Pendergast, Jane, Stephanie Kliethermes, Janet Freburger, and Pamela Duffy. “A comparison of Health Care Use for Physician-Referred and Self-Referred Episodes of Outpatient Physical Therapy.” *Health Services Research*, 2012; 2:633-654.

^{xv} Furhmans, Vanessa. “A Novel Plan Helps Hospital Wean Itself Off Pricey Tests.” *Wall Street Journal*, 1/12/07.

^{xvi} Mitchell, Jean, and Gregory de Lissovoy. “A Comparison of Resource Use and Cost in Direct Access Versus Physician Referral Episodes of Physical Therapy.” *Physical Therapy*, 1997; 77:10-18