



Physical Therapy Board of California

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY - GOVERNOR EDMUND G. BROWN JR.

# Physical Therapy Board of California

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## **Board Members**

### **President**

Alicia Rabena-Amen, PT, DPT

### **Vice-President**

TJ Watkins

### **Members**

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Katarina Eleby

Tonia McMillian

## **Physical Therapy Board of California Adopted Meeting Minutes**

September 13, 2018 9:00 a.m.

September 14, 2018 9:00 a.m.

Department of Consumer Affairs  
Hearing Room  
2005 Evergreen Street  
Sacramento, CA 95815

## **Board Staff**

Jason Kaiser, Executive Officer

Sarah Conley, Manager

Liz Constancio, Manager

Elsa Ybarra, Manager

Brooke Arneson, Associate

Analyst

For the sake of clarity, agenda items discussed during the meeting follow their original order on the agenda in these minutes though some agenda items may have been taken out of order during the meeting.

## **Thursday, September 13, 2018**

### **1. Call to Order**

The Physical Therapy Board of California (Board) meeting was called to order by President Dr. Rabena-Amen at 9:09 a.m. and recessed at 4:50 p.m. on September 13, 2018. The Board reconvened at 9:15 a.m. and adjourned at 6:30 p.m. on September 14, 2018.

### **2. Roll Call and Establishment of Quorum**

Dominguez- Present  
Drummer – Present  
Eleby – Present  
McMillian – Present  
Rabena-Amen - Present  
Watkins – Present

All members were present, and a quorum was established. Also present at the meeting were: Salwa Bojack, Legal Counsel; Jason Kaiser, Executive Officer; Liz Constancio, Elsa Ybarra, Sarah Conley, and Brooke Arneson.

**3. Review and Approval of June 20-21, 2018 Meeting Minutes – Brooke Arneson**

Dr. Rabena-Amen stated that the Board would revisit the draft June 20-21, 2018 meeting minutes at the December 2018 meeting to provide the Board with additional time to review.

**4. President's Report – Alicia Rabena-Amen**

**(A) 2018 Adopted Meeting Calendar**

Dr. Drummer questioned whether there was a venue for the December 5-6, 2018 Board meeting. Mr. Kaiser responded that there was not a set location as staff were still confirming availability at three location options. Dr. Rabena-Amen suggested to have the meeting at the University of Pacific, in Stockton, CA. Mr. Kaiser stated that we would confirm which location can commit to the December meeting dates and that the information would be disseminated within the following two to three weeks.

**(B) 2019 Proposed Meeting Calendar**

Dr. Rabena-Amen stated that the Board will be adopting the proposed 2019 calendar at the December meeting, and asked if there were any locations confirmed for the 2019 meetings. Mr. Kaiser responded that the Board is looking at new programs to potentially host the Board; however, there are backup locations secured for the proposed 2019 meeting dates.

**5. Executive Officer's Report – Jason Kaiser**

**(A) Administrative Services**

Mr. Kaiser introduced and welcomed Ms. April Beauchamp as the new Communication and Education Analyst within the Administration Services Program. He also stated that the Administrative Services Program is currently recruiting for a Limited-Term, Full-Time Office Technician to serve as the receptionist and provide administrative support to the programs.

Mr. Kaiser reported that the lease for the building at the Board's existing location is set to expire in March of 2019 and staff have managed to secure a larger space for the Board in the existing building at a reasonable rate. Mr. Kaiser stated that it would take between 12-24 months of construction in the new space to accommodate the Board and

that we anticipate moving in the later part of 2020. Mr. Kaiser reported that the Department of General Services (DGS) conducted a space planning assessment and according to their survey, DGS suggested that PTBC, at current staffing, requires 7,350 square feet. Mr. Kaiser stated that the Board may need to move twice as DGS plans to relocate not only the Board, but DCA and the Business, Consumer Services and Housing Agency to a single location in Sacramento by the year of 2025; so, with this being considered, the Board may need to move in the later part of 2020 and move again in 2025. Ms. Eleby stated that she noticed that \$200,000 was added to the fund in anticipation of the Board's relocation; however, she questioned where the additional money would come from. Mr. Kaiser responded that the Board has been proactive and reverted \$200,000 last fiscal year and again an additional \$200,000 was reverted this fiscal year. Mr. Kaiser stated that DCA is perusing a Budget Change Proposal for the Boards in the Evergreen building to account for these onetime costs as well as the increase in square footage.

Mr. Kaiser presented and disseminated the Board's Strategic Plan which was finalized by DCA's Publications, Design and Editing team.

Ms. Eleby read the Board's mission statement.

Mr. Kaiser reported that staff will be meeting and working with DCA's Strategic Organizational Leadership and Individual Development (SOLID) Unit, to create a publicized action plan to guide completion of strategic objectives by establishing due dates, identifying major tasks, and assigning responsible parties.

Dr. Rabena-Amen stated that she liked the layout, ease of reading, beautiful graphics and presentation of the finalized Strategic Plan. The Board members agreed. Dr. Drummer suggested that the Strategic Plan would be a great handout at the 2018 California Physical Therapy Association (CPTA's) Annual Conference in Santa Clara scheduled for September 22-23, 2018.

## **6. Discussion and Possible Board Action for the Increase in the Exempt Level of the Executive Officer – *Alicia Rabena-Amen***

Dr. Rabena-Amen stated that the Board asked for the increase in the exempt level of the Executive Officer be placed on the agenda each year to revisit to look at the growth of the Board and provide a status update of the request. Dr. Rabena-Amen stated that in 2017/18 the Board President submitted a 2<sup>nd</sup> formal request on behalf of the Board to increase the Executive Officer's exempt level from Level O to Level L.

The Board's request was partially approved to increase its Executive Officer exempt level from Level O to Level N.

Board members stated their displeasure at not being given a reason for the disapproval of the request to increase the exempt level of the Executive Officer to level L. Ms. Eleby reiterated that this request is a public protection issue as the Executive Officer is misclassified and, therefore, Board staff do not have the proper organizational structure to fulfill the mission of the Board. Ms. Eleby stated that the half increase of the Executive Officer to level N does not resolve the issues the Board outlined in their original request. Mr. Kaiser responded that there are two issues: the Board is not growing in ratio to the licensing population and the Board's office space does not accommodate additional staff as deemed necessary in this request.

Dr. Rabena-Amen solicited Board members to ask their appointing bodies for guidance since the Board is not receiving answers as to why these requests are not being approved.

Ms. Bojack advised that the Board be mindful of third-party communication and to follow appropriate protocols within the Administrative Procedure Act (APA) and Board Member Administrative Manual. Ms. Bojack advised against a general instruction to Board members to reach out to their various appointing authorities to avoid inconsistent and/or unauthorized communications on behalf of the Board. Ms. Bojack identified two possible alternatives for consideration that might avoid these concerns: (1) a letter drafted by committee or staff then presented to the Board for adoption, and/or (2) expressing the Board's desired communication via motion at a Board meeting. Members stated that it was not clear on the entity responsible for approving and denying this request as that has not been clarified during the process.

Dr. Rabena-Amen petitioned the Board for volunteers on who would like to participate in a committee to address the exempt level increase request. Ms. Bojack recommended that the committee consist of fewer than three members and that the Board clearly identify the scope of the committee's delegated authority as either an advisory or decision-making body, both of which impact the applicability of the Bagley-Keene Open Meetings Act. Mr. Watkins and Ms. Eleby volunteered to be a part of this committee.

**MOTION:**

Whereas the evidence indicates that the current salary compensation for the Executive Officer is clearly insufficient given the growth of the Board and level of responsibility, I move to authorize the establishment of a committee to draft

a letter changing the salary category to category L of the PTBC Executive Officer and prepare and draft supporting documentation for presentation at the Board's December 2018 meeting.

**M/S:** Drummer/Rabena-Amen

**VOTE:** Dominguez- Aye  
Drummer – Aye  
Eleby – Aye  
McMillian – Aye  
Rabena-Amen - Aye  
Watkins - Aye  
6-0 Motion carried

Dr. Drummer suggested that an additional letter be drafted to support the exempt level increase. He clarified that this secondary letter would not be included in the initial request and would be used as a tool in Board committee member conversations with the Department of Consumer Affairs, California Business Services Agency, California Department of Human Resources, and with the Board Member's appointing authorities. Dr. Drummer also clarified that the secondary letter drafted by the Exempt Level Increase Committee would be presented for Board consideration at the next Board meeting; however, the Exempt Level Increase Committee does not yet have the authority to have those conversations with the Department of Consumer Affairs, California Business Services Agency, California Department of Human Resources, and with the Board Member's appointing authorities.

**MOTION:** Authorize the Exempt Level Increase Committee to draft an additional letter regarding the Executive Officer exempt level increase that, after approval by the Board, can be used in Board committee member conversations with the Department of Consumer Affairs, California Business Services Agency, California Department of Human Resources, and with the Board Member's appointing authorities.

**M/S:** Drummer/Dominguez

**VOTE:** Dominguez- Aye  
Drummer – Aye  
Eleby – Aye  
McMillian – Aye  
Rabena-Amen - Aye  
Watkins - Aye

6-0 Motion carried

## **7. Consumer and Professional Associations and Intergovernmental Relation Reports**

### **(A) Federation of State Boards of Physical Therapy (FSBPT)**

No representatives were present.

### **(B) Department of Consumer Affairs (DCA) – Executive Office**

Karen Nelson, Assistant Deputy Director of Board and Bureau Services provided an update to the Board on behalf of DCA. The Director of DCA on June 25<sup>th</sup>, 2018 held the first Board Member and Advisory Committee Leadership teleconference which provided updates on Pro Rata, Assembly Bill 2138 and regulatory process improvements. Ms. Nelson stated that DCA anticipates holding another Advisory Committee Leadership teleconference in December 2018.

Ms. Nelson informed the Board that the quarterly Director's meeting was held on August 6, 2018 and included presentations from DGS, DCA's Equal Employment Opportunity (EEO) Office and DCA's Office of Human Resources (OHR). DGS presented a preview of their plan for their new construction that will house DCA in 2024. DCA's EEO Office provided a primer on implicit bias and OHR shared some new innovations and improvements on OHR processes specific to recruitment and adverse actions. Ms. Nelson reported that the next quarterly Director's meeting is scheduled for October 29, 2018.

Ms. Nelson stated that the licensing and enforcement workgroups continue to meet monthly to discuss specific topics and innovate in areas of licensing and enforcement through efficiencies in business processes or program collaboration. This past month the licensing workgroup discussed a tool for streamlining letter generation through the quality business intelligence reporting tool known as QBirt, which is available to BreEze programs. Ms. Nelson praised PTBC's Vincent Azar for sharing his knowledge, expertise, practices and tools that he developed for reporting.

Ms. Nelson reported that DCA's Future Leadership Development Program kicked off the second cohort on September 12, 2018, and seven individuals were selected. Ms. Nelson thanked Mr. Kaiser for his continued support of this program and participating in a steering committee.

Ms. Nelson stated that the Substance Abuse Coordination Committee (SACC) at its June 2018 meeting examined uniform standard number four and took an in-depth look at drug testing methodologies and research and technological

advancements. The SACC heard from a panel of industry and medical experts in the field of rehabilitation, toxicology, and laboratory science. Ms. Nelson reported that SACC voted to adopt some technical changes to uniform standard number four and examine the issue of testing frequency at the next meeting, scheduled for October 30, 2018.

Ms. Nelson congratulated Dr. Drummer and Dr. Dominguez on their recent reappointments and reminded the Board that Board Member Orientation Training is required to be completed within a year of appointment or reappointment to the Board. Ms. Nelson informed the Board that the training dates were scheduled for September 18, 2018, and December 5, 2018.

Dr. Rabena-Amen asked Ms. Nelson to report back to the Board on the reason why the Department may see a benefit in separating the Board Leadership and the Board's Executive Officer at the quarterly Director Meetings; other than the once per year meeting attended by both Board leadership and the Executive Officer.

(C) California Physical Therapy Association (CPTA)

Stacy DeFoe, Executive Director of the California Physical Therapy Association (CPTA), informed the Board that CPTA's Annual Conference would be taking place at the Santa Clara Convention Center, September 22-23, 2018 and thanked the Board for their participation at the upcoming event. Ms. DeFoe thanked the Board for their letter of support for AB 2423 (Physical Therapists: Direct Access to Services: Plan of Care Approval), which is with the Governor and for their letter of opposition, unless amended for AB 3110 (Athletic Trainers), which has been held in the Senate Appropriations Committee on suspense.

## **8. Administrative Services Report**

(A) Staff Introductions

Board staff from the Administrative Services Program introduced themselves; including Liz Constancio, Administrative Services Manager; April Beauchamps, Communication and Education Analyst; Carl Nelson, Business Services Liaison to DCA; and Brooke Arneson, Legislation and Regulation Analyst.

(B) Budget Report

Mr. Nelson presented the Budget Report and stated that the final quarter budget report is based on a month-11 projection received from the DCA Budget Office, and staff are waiting for month-12 and month-13 final budget reports for FY 2017-18,

since the Board is still in transition to the new accounting system, Fi\$cal. Ms. Constancio stated that a memo from DCA regarding the Fi\$cal delay was included in the meeting materials. Mr. Nelson reported that the Board is projecting a reversion to the fund of \$191,000. Mr. Nelson stated that the expenditure in the consolidated data center line item increased \$9,459 this year due to the Board's shared costs for the technical support from California Office of Technology in changing over to Microsoft Office 365. Mr. Nelson concluded that the budget continues to revert money at the end of each fiscal year despite setting aside \$200,000 for moves and the Board is responsibly handling its fiscal affairs.

Ms. Eleby questioned whether the consolidated data center line item was a one-time cost for Office 365. Mr. Nelson responded that there is a three-year span of the cost for Office 365, that the first-year cost will be higher, and the continuing costs each year will be lower for maintenance.

#### (C) Outreach Report – April Beauchamps

Ms. Beauchamps presented the Outreach report. Ms. Beauchamps reported that the overall traffic for the Board's website during the fourth quarter decreased 11% from the fourth quarter last year, with the most significant decrease being the laws tab. Ms. Beauchamps stated that the website's overall traffic increased by 147% from the fourth quarter last year. The most significant increases in activity was the "Consumers" page showing an 845% increase and the "Engaged Users" page showing a 655% increase.

Ms. Beauchamps reported that there have been quite a few outreach events attended. For fiscal year September through October 2018, the Board visited Sacramento State University four times. In January 2018, the Board visited the University of Pacific in Stockton twice. In February 2018, the Board visited Fresno State University. In March 2018, the Board visited Sacramento City College. On March 17, 2018, Dr. Dominguez participated in CPTA's Student Conclave at Mount St. Mary's University on behalf of the Board.

Dr. Drummer asked Ms. Beauchamps to amend the outreach report to include the outreach site visits described in the presentation to the meeting materials.

Dr. Drummer stated his concern regarding the use of Westlaw for regulations on the Board's website and requested that staff fix the links to Westlaw because he has experienced that they go to an error page. Mr. Kaiser explained that the reason for using Westlaw for regulations is to reference the most current statutes and regulations and simplify the process of keeping the Board's website regulations up-to-date. Mr. Kaiser stated that the "Board's California Laws and Regulations Related to the Practice of Physical Therapy" page will be updated annually and as necessary.



Dr. Rabena-Amen asked how long a change to the website takes to complete. Mr. Kaiser responded 7 to 10 days; however, priority requests can be done quickly within 24 to 48 hours, if necessary.

## **9. Overview of the Attorney General's Legal Process for Disciplinary Actions**

Mr. McKenna, Deputy Attorney General presented general overview of the Attorney General's legal process for disciplinary actions to the Board.

## **10. Closed Session**

(A) Pursuant to Government code section 11126(c)(3), the Board will convene to Deliberate on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceedings.

The Board went into closed session at 1:38 p.m. to deliberate on Agenda Item 10(A). The Board reconvened open session at 4:50 p.m. and recessed at that time.

(B) Pursuant to Government code section 11126(a)(1), the Board will convene to Consider the Evaluation of Performance of the Executive Officer.

**[The Board did not convene in closed session to consider Agenda Item 10(B).]**

## **11. Reconvene Open Session**

The Board went into closed session at 1:38 p.m. to deliberate on Agenda Item 10(A). The Board reconvened open session at 4:50 p.m. and recessed at that time.

## **12. Public Comment on Items Not on the Agenda**

The Board requested public comment on items not on the agenda, and there was no public comment.

## **13. Recess**

The Board recessed at 4:50 p.m. on Thursday, September 13, 2018.

**Friday, September 14, 2018**

**14. Call to Order**

The Physical Therapy Board of California (Board) reconvened at 9:15 a.m. and adjourned at 6:30 p.m. on September 14, 2018.

**15. Roll Call and Establishment of Quorum**

Dominguez- Present  
Drummer – Present  
Eleby – Present  
McMillian – Absent  
Rabena-Amen - Present  
Watkins – Present

All members were present; with the exception of Ms. McMillian, and a quorum was established. Also present at the meeting were: Salwa Bojack, Legal Counsel; Jason Kaiser, Executive Officer; Liz Constancio, Elsa Ybarra, Sarah Conley, and Brooke Arneson.

Dr. Drummer read the Board's mission statement.

**16. Legislation Report – *Brooke Arneson***

(A) Discussion and Possible Board Action Regarding the 2017/18 Legislative Session Summary

Ms. Arneson referred Board members to the legislative summary report included in the agenda book.

i. Discussion and Possible Board Action Regarding AB 2078 (Daly) Sex Offenses: Professional Services

Ms. Arneson provided a brief overview and update on the status of AB 2078 to the Board. Dr. Drummer asked whether this bill could be brought back the next year and Mr. Kaiser responded that since we are in the second year of the 2-year legislation session this bill would have to be reintroduced during the next legislative session.

ii. Discussion and Possible Board Action Regarding AB 2138 (Chiu & Low) Licensing Boards: Denial of Application: Criminal Conviction

Ms. Arneson provided a brief overview and update on the status of AB 2138 to the Board and stated that the Board has an opposed position on the bill and an additional opposition letter was sent to the Governor on behalf of the Board's Executive Officer asking for the Governor to veto this bill.

iii. Discussion and Possible Board Action Regarding AB 2221 (Bloom) Occupational Therapy Practice Act

Ms. Arneson provided a brief overview and update on the status of AB 2221 to the Board.

iv. Discussion and Possible Board Action Regarding AB 2423 (Holden) Physical Therapists: Direct Access to Services: Plan of Care Approval

Ms. Arneson provided a brief overview and update on the status of AB 2423 to the Board and stated that the Board is in support of this bill.

v. Discussion and Possible Board Action Regarding AB 2958 (Quik) State Bodies: Meetings: Teleconference

Ms. Arneson provided a brief overview and update on the status of AB 2958 to the Board.

vi. Discussion and Possible Board Action Regarding AB 3110 (Mullin) Athletic Trainers

Ms. Arneson provided a brief overview and update on the status of AB 3110 to the Board.

vii. Discussion and Possible Board Action Regarding SB 1448 (Hill) Healing Arts Licensees: Probation Status: Disclosure

Ms. Arneson provided a brief overview and update on the status of SB 1448 to the Board.

## **17. Rulemaking Report – Brooke Arneson**

(A) Discussion and Possible Board Action Regarding the 2018 Rulemaking Update

Ms. Arneson referred the Board to the rulemaking tracking form included in the agenda materials and advised on the status of all rulemaking items.

(B) Discussion and Possible Board Action Regarding Examination Passing Standard/Setting Examination Score

Mr. Kaiser referred the Board to the handout provided, which included proposed language to amend Section 1398.28 Written Examination in Article 2, Division 13.2 of Title 16 of the California Code of Regulations.

Mr. Kaiser stated that after legal review of the previously proposed language, Ms. Bojack identified the legal issue of whether the Board had the authority to defer the pass point setting for the National Physical Therapy Exam to FSBPT. Mr. Kaiser stated that, upon further consideration, Board staff decided to modify the previously proposed language and that this modified version is being presented for the Board's present consideration. Mr. Kaiser stated that the further changes are intended to increase transparency and clarity for stakeholders by identifying an exam passing score in the regulation language, rather than delegating to FSBPT.

Dr. Drummer asked if there was concern using a score in the regulation and if other jurisdictions refer to FSBPT's pass point. Ms. Bojack stated that she had not had a chance to review the proposed language and recommended that the proposed language be sent back to staff to present for legal review. Mr. Kaiser responded that there is not a concern referencing the score in the regulation and that other jurisdictions also defer to the pass point of 600 that FSBPT enforces.

Dr. Dominguez suggested possibly referencing a percentile in lieu of a score as that has been done with the Graduate Record Examinations (GRE) so that the Board is not restricted to a raw score if the pass point score changes. Ms. Eleby added that it was more transparent to our stakeholders to set the pass point score in regulation. Mr. Kaiser stated he would have a conversation with FSBPT regarding the conversion method of the raw score or the possibility of using a percentile. Mr. Kaiser stated that in previous conversations with FSBPT; there was no concern FSBPT expressed on putting the pass point of 600 into regulation. Ms. Eleby asked the Board if they had any concerns with including the score in the proposed language and members stated they did not.

Regarding the initial language approved the Board, Ms. Bojack stated that Business and Professions Code section 851 suggests the Board is to set the passing score, creating a legal issue regarding whether the Board is authorized to delegate that authority to FSBPT. Ms. Bojack identified several options to reduce the risk of issues with this rulemaking package in the future as follows: (1) the Board can choose to maintain the original adopted language, but it is recommended that the Board emphasize and explain in the rulemaking package that the Board has considered the FSBPT score setting process, such as the Angoff method, and why delegating score setting to FSBPT is justified, or (2) modifying the language to include the exam pass point score, as currently presented to the Board, while again explaining and emphasizing in the rulemaking package that the score is supported and how the score setting method used by FSBPT is justified.

The proposed amendment, including the exam passing score of 600 in the rulemaking language, was adopted.

**MOTION:** Approve the proposed amended text presented today and direct the Executive Officer to take all steps necessary to initiate the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and if no adverse comments are received and no hearing is requested, adopt the proposed regulatory changes as modified.

**M/S:** Drummer/Watkins

**VOTE:** Dominguez- Aye  
Drummer – Aye  
Eleby – Aye  
McMillian – Absent  
Rabena-Amen - Aye  
Watkins – Aye  
5-0 Motion carried

(C) Discussion of Issues and Possible Board Action Regarding Guidelines for Issuing Citations and Imposing Discipline, 6th Edition.

Ms. Arneson referred the Board to the rulemaking tracking form included in the agenda materials and advised on the status.

(D) Discussion of Issues and Possible Board Action Regarding Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant/Coursework Tool

Ms. Arneson referred the Board to the rulemaking tracking form included in the agenda materials and advised on the status.

(E) Discussion of Issues and Possible Board Action on the Federation of State Boards of Physical Therapy's (FSBPT) Performance Evaluation Tool for Foreign Educated Physical Therapists Completing a Supervised Clinical Practice in the United States.

Mr. Kaiser referred the Board to the handout provided which included proposed language to amend Section 1398.26.5 Clinical Service Requirements for Foreign Educated Applicants in Article 2, Division 13.2 of Title 16 of the California Code of Regulations.

Mr. Kaiser stated that the Board currently uses American Physical Therapy Association's (APTA) Clinical Performance Instrument (CPI) in paper form; however, the paper form is outdated and APTA has created a web-based tool. Mr. Kaiser stated that the Board has had previous discussion regarding possibly using FSBPT's newly introduced web-based tool called the Performance Evaluation Tool (PET) as an alternative. The PET is third-party validated. The PET also contains more than APTA's web-based tool because it was designed specifically for foreign educated graduates. Mr. Kaiser stated that previous discussions were to create proposed rulemaking language that would allow for submission of any of the three tools: the paper version of the APTA CPI the Board currently uses; the APTA online version that is used in the Commission on Accreditation in Physical Therapy Education (CAPTE) schools; or the FSBPT PET. Mr. Kaiser informed the Board that during staff research regarding these tools, the second option, using the APTA's web-based tool, used by CAPTE's, is not an option as it is only accessible for use by a CAPTE school. Mr. Kaiser directed the Board to proposed language referencing both APTA's CPI and FSBPT's PET for consideration by the Board. Mr. Kaiser additionally stated that APTA has a statement attached to the 1997 edition of the CPI that allows outside agencies to use that tool for purposes of evaluating foreign educated graduates for licensure.

Dr. Drummer asked if a side-by-side comparison on what is being evaluated has been done utilizing the two tools, the 1997 CPI vs. PET, and if they are on par with each other. Mr. Kaiser responded that the PET is based on the structure of the CPI model. The PET also adds steps that reference custom and culture regarding health care systems that may have been experienced in addition to the US health care system.

Ms. Bojack stated that she had not had a chance to review the proposed language and recommended that if the Board would like legal opinion, the proposed language should be sent back to staff to present for legal review; which the Board declined.

Board members discussed that additional statistical data regarding the experience and outcomes of both tools would be helpful in comparing the PET with the CPI. The Board discussed staff collecting data regarding both tools and presenting those findings back to the Board. Dr. Drummer proposed adding a sunset provision into the regulation which would require the supervising physical therapist to perform both the PET and the CPI, and after three years, the Board would revisit the regulation once they had enough data on which tool was best suited for assessment of the foreign educated applicant.

The Board discussed that in the proposed language, there is a lack of consistency which could be confusing to the public, in the use of the terms supervising physical therapist and clinical instructor, and with the terms foreign educated applicant and physical therapist license applicant.

During public comment, Mr. Floris Van de Ven, a foreign trained physical therapist, offered his experience in supervising foreign educated physical therapists and using the CPI tool. He stated that the CPI model is familiar to many; however, there are a few issues with it: it is not validated for foreign trained physical therapists and it has not been revised since 2006, which does not account for recent changes in the physical therapy practice. Mr. Van de Ven shared that he was part of the Foreign Trained Committee of FSBPT and participated in the development of the PET tool; however, he has not had experience utilizing the PET tool for evaluation. Mr. Van de Ven stated that the CPI is a tool that looks at certain aspects; however, it lacks depth, is not validated and is old and shouldn't be used as a decision-making tool.

After further deliberation by the Board, amendments to the proposed language were adopted.

**MOTION:** Approve the proposed regulatory text in Title 16, CCR section 1398.26.5, as amended to be consistent in using foreign educated applicant rather than Physical Therapy License Applicant and consistency in the use of clinical instructor versus supervising physical therapist, direct staff to submit the proposed text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing.

**M/S:** Eleby/Watkins

**VOTE:** Dominguez- Yes  
Drummer – No  
Eleby – Aye  
McMillian – Absent  
Rabena-Amen - No  
Watkins – Aye  
3-2 Motion carried

Dr. Dominguez requested to revisit Agenda item 17(E) FSBPT Performance Evaluation Tool for Foreign Educated Physical Therapists Completing a Supervised Clinical Practice in the United States (CCR section 1398.26.5) for clarification on the motion and vote that was taken. Dr. Dominguez stated that he voted incorrectly; he voted on the motion of the proposal by Dr. Drummer that would require the use of both the CPI and the PET with a sunset provision so that the Board can determine which tool should be used; not the motion to proceed with the amended proposed regulatory text.

**MOTION:** Reconsider the earlier motion to approve the proposed regulatory text of Title 16, CCR section 1398.26.5, as amended.

**M/S:** Eleby/Dominguez

**VOTE:** Dominguez- Aye  
Drummer – Aye  
Eleby – Aye



McMillian – Absent  
Rabena-Amen - Aye  
Watkins – Aye  
5-0 Motion carried

Ms. Eleby stated that with the proposed regulatory language as presented, the supervising physical therapist would be able to utilize the tool they prefer, and that discretion should be up to the supervising physical therapist's clinical judgement.

The Board further discussed Dr. Drummer's original suggestion of adding a sunset clause into the regulation to require a supervising physical therapist to perform both the PET and CPI and after three years, the Board would revisit the regulation once they had enough data on which tool was best suited for assessment of the foreign educated applicant. Mr. Kaiser advised the Board that it is difficult for foreign trained applicants to find a clinical instructor and he cautioned the Board that adding an additional requirement such as using both tools simultaneously could increase this issue. Ms. Eleby stated that the extra requirement could be perceived as a barrier to licensure for a foreign applicant. Mr. Watkins added that he was not comfortable with enforcing an additional requirement for supervising physical therapists and placing that burden on them.

Mr. Kaiser asked the Board that if they wanted to include sunset language into the regulation, to direct Board staff to do some additional research on what the language would look like and speak with the Office of Administrative Law (OAL) on what would be acceptable.

After further deliberation by the Board, amendments to the proposed language were adopted.

**MOTION:** Approve the proposed modified regulatory text presented and amended in Title 16, CCR section 1398.26.5, with the additional amendments to add "credentialed" before "Clinical Instruction" in subdivision (a), change the two uses of the word "certified" in subdivision (c) to "credentialed" and capitalize Center coordinator of clinical education and Clinical instructor in subdivision (c) to be consistent with subdivision (a), direct staff to submit the proposed text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate

the rulemaking process, make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and if no adverse comments are received and no hearing is requested, adopt the proposed regulatory changes, as modified.

**M/S:** Eleby/Watkins

**VOTE:** Dominguez- No  
Drummer – Aye  
Eleby – Aye  
McMillian – Absent  
Rabena-Amen - No  
Watkins – Aye  
3-2 Motion carried

**18. Trigger Point Dry Needling (TDN) Presentation from Physical Therapists at the Veteran's Administration, Palo Alto, California –**

Ms. Bojack identified that she is also legal counsel for the Acupuncture Board and recused herself from providing legal guidance on PTBC's scope of practice as it relates to dry needling.

Mr. Kaiser informed the public that dry needling is not within the current scope of practice of PTBC and those practicing dry needling within the Board's jurisdiction may face enforcement by the Board. Mr. Kaiser also stated that there would need to be a statutory change to the scope of practice for physical therapists within the Board's jurisdiction to practice dry needling.

Jerome Sabangan, PT, DPT, Russell Bishop, PT, DPT, Thaa De Ornelas, PT, DPT, Richard Gastillo, PT from the Veteran's Administration in Palo Alto, CA provided an informative presentation on Trigger Point Dry Needling (TDN) as performed in their Veteran's Administration Clinic in Palo Alto, CA.

During public comment, Ms. Michelle Lau, licensed acupuncturist, doctor of Traditional Chinese Medicine and president of the Council of Acupuncture and Oriental Medicine Associations, expressed her appreciation for the informative presentation on dry needling however stated that it is her belief that dry needling is practiced in California under the acupuncture practice act and physical therapists should not practice dry needling as it is outside of their scope of practice.

## **19. Closed Session**

(A) Pursuant to Government Code section 11126(c)(3), Deliberation on Disciplinary Actions and Decisions to be Reached in Administrative Procedure Act Proceeding

The Board entered closed session on day two, September 14, 2018 at 5:04 p.m. to deliberate on Agenda Item 19(A). The Board reconvened open session to adjourn at 6:30 p.m.

(B) Pursuant to Government Code section 11126(a)(1), the Board will convene to Consider the Evaluation of Performance of the Executive Officer.

The Board entered closed session on day two, September 14, 2018 at 4:30 p.m. to consider Agenda Item 19(B) and concluded closed session on Agenda Item 19(B) at 6:30 p.m.

## **20. Reconvene Open Session**

The Board reconvened into open session to adjourn at 6:30 p.m.

## **21. Presentation and Discussion of Application Process for Graduates of NonAccredited Programs Located Outside of the United States**

Ms. Conley provided a presentation on the application process for graduates of nonaccredited programs located outside of the United States.

## **22. Application Services**

(A) Staff Introductions

Board staff from the Application Services Program introduced themselves; including Sarah Conley, Application Services Manager; Angel Ottley, responsible for application intake support; Eura Trent, Lead of the Application and Licensing Services Unit; Valerie Kearney, responsible for processing CAPTE Accredited PT and PTA Applications; Paul Harrison, responsible for review and licensure of PTA applicants; and Teresa Gutierrez, responsible for processing PT and PTA applications from non-accredited programs.

(B) Statistical Report

Ms. Conley presented the Application Services Report. She noted that the website has been extensively updated with new information for CAPTE accredited graduates, including a new packet which contains a guide to the application process, checklist and forms that are required for applicants. Ms. Conley stated that this packet has only been

posted for a few months. Ms. Conley added that the website has been modified to remove detailed information from the pages and now has short links to help guide an applicant through the application process. Ms. Conley stated that the Application Services Program welcomes any feedback on these changes.

Ms. Conley reported that there is an overall increase in the applications received from CAPTE graduates, with a decrease in applications from foreign educated applicants. Ms. Conley stated that the licenses issued has increased due to process and staffing changes the Board has made to allow for greater efficiency.

## **23. Licensing Services**

### **(A) Staff Introductions**

Board staff from the Licensing Services Program introduced themselves, including Sarah Conley, Licensing Services Manager; and Justin Silva, responsible for license maintenance including processing address changes, duplicate certificates, name changes, return mail and inquiries from all PT and PTA licensees.

### **(B) Statistical Report**

Ms. Conley presented the Licensing Services Report. She reported that the licensing population is continuing to grow. Ms. Conley noted that there has been a decrease in address changes due to licensees using other methods to update their address, other than just a name changes transaction. Ms. Conley reported that duplicate license requests has seen a decrease due to help with the automation of the BreEze system.

## **24. Continuing Competency Services**

### **(A) Staff Introductions**

Board staff from the Continuing Competency Services Program introduced themselves; including Veronica Gutierrez who is responsible for conducting continuing competency audits and working directly with approval agencies for continuing competency.

### **(B) Statistical Report**

Ms. Gutierrez presented the Continuing Competency Services Report. Ms. Gutierrez directed the members to the report included in the agenda book. She reported that for quarter 3, FY 2017/18, PT continuing competency audits had a 92% pass rate with 135 licensees selected. There were 124 PTs who passed, 9 PTs who failed, and 2 PTs that are still pending because the Board requires additional information from the licensee. PTA continuing competency audits also concluded with an 89% pass rate with 46 selected; there were 41 PTAs who passed, and 5 PTAs that failed. Ms. Gutierrez stated that the website has been updated to reflect continuing competency approval agencies

that are recognized by the Board. Ms. Gutierrez stated that staff are currently working on continuing competency audits for quarter 4.

## **25. Consumer Protection Services**

### **(A) Staff Introductions**

Board staff from the Consumer Protection Services Program introduced themselves, including: Vincent Azar, responsible for complaint initiation, processes endorsements, resident reports and also is the Information Technology liaison for the Board; David Laxton, responsible for low level adverse actions and discipline in other states, cease and desist, unlicensed practice and assists other consumer protection analysts in their cases; Carole Phelps, enforcement analyst for the Board and is responsible for handling consumer complaints; and Marney Kincaid, enforcement analyst responsible for working with applicants who have criminal conviction history and also works with continuing competency citations.

### **(B) Statistical Report**

Ms. Ybarra thanked Ms. Karen Nelson for DCA's recognition of Mr. Azar's contribution to the QBirt project.

Ms. Ybarra presented the Consumer Protection Services Report. Ms. Ybarra directed the members to the report included in the meeting materials. She stated that although the licensing population continues to grow, the intake on complaints and discipline has not increased; it is steady. Ms. Ybarra reported that the enforcement performance measure report, which has not been included in the materials, is being revamped by DCA for a better display and will be provided hopefully during the first quarter of next year. Ms. Eleby stated she appreciated the 5-year Performance Measures Milestone sheet included in the materials.

## **26. Probation Monitoring Report**

Ms. Ybarra presented the Probation Monitoring Report on behalf of Monny Martin. Ms. Ybarra directed the members to the probation monitoring report included in the agenda book. She stated that the number of probationers has decreased. Ms. Ybarra reported that fewer licensees have entered into the Maximus program. Last year, there were 11 licensees in the program. This year there were only 4 licensees in the program. Ms. Ybarra informed the Board that the number of licensees that have entered probation is steady.

## **27. Public Comment on Items Not on the Agenda**

*Please note that the Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide*

*whether to place the matter on the agenda of a future meeting. [Government Code sections 11125, 11125.7(a).]*

The Board requested public comment on items not on the agenda and no public comments were made. The Board thanked Mr. Floris Van de Ven for attending the meeting and providing public comment under Agenda Item 17(E) and for encouraging his students to attend the meeting.

## **28. Agenda Items for Future Meeting –**

December 5-6, 2018  
TBD, Bay Area, CA

Mr. Watkins stated he would be interested in a presentation from acupuncturists on their viewpoint of dry needling to contribute to the Trigger Point Dry Needling (TDN) presentation under Agenda Item 18. Mr. Kaiser stated that he would look into it for a future meeting and would prefer that it be done in Sacramento, rather than during a travelling meeting. Dr. Rabena-Amen noted that the Board was approached regarding the dry-needling presentation, and that it was not solicited.

## **29. Adjournment**

The meeting adjourned at 6:30 p.m.