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# Sunset Evaluation Report: Physical Therapy

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A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawaii

Submitted by

**THE AUDITOR**  
STATE OF HAWAII

Report No. 92-20  
November 1992

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## Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The State Auditor is responsible for evaluating each program for the Legislature prior to the date of repeal.

This report evaluates the regulation of physical therapy under Chapter 461J, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate physical therapy to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified or repealed. In accordance with Section 26H-5, HRS, the report incorporates in Appendix B the draft legislation intended to improve the regulatory program.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs, the Board of Physical Therapy, and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa  
State Auditor

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# Chapter 1

## Introduction

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The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the State Auditor to evaluate each licensing statute prior to the repeal date and determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of physical therapy under Chapter 461J, HRS, complies with policies for occupational regulation in the Sunset Law.

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### Background on Physical Therapy

Physical therapists work to rehabilitate persons suffering from pain, loss of mobility, or a disabling injury or disease. In concert with a physician or other specialist, physical therapists evaluate and treat patients. They may use a variety of treatments. These include heat, cold, electricity, traction, exercise, massage, joint mobilization, and ultrasound. Therapists also teach patients to use artificial limbs, braces, and aids such as wheelchairs. They work in hospitals, clinics, home health agencies, nursing homes, school systems, residential facilities for children with disabilities, and private practice.

Education and training in physical therapy is usually acquired through university-based bachelor's and master's programs. The curriculum includes basic sciences such as anatomy and physiology and specialized courses such as biomechanics, patient assessment, and therapeutic procedures. Students also receive supervised clinical experience.

There are about 540 physical therapists licensed in Hawaii.<sup>1</sup>

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### Regulatory Program

Physical therapy was first regulated by the Board of Health in 1941.<sup>2</sup> In 1985, the Legislature transferred the licensing of physical therapists from the Department of Health to the Department of Commerce and Consumer Affairs.<sup>3</sup>

Chapter 461J, governing the practice of physical therapy, created a Board of Physical Therapy. Those wishing to practice must have a license from the board which is administratively attached to the

Department of Commerce and Consumer Affairs. The five-member board is appointed by the governor and serves without compensation. Three of its members must be physical therapists with at least three years of practice; one must be a physician, surgeon, or dentist; and one a consumer with a demonstrated interest in community health. Physical therapist members may be appointed from recommendations submitted by the Hawaii chapter of the American Physical Therapy Association.

The law defines physical therapy as the examination, treatment, and instruction of people to detect, prevent, and alleviate physical disability and any other physical or mental condition. Physical therapists are allowed to use a wide range of treatment, but the treatment must not contravene that prescribed by a medical doctor or osteopathic physician.

Applicants for licensure must have graduated from a physical therapy program approved by the Commission on Accreditation in Physical Therapy Education, pass a national licensing examination, and pay the necessary fees.

An executive secretary in the department's Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day operations. The department's Regulated Industries Complaints Office mediates and resolves consumer complaints, pursues disciplinary action against licensees, and seeks court injunctions and fines against unlicensed persons. Final disciplinary decisions are made by the board following a recommended decision from the department's Office of Administrative Hearings.

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## Objectives of the Evaluation

This evaluation sought to determine whether the regulation of physical therapy complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate physical therapy to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

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## **Scope and Methodology**

To accomplish these objectives, we reviewed the literature on physical therapy and its regulation. We reviewed statutes and rules on physical therapy in Hawaii and the changes in these since the licensing program was moved to the Department of Commerce and Consumer Affairs in 1985.

We also reviewed evidence of harm to consumers including complaint files. We interviewed members of the Board of Physical Therapy and personnel from the department. We obtained information from the Federation of State Boards of Physical Therapy, the American Physical Therapy Association, and its Hawaii chapter. At the department, we reviewed files on board operations and correspondence. And finally, we attended one of the licensing examinations to observe procedures.

Our work was performed from January 1992 through September 1992 in accordance with generally accepted government auditing standards.



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# Chapter 2

## Findings and Recommendations

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We recommend that physical therapists continue to be regulated. In this chapter we explain why regulation is needed and recommend improvements in the statutes, the rules, and the administration of the regulatory program.

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### Summary of Findings

1. The State should continue regulating physical therapists to protect the public's health, safety, and welfare.
2. Chapter 461J is unclear about (a) whether physical therapists may use invasive procedures and (b) whether the chapter applies to certain other health practitioners whose activities include physical therapy.
3. The administrative rules are inappropriate and restrictive in setting passing scores for the licensing examination.
4. Deficiencies in administering the licensing examination could compromise its integrity.
5. The board lacks adequate consumer representation and is too closely linked to the physical therapists' professional association.

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### State Should Continue to Regulate Physical Therapists

The Legislature should reenact Chapter 461J to continue the regulation of physical therapists. The practice of physical therapy could harm the public's health, safety, and welfare. Incompetent physical therapists could cause personal injury to consumers. All states require that physical therapists be licensed.

### *Potential for injury*

There is a potential for personal injury from the practice of physical therapy. Physical therapists are health professionals who work semi-independently. They use a range of hands-on techniques on patients who suffer from conditions that are often very serious—heart attack, stroke, trauma, degenerative orthopedic conditions, spinal cord injuries, and so on.

Physical therapists may use heat, cold, traction, hydrotherapy, electromagnetic radiation, compression, and a wide range of other

techniques in treating patients. Improper application of physical therapy techniques can affect a patient's response to treatment, result in injury, or in deterioration of a condition.

Although physical therapists must obtain referrals from physicians and other licensed health care professionals to treat patients, the extent of supervision varies. Physical therapists in a hospital or physician's office work together with many other health care practitioners and, in most cases, under the supervision of a physician. In private practice or in certain clinical settings, however, the physical therapist may work autonomously.

We found few complaints alleging injury caused by physical therapists, but because of their contact with seriously ill patients and the technical knowledge necessary for safe treatment, the State should continue to regulate the practice of physical therapy.

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## **Scope of Practice and Regulation Should Be Clarified**

By clearly delineating the permitted scope of practice, a licensing statute helps ensure that practitioners do not act outside their sphere of competency. A licensing statute should also exempt those who need not be regulated such as practitioners who work under the supervision of other licensed health care professionals. Chapter 461J needs improvement in both areas.

## ***Use of invasive techniques***

Chapter 461J is silent on whether physical therapists may use surgical or invasive techniques. The law describes physical therapy as the examination, treatment, and instruction of anyone with a physical or mental condition. The practice of physical therapy includes but is not limited to techniques such as exercise, biofeedback, traction, positioning, the application of heat and cold, and tests of physical functioning.

Use of the phrase "includes, but is not limited to," and the absence of an explicit prohibition means that the statute could be interpreted to permit physical therapists to use invasive procedures such as surgery, needle electromyography, or injections. But the current licensing examination and accreditation criteria do not address competency in these areas. To protect the public from potential harm, the scope of practice in Chapter 461J should be amended to prohibit physical therapists from performing invasive procedures.

***Exemption for other health practitioners***

Health practitioners other than physical therapists—such as respiratory therapists, physical therapy assistants, and physical therapy aides—may provide services that fall within the scope of physical therapy. These practitioners are not exempted from Chapter 461J and could be accused of practicing physical therapy without a license.

Chapter 461J has four exemptions:

1. persons acting within the scope of a license issued to them under any other law;
2. students in an educational program or physical therapy support personnel who are a part of an educational program and are under the guidance and direct supervision of a licensed physical therapist;
3. physical therapists licensed by any other state or foreign country participating in an educational demonstration, instructional program, or seminar for the duration of the program or seminar; and
4. athletic trainers including those who are nationally certified and those who work in schools to provide students with basic first aid or who work under the supervision of a certified athletic trainer or team physician.

These exemptions do not cover practitioners who are not required to be licensed. For example, respiratory therapists are not licensed in Hawaii. But they provide pulmonary therapy which is included in the scope of physical therapy according to the administrative rules under Chapter 461J. Physical therapy assistants or aides who are not in an educational program are also not licensed. Physical therapy assistants work under the direct supervision of a physical therapist to perform tests and treatments, supervise exercises, train patients to use mechanical aids, and maintain equipment and supplies. Physical therapy aides, also working under the direction of a physical therapist, assist with patients, care for equipment and supplies, clean treatment areas, and perform minor administrative tasks.

To prevent confusion and ensure that other health practitioners are not inappropriately placed in violation of Chapter 461J, the Board of Physical Therapy (the board) should propose amendments to Chapter 461J expanding the exemptions to include practitioners who work under the supervision of licensed physical therapists and other licensed health care professionals such as medical doctors, osteopathic physicians, podiatrists, and chiropractors. To ensure proper legal authority, the statute should also be amended to define supervision. It

should specify that the supervising physician or other licensed health care professional directs and controls the services of the support personnel; that this does not mean being personally present in all situations; and that the supervising licensee assumes full professional responsibility for the acts of support personnel.

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## **Examination Scoring Methods Are Inappropriate and Restrictive**

The purpose of licensing examinations is to help ensure that applicants are competent in the basic knowledge and skills required for entry-level practice. The administrative rules require physical therapists to pass a standardized national examination. Hawaii's approach to setting passing scores is inconsistent with that purpose and may restrict entry into the occupation.

### ***Inappropriate scoring method***

The passing score for the examination is not set at a point which represents a minimum level of competency. Instead the passing score is based on the relative performance of those taking the examination.

The board uses normative or norm-referenced scoring which measures an individual's score against that of all candidates nationwide who took that exam. Those who score a certain level below the mean of national scores fail the examination. Norm-referenced scoring is affected by the capabilities of the candidates for each examination. This varies from one exam to another. The normative method is designed to pass a fixed proportion of candidates. Qualified candidates who sit for an examination which is more difficult or which has higher average scores may fail. Conversely, unqualified candidates may pass an examination which is less difficult or which has lower average scores.

Norm-referenced passing scores do not measure whether applicants possess basic competency in the knowledge and skills needed for entry-level practice. Norm-referenced scoring is inappropriate in the licensure setting, where the purpose of examinations and other requirements is to ensure minimal competency for practice and not competency relative to other examinees.

National examination officials appear to be moving toward criterion-based scoring. In this approach a panel of experts determines a passing score based on the difficulty of the test questions and the ability of minimally competent candidates to answer them correctly. The board of the American Physical Therapy Association has endorsed criterion-reference scoring in principle and with the Federation of State Boards of Physical Therapy is exploring this method in detail.

The Hawaii board should amend its rules to adopt criterion-based scoring. In setting a passing score the board should seek advice from the national organizations.

***Restrictive passing score***

Hawaii's normative scoring method uses a passing score that is restrictive. It is well above the passing score set by most other states. This means that Hawaii applicants must score higher than applicants of most other states who take the examination. All states use the national examination and nearly all jurisdictions use a passing score that is less restrictive.

The board established its passing score in 1986 without explanation. Some see this higher standard as ensuring higher quality practitioners. But the purpose of licensure is to ensure entry level competency, not higher quality of service. Furthermore, the requirement creates a barrier to applicants licensed elsewhere who wish to transfer their examination scores. Qualified people could be prevented from entering practice. Until the board adopts criterion-referenced scoring, it should follow the passing score used by the majority of other states.

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**Examination Procedures Are Not Followed**

The department's examination branch administers the national examination twice a year in Hawaii. At the March 1992 examination, which was taken by ten applicants, the test supervisor failed to follow all of the procedures prescribed in the test manuals of the department and the testing company.

To maintain the integrity of examinations, professional standards require close adherence to the procedures set by test publishers. Exceptions are appropriate "only on the basis of carefully considered professional judgment, primarily in clinical applications."<sup>1</sup> Without close supervision, examinees may receive unequal treatment, and the security of the examination may be compromised.

In March, the test supervisor did not read all of the instructions. The supervisor looked up only occasionally, and monitoring of examinees was limited and uneven. One examinee was told not to eat during the examination, while another got away with it. Examinees were allowed to leave their answer sheets and test booklets on their desks upon leaving the room during the examination, despite the test company's instructions to collect these items.

Test supervisors are given the testing company's manual as soon as possible and are able to obtain additional guidance from the branch's

manual. But the examination branch does not review the performance of test supervisors or proctors to ensure their compliance with standard procedures. Instead, the branch relies on experienced test administrators and proctors who have worked for the department for many years to know and practice the proper procedures.

Based on our observations, we believe that the examination branch supervisor or a delegate should review examination procedures with the test supervisors and proctors before each examination and periodically attend the examination to ensure that procedures are followed.

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## **Board Composition Lacks Balance**

Chapter 461J establishes requirements for board composition that could tip the scales against the interests of consumers. The imbalance is created by statutory requirements governing board membership and the making of appointments.

### ***Inadequate consumer representation***

The purpose of regulatory boards is to safeguard the public interest. Boards should have both professional and consumer members in numbers which will serve this purpose. The Board of Physical Therapy has not had adequate consumer representation.

The law requires the five-member board to have three physical therapists; one consumer; and one physician, surgeon, or dentist. It also requires the consumer member to have demonstrated interest in community health concerns prior to appointment. The former and the current consumer members are both athletic trainers—an occupation that is closely allied to that of physical therapy.

Athletic trainers use many of the same techniques and therapies used by physical therapists. Though they work primarily in school settings, athletic trainers may also be hired to work in the same clinical settings as physical therapists. The scope of work of athletic trainers overlaps with that of physical therapists to such a degree that a specific exemption was made for them in the physical therapy practice act.

To make the board more consumer oriented, the statute should be amended to delete the requirement that the consumer member should have a demonstrated interest in community health concerns prior to appointment. The Legislature could also ensure a better balance of professional and consumer interests by adding two more members to the board. This would result in a seven-member board consisting of three physical therapists; one physician, surgeon, or dentist; and three consumers.

### ***Link with professional association***

All physical therapist members of the board belong to the American Physical Therapy Association. The ties between the association and board are reinforced by the statute which says that the governor may appoint physical therapy members from recommendations made by the Hawaii chapter of the association. The board's manual also says that it is in close touch with the association and the Hawaii chapter. The board's ties with the association could create the perception of industry bias.

The interests of the board and the association are different. The purpose of the board is to protect the health and safety of the public. The purpose of the association is to promote the interests of the profession. The interests of the profession may, at times, be in conflict with those of the board. In addition, the association does not represent all physical therapists. About half of the licensed physical therapists in Hawaii are not members of the association.

### **Recommendations**

1. The Legislature should reenact Chapter 461J. In reenacting the law, the Legislature should consider amending it to:
  - prohibit physical therapists from using invasive procedures;
  - create a seven-member board consisting of three physical therapists; one physician, surgeon, or dentist; and three consumers;
  - delete the requirement that the consumer member of the board have a demonstrated interest in community health concerns; and
  - delete Section 461J-4(d) which authorizes the governor to fill vacancies on the Board of Physical Therapy from recommendations submitted by the Hawaii chapter of the American Physical Therapy Association.
2. The Board of Physical Therapy should propose legislation amending Chapter 461J to exempt allied health practitioners who work under the supervision of licensed health care providers.
3. The board should propose amendments to Section 16-110-20(c) of the administrative rules to (a) shift from norm-referenced scoring of the national examination to criterion-based scoring and (b) change the passing score to that used by the majority of other states until criterion-based scoring is adopted.

4. The Department of Commerce and Consumer Affairs should ensure that the examination branch reviews examination procedures with test supervisors and proctors before each examination and periodically monitors examinations to ensure that procedures are followed.

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## Notes

### Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/Geographic Report* (printout), February 6, 1992, p. 31.
2. Hawaii, Legislative Reference Bureau, *Regulation of Physical Therapy in Hawaii*, Honolulu, February 1984, p. 7.
3. Act 276, SLH 1985.

### Chapter 2

1. American Educational Research Association, American Psychological Association, and National Council on Measurement in Education, *Standards for Educational and Psychological Testing*, Washington, D.C., American Psychological Association, 1985, Standard 15.1, p. 83.



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## Responses of the Affected Agencies

### Comments on Agency Responses

We transmitted a draft of this report to the Board of Physical Therapy and to the Department of Commerce and Consumer Affairs on October 2, 1992. A copy of the transmittal letter to the board is included as Attachment 1. A similar letter was sent to the department. The response from the board is included as Attachment 2 and that from the department is included as Attachment 3.

The board agrees with our recommendations to continue regulation, prohibit invasive procedures, and balance the composition of the board, and it proposes a definition of invasive procedures. It disagrees with our recommendation to exempt from Chapter 461J allied health practitioners who work under the supervision of licensed health care providers. The board plans to consider moving to criterion-reference examination scoring, which we favor. But it does not agree that in the meantime it should change to the passing score used by the majority of the states.

The department says that it will continue its long-standing practice of periodically monitoring examinations. It believes that the many other duties of the examination branch make it impractical to implement our recommendation to review examination procedures with test supervisors and proctors before each examination. The department questions our conclusion that it did not live up to testing standards, assures us of its commitment to maintain the integrity of examinations, and describes its activities in carrying out this commitment.

# ATTACHMENT 1

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917



MARION M. HIGA  
State Auditor

(808) 587-0800  
FAX: (808) 587-0830

October 2, 1992

C O P Y

Mr. Mark K. Ono, Chair  
Board of Physical Therapy  
Department of Commerce and Consumer Affairs  
Professional and Vocational Licensing Division  
1010 Richards Street  
Honolulu, Hawaii 96813

Dear Mr. Ono:

Enclosed for your information are six copies, numbered 9 to 14 of our draft report, *Sunset Evaluation Report: Physical Therapy*. We ask that you telephone us by Tuesday, October 6, 1992, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, November 2, 1992.

The Director of the Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in its final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script that reads 'Marion M. Higa'.

Marion M. Higa  
State Auditor

Enclosures



JOHN WAIHEE  
GOVERNOR

ROBERT A. ALM  
DIRECTOR

NOE NOE TOM  
LICENSING ADMINISTRATOR

BOARD OF PHYSICAL THERAPY  
STATE OF HAWAII  
PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
P. O. BOX 3469  
HONOLULU, HAWAII 96801

November 2, 1992

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OFF. OF THE AUDITOR  
STATE OF HAWAII

Ms. Marion Higa, Auditor  
Department of the Legislative Auditor  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813

Dear Ms. Higa:

Thank you for the opportunity to comment on the Sunset Evaluation Report on Physical Therapy.

We would like to address the recommendations contained at the end of your report.

First, the Board of Physical Therapy ("Board") agrees with the following recommendations listed under Recommendation 1:

1. The reenactment of chapter 461J, Hawaii Revised Statutes;
2. The prohibition of physical therapists from using invasive procedures (subject to clarification as described in the latter part of this letter);
3. The creation of a seven-member board consisting of three physical therapists; one physician, surgeon, or dentist; and three consumers;
4. The deletion of the requirement that the consumer member of the board have a demonstrated interest in community health concerns (although we note that the appointment of athletic trainers as public members was very deliberate, providing a consumer perspective for a different population involved with community and educational health concerns); and

5. The deletion of 461J-4(d) which authorizes the governor to fill vacancies on the Board of Physical Therapy from recommendations submitted by the Hawaii Chapter of the American Physical Therapy Association (although we note that the governor is not required by this provision to fill the vacancy for a physical therapist member from a recommendation list submitted by HAPTA).

As to the prohibition of physical therapists from using invasive procedures, the Board believes there is a need to define "invasive procedure". The Board suggests that an "invasive procedure" be defined as the breaking or puncturing of a person's good skin integrity (i.e., debridement, noninclusive, as it is the process of removing necrotic tissue). The Board is concerned that unless "invasive procedure" is defined, confusion may result as to what is an invasive procedure. For example, modalities currently utilized by physical therapists, such as phonophoresis and iontophoresis may be interpreted as invasive procedures. Briefly, phonophoresis and iontophoresis are procedures by which medication is applied to the skin's surface and penetration is accomplished by the use of ultrasound equipment.

Regarding Recommendation 2 to exempt allied health practitioners who work under the supervision of licensed health care providers, the Board agrees, in part, that an amendment be made to chapter 461J to clarify that physical therapist assistants, physical therapy aides, and other physical therapist support personnel are permitted to work under the supervision of a licensed physical therapist. Also, the Board can support the addition of a provision to exempt respiratory therapists who work under supervision of medical doctors.

However, the Board does not feel it would be in the consumers' interest to allow unlicensed or untrained personnel to provide physical therapy treatment simply because they work for another type of licensed health care provider. On pages 7 and 8 of the report, statutory amendments are proposed to allow "other licensed health care professionals" to direct and control the services of support personnel. The Board had difficulty addressing this recommendation because there was insufficient information in the report as to whether the Auditor intended to limit "other licensed health care professionals" to those specified in the report or were others to be included? In addition, the Board questioned whether it has the authority to (1) define, in chapter 461J, HRS, supervision for "other licensed health care professionals such

as medical doctors, osteopathic physicians, podiatrists, and chiropractors" and (2) require other licensed professionals to "assume full professional responsibility for the acts of support personnel." Moreover, the Board questioned whether it would be authorized to discipline the other health care professionals who fail to assume full professional responsibility for the acts of their support personnel. The Board therefore would not be in favor of proposing legislation according to the recommendation in the report.

With respect to Recommendation 3(a), the Board is not opposed to a shift from norm-referenced scoring of the national examination to criterion-based scoring. The Board has been informed by the Federation of State Boards of Physical Therapy (FSBPT) that FSBPT expects to announce a recommended criterion-referenced passing score very shortly. In this regard, the Board will be considering FSBPT's recommendation on this matter.

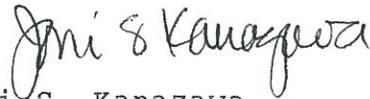
However, the Board disagrees with Recommendation 3(b) to change the passing score to that being used by the majority of other states until criterion-based scoring is adopted. The sunset report indicates that Hawaii's normative passing score method, which is -1.0 Standard Deviation (SD) below the national mean, is restrictive as compared to the -1.5 SD below the national mean passing score method used by the majority of the other states. Studies completed by the Committee on Licensure Examination of the American Physical Therapy Association (APTA) and a select panel of judges from FSBPT showed that the criterion-referenced passing scores were nearly identical to the -1.0 SD below the national mean scores used by the Board. Further, it should be noted that the two studies had also focused on a criterion-referenced passing score that would reflect a minimally competent physical therapist candidate.

Based on the above research, the Board believes that its current method based on -1.0 SD below the national mean standard is a more appropriate measure of a minimally competent physical therapist than the -1.5 SD below the mean standard that is being recommended by the Auditor. The Board believes that by adopting the -1.5 SD standard, it would be issuing licenses to individuals who are less than minimally competent to practice physical therapy. This would not be consistent with the Board's fundamental responsibility of protecting the health and safety of the public.

Ms. Marion Higa  
November 2, 1992  
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We wish to express appreciation for allowing us the opportunity to respond to your report. The report was informative and provided constructive suggestions for further improvement.

Very truly yours,



Joni S. Kanazawa  
Chairperson

JOHN WAIHEE  
GOVERNOR



STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

1010 RICHARDS STREET  
P. O. BOX 541  
HONOLULU, HAWAII 96809

ROBERT A. ALM  
DIRECTOR

SUSAN DOYLE  
DEPUTY DIRECTOR

November 2, 1992

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OFFICE OF THE AUDITOR  
STATE OF HAWAII

The Honorable Marion M. Higa, State Auditor  
Office of the Auditor  
State of Hawaii  
465 S. King Street, Room 500  
Honolulu, HI 95813-2917

Dear Mrs. Higa:

Thank you for providing the Department of Commerce and Consumer Affairs ("department") the opportunity to comment on the Sunset Evaluation Report regarding Physical Therapy. The recommendation in the report directed at the department will be commented on, as well as statements in the report relative to that recommendation.

The report recommends that the department ensure that the examination branch reviews examination procedures with test supervisors and proctors before each examination, and periodically monitor examinations to ensure that examination procedures are followed.

The second part of this recommendation, periodic monitoring of examinations by examination branch personnel, is already in practice, and has been for several years now. This obligation is not taken lightly. Monitoring of examinations has even extended beyond regular business hours. Examination branch personnel have monitored examinations on weekends, and also in the evening. Specific comments in the report states that the test supervisor looked up only occasionally, and monitoring of examinees was limited and uneven.

While we understand such observations are presented for a purpose we have difficulty seeing on what basis, from a professional testing standard point of view, that such observations were valid criticism against examination administration procedures. The configuration of the examination

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Page 2

room is intentionally set-up such that the test supervisor is able to see the entire room and all examinees simply by looking straight ahead. Procedures, as well as the experience of staff involved with the administration of the examination, establish the perimeters for supervision and monitoring of examinees. Perhaps expectations were such that it was felt we didn't live up to standards, but there is a question on what standards are being relied upon.

With regard to other comments about the actions of the test supervisor and examinees, we thank you for bringing them to our attention. We will continue our long standing practice to periodically monitor examinations for further improvement.

The first part of this recommendation, reviewing examination procedures with test supervisors and proctors in person before each examination, is well-intentioned and proposes an optimum situation. The recommendation, however, is impractical. In addition to the 2 annual physical therapy examinations, the examination branch is responsible for overseeing approximately 200 separate examinations per year. Numerous tasks are involved with this responsibility, for example, notifying candidates by mail of information concerning the examination, coordinating with various testing agencies and vendors for payment and examination materials, securing examination equipment and sites, etc. Given these numerous tasks, it would be impractical for the examination branch supervisor or delegate to personally review examination procedures with test supervisors and proctors before each examination.

Rather, the department submits that the more reasonable approach is currently being utilized. This approach is to mail examination procedures as soon as possible to test supervisors and proctors before each examination. The test supervisors and proctors then contact the examination branch if there is need for clarification. Test supervisors utilized by the department are those who have filled this role for a while. Therefore, they are not novice employees but instead employees with sufficient experience behind them to know the procedures. Retraining before each examination would seem unnecessary and overly burdensome.

Regarding statements in the report relative to the above recommendation, the report states that the test supervisor failed to follow all of the procedures prescribed in (1) the

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test manual of the department and (2) the testing company. The report also states that the test supervisor did not read all of the instructions.

With regard to (1) above, the test manual of the department is a compilation of examination procedures that have been extracted from various national examinations. It is the department's intent that this manual contain "model" examination procedures, and serve as an administrative guideline. Although this manual has not been finalized, procedures contained in this manual have been implemented. With regard to (2) above, the test manual of the testing company also serves as an administrative guideline, and may be revised or supplemented as appropriate. Thus, selected procedures from these two manuals are used in the administration of the physical therapy examination referenced in the report. In addition, specific situations that occur at an examination are further supplemented by (3) standard examination branch procedures. All sources provide sufficient procedures so that each aspect in administering an examination is covered, irregardless whether it's in (1), (2) or (3) above.

For example, the test manual of the testing company suggests, but does not mandate, that answer sheets and test booklets be collected if the examinee leaves the room during the examination. However, the standard examination branch procedure is to have examinees leave the answer sheet and booklet on their desk because experience has shown that it is less distracting to other examinees. Also, the test manual of the testing company suggests, but does not mandate, that examinees place their books and papers in a separate area of the room while taking the examination. However, the standard examination branch procedure is to have examinees place their belongings next to their seat, on the floor. This revised procedure reduces the possibility of theft of mix-up.

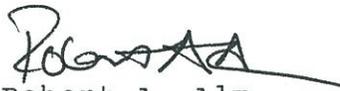
In addition, not all of the instructions contained in the test manual of the testing company are applicable. For example the test manual contained instructions for administering a physical therapy assistant examination. We do not license physical therapy assistants so this portion of the manual was not applicable. Were we to follow all the procedures in the test manual, as recommended in the report, we would have wasted valuable time, confused examinees and affected the organized and logical structure for administering the exam.

The Honorable Marion M. Higa  
November 2, 1992  
Page 4

We'd like to assure you that our commitment to maintain the integrity of examinations and professional testing standards is of utmost priority. You have in previous sunset reports acknowledged our effort and progress in this area. In no way would we allow unequal treatment of examinees, or have the security of the examination compromised in any manner.

Again, thank you for the opportunity to provide comment.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert A. Alm", with a long horizontal flourish extending to the right.

Robert A. Alm  
Director

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# A BILL FOR AN ACT

RELATING TO PHYSICAL THERAPY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3 "(c) The following chapters and sections are hereby  
4 repealed effective December 31, 1993:

5 (1) Chapter 452 (Board of Massage)

6 (2) Chapter 453 (Board of Medical Examiners)

7 (3) Chapter 460 (Board of Osteopathic Examiners)

8 (4) [Chapter 461J (Board of Physical Therapy)

9 (5)] Chapter 463E (Podiatry)

10 [(6)] (5) Chapter 514E (Time Sharing Plans)

11 [(7)] (6) Sections 804-61 and 804-62"

12 SECTION 2. Section 26H-4, Hawaii Revised Statutes, is  
13 amended by amending subsection (i) to read as follows:

14 "(i) The following chapters are hereby repealed effective  
15 December 31, 1999:

16 (1) Chapter 436E (Board of Acupuncture)

17 (2) Chapter 442 (Board of Chiropractic Examiners)

18 (3) Chapter 444 (Contractors License Board)

19 (4) Chapter 448E (Board of Electricians and Plumbers)

- 1       (5) Chapter 461J (Board of Physical Therapy)  
2       [(5)] (6) Chapter 464 (Professional Engineers, Architects,  
3               Surveyors and Landscape Architects)  
4       [(6)] (7) Chapter 465 (Board of Psychology)  
5       [(7)] (8) Chapter 468E (Speech Pathology and Audiology)"

6       SECTION 3. Chapter 461J, Hawaii Revised Statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9       "§461J- Prohibited practices. A physical therapist shall  
10 not use invasive procedures. For purposes of this section, an  
11 invasive procedure is defined as the breaking or puncturing of a  
12 person's good skin integrity, for example, through surgery or  
13 injections."

14       SECTION 4. Section 461J-4, Hawaii Revised Statutes, is  
15 amended to read as follows:

16       "§461J-4 Board of physical therapy; establishment,  
17 appointment, membership. (a) There is established within the  
18 department of commerce and consumer affairs for administrative  
19 purposes the board of physical therapy. The board shall consist  
20 of [five] seven members. Three members shall be physical  
21 therapists. [The fourth member shall be a consumer who has  
22 demonstrated interest in community health concerns prior to

1 appointment. The fifth] Three members shall be consumers. The  
2 seventh member shall be a physician or surgeon with a permanent  
3 license under chapter 453 or 460, or a dentist with a permanent  
4 license under chapter 448. All members shall be at least  
5 eighteen years of age and residents of the State.

6 (b) Each physical therapist member of the board shall  
7 possess a valid permanent license as a physical therapist in this  
8 State and shall have, after graduation from a school of physical  
9 therapy, at least three years of full-time experience or the  
10 equivalent in any of the following areas or in any combination of  
11 the following: clinical physical therapy services,  
12 administration in physical therapy or related health fields, or  
13 teaching in an educational program to prepare practitioners of  
14 physical therapy.

15 [(c) The governor may fill each vacancy for a physical  
16 therapist member from a recommendation list of at least two or  
17 more persons submitted by the Hawaii Chapter of the American  
18 Physical Therapy Association.]"

19 SECTION 5. Statutory material to be repealed is bracketed.  
20 New statutory material is underscored.

21 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_