



# 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, M.A.

Tonia McMillian

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

March 21, 2019 9:00 a.m.

March 22, 2019 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, March 21, 2019

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

The Physical Therapy Board of California (Board) meeting was called to order by President Dr. Rabena-Amen at 9 a.m. and recessed at 5:30 p.m. on March 21, 2019. The Board reconvened at 8:56 a.m. and adjourned at 6:30 p.m. on March 22, 2019.

### **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; Elsa Ybarra, Sarah Conley, Brooke Arneson, Monny Martin and April Beauchamps.

Ms. McMillian read the Board's mission statement: To advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act.

**3. 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

(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 at on day one, March 21, 2019 at 3:22 p.m. to deliberate on Agenda Item 3(A). The Board reconvened open session to recess at 5:30 p.m.

**4. Reconvene Open Session**

The Board reconvened into open session to recess at 5:30 p.m. on day one, March 21, 2019.

**5. Review and Approval of December 5-6, 2018 Meeting Minutes – Brooke Arneson**

Ms. Arneson presented the draft December 2018 meeting minutes. Dr. Rabena-Amen and Dr. Drummer questioned whether the italicized statement regarding closed session deliberation on lines 51-52 for Agenda Item 3 was necessary. The statement was determined unnecessary and was stricken from the minutes.

**MOTION:** Approve the proposed December 5-6, 2018 Meeting Minutes, as amended.

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

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

**6. Review and Approval of February 13, 2019 Teleconference Meeting Minutes – Brooke Arneson**

Ms. Arneson presented the draft February 13, 2019 Teleconference meeting minutes. Ms. Bojack, legal counsel recommended that the Board add a sentence below the

noticed teleconference locations stating that a Board member was present at each of the locations noticed on the agenda. She also recommended that on Agenda Item 2, the minutes reflect that public comment was requested by the Board at each of the noticed teleconference locations. Ms. Bojack requested that the minutes be edited on Agenda Item 3 to reflect that the Board came back to open session to adjourn.

**MOTION:** Approve the proposed February 13, 2019 Teleconference Meeting Minutes, as amended.

**M/S:** Watkins/Dominguez

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

## **7. President's Report – *Alicia Rabena-Amen***

### **(A) 2019 Adopted Meeting Calendar**

Mr. Kaiser stated that there is a scheduling conflict for the June 19-20, 2019 meeting and reported that CSU Long Beach had availability to move the June meeting to the 20-21<sup>st</sup> to allow for Board members to attend the Board Orientation Training with the DCA on June 19<sup>th</sup> in Southern California. Mr. Kaiser asked the members to amend the adopted 2019 calendar. Dr. Rabena-Amen clarified that Student Conclave is scheduled on April 20, 2019. Ms. Eleby requested that FSBPT's Regulatory training scheduled on August 16-18, 2019 and FSBPT's Annual Meeting and Delegate Assembly scheduled for October 24-26, 2019 be added to the 2019 meeting calendar.

**MOTION:** Adopt the 2019 Meeting Calendar as amended.

**M/S:** Drummer/Watkins

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

6-0 Motion carried

(B) 2020 Proposed Meeting Calendar

Dr. Rabena-Amen asked why board meetings are scheduled on different weeks during the months of 2019 and Mr. Kaiser responded that it is to account for holidays, graduation and other meetings.

Dr. Drummer stated he was concerned with the proposed dates on the 2020 Meeting Calendar to allow the Board to address legislative concerns within the time constraints of the legislative calendar. Mr. Kaiser responded that staff would look at the 2020 proposed June Board meeting date and potentially move it to account for the legislative timeframes. Dr. Rabena-Amen and Ms. Eleby stated they agreed moving the June 2020 meeting if it would allow the Board to address legislative concerns with regards to legislative deadlines. Dr. Dominguez added that the first and second week of June 2020 does not work well for his teaching schedule and that the third and fourth week of June 2020 works better. Dr. Drummer asked that Board staff investigate the proposed June 2020 meeting dates and report back to the Board at the June 2019 meeting.

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

Mr. Kaiser presented the Executive Officer's Report.

(A) Administrative Services

Mr. Kaiser reported that the Administrative Services Program is currently recruiting for two vacancies. He added that the Board would like to bid a fond farewell to Araceli Strawmier, who was the Board relations liaison, as she has accepted a promotion at the Department of Motor Vehicles.

(B) Applications

Mr. Kaiser reported that staff have been working with QBirt, which allows for the opportunity to collect data that previously was not available. Mr. Kaiser provided the Board with an example which reported the percentage of applicants that applied online; in 2016 only 18% applied online, in 2017 39% applied online, in 2018 64% applied online and in 2019 to-date 89% have applied online.

The Board was referred to Agenda Item 22 for a detailed report.

(C) Licensing/Continuing Competency

Mr. Kaiser reported that online renewals have also increased from 73% in 2016 to 83% to-date. Mr. Kaiser added that the Board sees the continuing competency audit process as an opportunity to increase outreach with licensees. He reported that the Board looks forward to auditing content of courses, approvers and recognized approval agencies soon.

The Board was referred to Agenda Item 23 and 24 for a detailed report.

(D) Consumer Protection Services

Mr. Kaiser stated that the number of the complaints received has gone down; however, cases that have resulted in formal discipline have gone up which is attributed to complexity in health care, evolution of the profession and the streamline and efficiency of the case process.

The Board was referred to Agenda Item 25 for a detailed report.

(E) Outreach

Mr. Kaiser reported that the Board, in collaboration with DCA, will be going to a licensing fair at the West Hills Community College District in LeMoore, CA in April 2019.

The Board was referred to Agenda Item 13(B) for a detailed report.

(F) PTBC Relocation

Mr. Kaiser reported that the Board is on track for relocation upstairs and has received the revision of blueprints on what the suite will look like and the Board anticipates that it will close out lease negotiations by May 2019.

(G) Strategic Plan

Mr. Kaiser reported that staff have been actively working on an action plan from the Board's adopted Strategic Plan. The Board has created a display in each unit, to map out the goals and objectives from the strategic plan for staff as a gauge of success and to show progress.

Ms. Eleby stated that she was excited to hear about the outreach the Board will be able to do in LeMoore, CA since the Board has not been able to do events like these in the past due to travel restrictions and she encouraged staff to participate in outreach events in neighborhoods and communities with varied demographics where physical therapy is not pursued as a profession.

David Campbell, licensed physical therapist, stated that it was an interesting finding in the consumer protection report that incidents were down; however, case complexity has increased, and he asked Mr. Kaiser to expand on that finding and if he could provide an example. Mr. Kaiser responded that when the Board receives a complaint it is run through a priority matrix which will put the most egregious cases at the top and those that are more rudimentary at the bottom. Mr. Kaiser also stated that the Board has tools that have been handed down recently by legislation that helps the Board address less egregious cases which can be diverted through non-disciplinary means. In addition, Mr. Kaiser stated that the Board has collaborated with the Division of Investigation (DOI) and looked for ways to increase communication to keep a case on track so that

ageing does not have to occur unnecessarily. Mr. Kaiser stated that the complexity of these cases has increased as well with ethical and documentation issues being the most common complaints.

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

(A) Report from the Exempt Level Increase Committee- *Katarina Eleby and TJ Watkins*

Mr. Watkins reported on behalf of the Exempt Level Increase Committee. He updated the Board that at the last meeting the Board discussed preparing a letter to Alexis Podesta, Secretary at the California Business, Consumer Services and Housing Agency (BCSH), regarding the previous exempt level increase request. The Committee reached out to BCSH directly and they responded and provided new information. Mr. Watkins thanked Sonya Logman, Deputy Secretary, BCSH for clarifying some of the issues to the Committee and for providing a way to move forward in the Board's next application for an exempt level increase of the executive officer with the desired outcome.

Mr. Watkins stated that the Board has a new BCSH liaison as Ms. Logman has been appointed Deputy Cabinet Secretary and stated that the Committee is looking forward to meeting with the new liaison and discussing this request. Mr. Watkins informed the Board the Committee decided to withdraw the letter as they found it unnecessary since the Committee was provided with the tools to make the next request successful in achieving the desired level increase. The Committee reported that they are looking forward to working with both BCSH and DCA with submission of this next request.

Dr. Rabena-Amen thanked the Committee for their hard work. Ms. Eleby added that this is important endeavor and the Committee is happy to pursue it on behalf of the Board.

Mr. Kaiser presented the proposed exempt level increase package to the Board which included the following:

- (B) PTBC's Executive Officer Exempt Level/Organizational Structure Overview
- (C) DCA Exempt Level Comparison
- (D) Exempt Salary Schedule
- (E) PTBC Organization Chart
- (F) Executive Officer Exempt Level Increase (Previous Package)

(G) Draft Request for Exempt Level Position Level Change

Mr. Kaiser stated that the exempt level increase package has been updated from the Board's previous package and includes a draft letter that is similar to the letter sent with the previous request.

Ms. Bojack, legal counsel stated that her recommendation is for the Board to make a motion to further authorize and delegate the next steps in the process of the exempt level increase.

Mr. Watkins responded that the next steps would be for the Board to work with DCA and the new BCSH liaison on creating the strongest exempt level increase package request.

**MOTION:** Authorize the Exempt Level Increase Committee to continue to work with the Department of Consumer Affairs and the California Business, Consumer Services and Housing Agency and Board staff to research the Exempt Level Increase and prepare a package requesting an exempt level change to be voted on by the Board at the next meeting.

**M/S:** Watkins/Drummer

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

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

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

No representatives were present. Ms. Eleby, the Board's FSBPT delegate reported on behalf of FSBPT. She stated that FSBPT will be holding its Leadership Issues Forum on July 13-14, 2019 in Alexandria, Virginia. Ms. Eleby reported that additionally, FSBPT would be holding Regulatory Training for Members and Board Staff including legal counsel on August 16-18, 2019 also in Alexandria, Virginia. Ms. Eleby stated FSBPT would also be holding their 2019

Annual Meeting and Delegate Assembly on October 24-26, 2019 in Oklahoma City, Oklahoma.

Ms. Eleby reported the Board has members and staff participating at the committee and task force level. Dr. Dominguez was appointed to the education committee. Dr. Dominguez reported an update from the education committee that they had a teleconference orientation meeting in early March and are scheduled to have another teleconference meeting in May and that he is looking forward to participating in the committee. Ms. Eleby reported that Mr. Kaiser was appointed to the Board assessment and licensure enforcement task force and Dr. Rabena-Amen was appointed to the member survey task force. Dr. Rabena-Amen stated that the survey results would be presented during the Leadership Issues Forum meeting in July 2019.

Ms. Eleby reported that the PT licensure compact has been introduced in 6 states at the legislative level: Virginia, Arkansas, Georgia, Maryland, Michigan and Nevada. Dr. Rabena-Amen asked how many states are issuing compact licenses. Mr. Kaiser responded that 19 states are in the licensure compact and 4 states are issuing privileges.

(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. Ms. Nelson reported that in 2018 DCA convened nine licensing and enforcement workgroup meetings, three substance abuse coordination committee meetings, four director quarterly meetings, pro rata workgroup meeting and two directors board member and advisory committee meeting leadership teleconferences. Ms. Nelson thanked the Board and Board staff in participating in these meetings. Ms. Nelson also stated that the 2018 DCA Annual Report is now available online.

Ms. Nelson reported that Monday, January 7, 2019 Governor Newsom was sworn in as the 40<sup>th</sup> Governor of California. DCA has met with the transition team and is also meeting with the appointments team regarding appointment vacancies and pending reappointments.

Ms. Nelson reported that the Director's Quarterly Meeting was held on February 25, 2019 and at this meeting DCA provided an update on the regulations unit, the executive officer's salary study and several division updates.

Ms. Nelson stated that DCA hosted its first Technology Advisory Council (TAC) on March 7, 2019 led by Jason Piccione, Deputy Director of the Office of Information Services. TAC will discuss trends in technology and government and provide guidance and general direction to innovate efforts at DCA. Ms. Nelson reported that TAC will also make recommendations concerning strategic direction



of proposed enterprise computing and information technologies. TAC will also make recommendations about policies consistent with goals and objectives of DCA for proper use of computing resources.

Ms. Nelson informed the Board that 2019 is a mandatory sexual harassment prevention training year for DCA which means all Board members and DCA employees are required to complete the training even if it was completed last year. Ms. Nelson added that the training is provided online and is interactive. Dr. Drummer informed Ms. Nelson that he attempted to take the training online Summer of 2018 and could not access the training. Ms. Nelson thanked Dr. Drummer for the feedback and stated she would look into this training accessibility issue further.

Dr. Rabena-Amen asked Ms. Nelson for an update on the Executive Officer's Salary Study and Ms. Nelson reported that the consultant is currently doing the benchmark piece which means they are going to look at different entities that are similar in structure for Boards, Bureau's and the DCA. After this is completed, a draft report will be sent to DCA and will be shared with BCSH and the Governor's Office and upon final approval that report will be shared with DCA programs.

(C) California Physical Therapy Association (CPTA)

Stacy DeFoe, Executive Director of the California Physical Therapy Association (CPTA), updated the Board on upcoming events. Ms. Defoe stated that CPTA's Advocacy Day at the Capitol is on March 26, 2019, and Student Conclave will be at University of the Pacific on April 13, 2019. In addition, Ms. Defoe added that CPTA's Annual Conference on October 12-13, 2019 will be held in Las Vegas.

Ms. DeFoe stated that CPTA is sponsoring SB 537 which is authored by Jerry Hill who is the Chair of the Labor, Public Employment and Retirement Committee. Ms. DeFoe reported that while this bill is currently in spot form, it will address the issues relating to third party administrators in the workers compensation system. Ms. DeFoe reported that CPTA will be watching AB 1592, the Athletic Trainers licensure bill sponsored by Bonta which is also currently in spot form.

## **11. Legislation Report – Brooke Arneson**

(A) 2019/20 Legislative Session Summary

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

i. AB 5 (Gonzalez) Workers Status: Independent Contractors

Ms. Arneson reported that AB 5 is in the Assembly pending referral.

ii. AB 71 (Melendez and Kiley) Employment Standards: Independent Contractors and Employees

Ms. Arneson reported that AB 71 was re-referred to the Assembly Committee on Labor and Employment on February 26, 2019.

iii. AB 193 (Patterson) Professions and Vocations

Ms. Arneson reported that AB 193 was recently amended on March 5, 2019 and re-referred to the Assembly Business and Professions Committee.

iv. AB 496 (Low) Business and Professions

Ms. Arneson reported that AB 496 was re-referred to the Assembly Business and Professions Committee on February 21, 2019.

v. AB 613 (Low) Professions and Vocations: Regulatory Fees

Ms. Arneson reported that AB 613 was re-referred to the Assembly Business and Professions Committee on February 25, 2019.

vi. AB 1592 (Bonta) Athletic Trainers

Ms. Arneson reported that AB 1592 was read for the first time on February 25, 2019.

vii. SB 53 (Wilk and Lackey) Open Meetings

Ms. Arneson reported that SB 53 was re-referred to the Senate Appropriations Committee on March 12, 2019.

Ms. Bojack, legal counsel stated that this bill would change how the Board could hold Committee and other meetings as it would be applicable to two or members of the Board. Ms. Eleby stated that she valued transparency but felt that this bill would limit the ability of committees to be nimble and to move forward and on

issues that need to be resolved in between Board meetings. Ms. Bojack informed the Board that the Board of Accountancy has opposed this bill. Mr. Kaiser stated that it would create difficulty in logistics and could increase costs for the Board. Ms. Bojack added that Governor Brown has vetoed similar versions of this bill in previous sessions on the grounds that the Open Meetings Act was sufficient. Mr. Kaiser stated as this bill progresses through the legislative session the Board would have an additional opportunity to take a position at the June, 2019 meeting.

viii. 425 (Hill) Health Practitioners: Licensee's File: Probationary Physician's and Surgeons Certificate: Unprofessional Conduct.

Ms. Arneson reported that SB 425 was referred to the Senate Business Professions and Economic Development Committee on March 7, 2019.

ix. SB 537 (Hill) Workers Compensation: Independent Bill Review

Ms. Arneson reported that SB 537 was referred to the Senate Rules Committee on March 7, 2019.

Stacy DeFoe, Executive Director of the California Physical Therapy Association (CPTA), informed the Board that CPTA is sponsoring this bill in the hopes to provide regulation on third party administrators in California under the workers compensation system. Ms. DeFoe stated that the bill is currently in spot form and the language CPTA outlined will hopefully be included on Monday, March 25, 2019. Ms. DeFoe also informed the Board that CPTA has been working very closely with the author, Senator Jerry Hill, Chair of the Senate Labor, Public Employment and Retirement Committee. Dr. Drummer asked if CPTA is the only sponsor at this time and Ms. DeFoe responded that at this time they are; however, they anticipate other health care providers supporting this bill soon.

David Campbell, licensed PT, provided public comment on this agenda item. Mr. Campbell asked why the Board is not taking a position on the 9 introduced bills noticed on the agenda under the Legislation Report. Mr. Kaiser responded that it is very early in the session and some of the bills are spot bills so there is no language for the Board to base a position on. Mr. Kaiser added that some of these bills are brought to the attention of the Board as they may affect the Board directly or indirectly and as the legislative session progresses the Board may take a position.

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

### **(A) 2019 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.

#### **i. Examination Passing Standard/Setting Examination Score**

Ms. Arneson reported that modified language was adopted by the Board at the September 2018 Board meeting and PTBC staff are preparing the initial rulemaking package for completing the new review process implemented by DCA.

#### **ii. Guidelines for Issuing Citations and Imposing Discipline, 6th Edition**

Ms. Arneson reported that modified language was adopted at the March 2018 by the Board and with the passage of AB 2138, significant revisions will need to be made to the Disciplinary Guidelines, and staff will be presenting proposed amendments for Board consideration under Agenda Item 12(A). Mr. Kaiser stated that the Board will be addressing the modifications necessitated by AB 2138 to the guidelines at the June 2019 meeting.

#### **iii. Satisfactory Documentary Evidence of Equivalent Degree for Licensure as a Physical Therapist or Physical Therapist Assistant/Coursework Tool**

Ms. Arneson reported that the Board approved regulatory language at the May 2017 Board meeting and PTBC staff and DCA legal are working on preparing the initial rulemaking package for completing the new review process implemented by DCA.

#### **iv. 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**

Ms. Arneson reported that language was adopted at the September 2018 Board meeting and staff is in the process of preparing the initial rulemaking package for completing the new review process implemented by DCA.

v. Substantial Relationship Criteria

Ms. Arneson reported that proposed language will be presented under Agenda Item 12(B) for Board consideration.

vi. Rehabilitation Criteria for Denial and Reinstatement of Licensure

Ms. Arneson reported that proposed language will be presented under Agenda Item 12(C) for Board consideration.

vii. Rehabilitation Criteria for Suspensions and Revocations

Ms. Arneson reported that proposed language will be presented under Agenda Item 12(D) for Board consideration.

Ms. Bojack stated that the Board will be addressing the AB 2138 regulations first as they impact the Disciplinary Guidelines. Ms. Bojack referred the Board to the briefing papers included in the materials which clearly outlined the necessity and purpose of the rulemaking packages regarding Substantial Relationship Criteria and Rehabilitation Criteria for Denial, Reinstatement, Suspension and Revocations and asked the Board if they had any additional questions.

(B) Discussion and Possible Board Action to Initiate a Rulemaking to Amend Title 16, California Code of Regulations Section 1399.20 Substantial Relationship Criteria – *Salwa Bojack*

Ms. Bojack referred the members to the proposed language in the meeting materials and explained that there are two options recommended by staff regarding substantial relationship criteria. Ms. Bojack stated that the main difference between the two options was that Option 2 has subsection(c) which gives a list of examples of professional misconduct and one of the reasons DCA Boards have not chosen Option 2 option is because of the language “shall include but are not limited to, the following:” which many Board’s felt it limited them with a list. Ms. Bojack stated that Option 1 provides more discretion to the Board to consider without having a list; as the Board may want to consider some items on the list or others that are not included on the list. Ms. Bojack added that it simplifies the law to not include a list under subsection (3).

Mr. Kaiser further clarified that Option 1 is the discretionary model and is most similar to the Board's existing regulatory language. Mr. Kaiser brought up additional concerns he had with Option 2. He stated that if there are already violations that automatically, without Board discretion, would result in revocation, denial or suspension of a license, the Attorney General's recommendation is to include that in subsection (c) as a list and by doing that, the list essentially means if they commit that offense no point of discretion is going to be applied by the Board. Mr. Kaiser added he liked the simplicity of the first model (Option 1) better as it doesn't limit the Board to exercise its discretion on a case by case basis while considering rehabilitation, mediation and anything else an applicant or licensee may bring to the case to make a showing of rehabilitation.

Ms. Bojack clarified that Option 2 in subsection (c) "shall include but are not limited to, the following:" examples listed are preexisting regulatory language for other Boards, so it does not satisfy any new requirements for AB 2138. Ms. Bojack stated that Option 1 reflects what the Board is proposing to satisfy AB 2138 and that's that AB 2138 requires the Board to consider three factors: the nature and gravity of the offense; the number of years elapsed since the date of the offense; and the nature and duties of a licensee [or physical therapist or physical therapist assistant] to determine substantial relationship criteria. Ms. Bojack further clarified that the examples listed in proposed language subsection(C) is underlined for Board consideration because the Board does not currently have those in regulation, not because it is recommended to satisfy amendments necessitated by AB 2138.

Ms. Eleby agreed with Board staff's recommendation that Option 1's simplicity lends to more discretion of the Board and allows the Board to take each occurrence on a case by case basis instead of boxing the Board into a set list that might be interpreted differently so she supported Option 1.

Dr. Dominguez stated that he agreed with Ms. Eleby in that he preferred Option 1 in that it gives the Board more latitude and discretion. Dr. Dominguez asked counsel if Option 1 means that the Board will have to further justify each decision applied, or does Option 2, by having the list, provide more justification for the Board's decision. Ms. Bojack, legal counsel, replied that the Board's decision must include a thorough analysis and that Option 2, of the proposed language, does not increase justification of a Board's decision. Mr. Kaiser added that Option 1 is in alignment with the way deliberations by the Board occur now.

Dr. Drummer questioned for both Option 1 and 2, in subsection (b)(2) if it is required with the language in AB 2138 to use “number of years” or would it be more appropriate to use “the amount of time since the date of the last offense.” Dr. Rabena-Amen stated that “number of years” is the term specified in AB 2138 and Mr. Kaiser confirmed it is a direct quote from the statute and further clarified that “years” does not box the Board into a time parameter.

Dr. Drummer suggested an amendment in subsection (b)(3) “the nature and duties of a licensee [or physical therapist or physical therapist assistant]” and would prefer that the proposed language be amended to “licensed physical therapist or licensed physical therapist assistant” since that is the licensing population the Board oversees would be more appropriate than using the term “licensee.” Dr. Rabena-Amen and Ms. Eleby agreed with Dr. Drummer’s amendment to the proposed language as it adds clarity.

Mr. Kaiser stated that a great deal of time was invested to conform regulatory language as a result of AB 2138 which will be helpful to OAL to process multiple rulemaking packages in a timely manner, so he advised the Board to keep the regulatory language amendments to a minimum to keep the language as uniform as possible with other DCA Boards.

The Board was in unanimous agreement that it would like to pursue Option 1 of the proposed language regarding CCR 1399.20 Substantial Relationship Criteria.

**MOTION:** “Approve the proposed regulatory text of Option 1 as amended with changing the text in subsection (b)(3) to “licensed physical therapist or licensed physical therapist assistant” for Section 1399.20, direct staff to submit the text to the Director 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 hearing.”

**M/S:** Watkins/McMillian

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

Rabena-Amen - Aye  
Watkins – Aye  
6-0 Motion carried

(C) Discussion and Possible Board Action to Initiate a Rulemaking to Amend Title 16, California Code of Regulations Section 1399.21 Rehabilitation Criteria for Denial and Reinstatement of Licensure – *Salwa Bojack*

Ms. Bojack referred the members to the proposed language in the meeting materials and explained that again, there are two options proposed regarding rehabilitation criteria for denial and reinstatement of licensure for Board consideration. Ms. Bojack stated that the main difference between the two options was that Option 1 gives the Board more discretion than Option 2. Ms. Bojack stated that in Option 1, the Board can weigh in on whether or not successful completion of the criminal sentence is considered rehabilitation; whereas Option 2 states that successful completion of the criminal sentence is considered rehabilitation and takes away from the Board considering additional factors of rehabilitation.

Ms. Eleby stated that she agreed with Board staff's recommendation and supported Option 1. Dr. Drummer stated with Option 2 that it implies that completing criminal probation or sentence is equivalent to rehabilitation for a license which Dr. Drummer did not feel is an appropriate connection to make; Dr. Drummer stated he also supported Option 1.

Mr. Kaiser added with Option 2, anyone who is on criminal probation could not have a license issued to them. Mr. Kaiser clarified that in Option 1, the discretion is applied evenly amongst the applicant's circumstances on a case by case basis whereas, with Option 2 it is inferred if they complete the criminal probationary period, the Board will be forced to consider that rehabilitation.

The Board was in unanimous agreement that it would like to pursue Option 1 of the proposed language regarding CCR 1399.21 Rehabilitation Criteria for Denial and Reinstatement of Licensure.

Dr. Drummer recommended amending subsection (a) to read "whether the applicant made a showing of sufficient rehabilitation and is presently eligible for a license." Ms. McMillian asked how does the Board determine what is deemed sufficient? Dr. Drummer stated that the Board determines whether there has been sufficient rehabilitation in the Board's deliberations and its at the Board's discretion to consider



rehabilitation on a case by case basis. Ms. Bojack stated there was an issue of clarity with adding “sufficient” to subsection (a) as it becomes debatable on if an applicant is rehabilitated. Ms. McMillian stated that since the Board is assessing rehabilitation already, the term “sufficient” in subsection (a) is not necessary. Dr. Drummer agreed with Ms. McMillian. Mr. Kaiser advised the Board to keep the regulatory language amendments to a minimum to keep the language as uniform as possible with other DCA Boards for timeliness and ease of OAL review.

Dr. Dominguez suggested for consistency, to replace “severity” in subsection (b)(1) with “gravity” to conform with the language in AB 2138. Dr. Rabena-Amen and Mr. Kaiser agreed with the suggested amendment to the proposed language. Ms. Bojack added that the bill language in AB 2138 Section 493(a) states “nature and gravity of the offense” which is consistent with Dr. Dominguez’s suggested amendment.

**MOTION:** “Approve the proposed regulatory text of Option 1 as amended, replacing in subdivision (b)(1) “the nature and severity” with “the nature and gravity” for Section 1399.21, direct staff to submit the text to the Director 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 hearing.”

**M/S:** Eleby/Watkins

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

(D) Discussion and Possible Board Action to Initiate a Rulemaking to Amend Title 16, California Code of Regulations Section 1399.22 Rehabilitation Criteria for Suspension and Revocations – *Salwa Bojack*

Ms. Bojack referred the members to the proposed language in the meeting materials and explained that again, there are two options proposed regarding rehabilitation criteria for suspensions and revocations for Board consideration. Ms. Bojack stated

that the amendments to CCR 1399.22 has similar distinguishing features of the previous rulemaking package discussed (CCR 1399.21) however; instead of addressing applicants it addresses licensees. Ms. Bojack stated that Option 2 takes away some discretion from the Board when considering whether the licensee made a showing of rehabilitation and is eligible for a license if they have completed their criminal sentence; whereas Option 1 allows the Board to weigh in on whether or not successful completion of the criminal sentence is considered rehabilitation.

The Board was in unanimous agreement that it would like to pursue Option 1 of the proposed language regarding CCR 1399.22 Rehabilitation Criteria for Suspensions and Revocations.

Dr. Dominguez suggested for consistency, to replace “severity” in subsection (b)(1) with “gravity” to conform with the language in AB 2138. Ms. Bojack solicited the Board’s feedback on whether or not they felt there was a difference between the words “gravity and “severity.” The Board stated they felt that the words were synonymous in this context. The Board reiterated the reason for the suggested amendment is that it promotes internal uniformity, consistency and clarity and conformity to the statutory language in AB 2138.

**MOTION:** “Approve the proposed regulatory text of Option 1 as amended, replacing in subdivision (b)(1) “the nature and severity” with “the nature and gravity” for Section 1399.22, direct staff to submit the text to the Director 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 hearing.”

**M/S:** Eleby/McMillian

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

### **13. Administrative Services – Discussion and Possible Board Action**

(A) Budget Report – *Carl Nelson*

Mr. Nelson reported that the Board is not projecting major changes in expenditures this fiscal year, however anticipates a slight increase in personnel services, specifically within the Temp Help expenditures to accommodate additional staff to address workload backlogs in core program areas such as applications and continuing competency. Mr. Nelson stated that Board spending has decreased this fiscal year by 3% and the Board's revenues have increased 4% over last fiscal year, quarter 2.

Mr. Watkins asked what the decrease in the Department of Investigations Services (DOI) line item was attributed to. Mr. Nelson responded that DOI operates on a 2 year roll forward budget system; which means the DOI line item is based on activity two years prior to the current fiscal year.

Dr. Rabena-Amen asked why the Board Member expenditure line item shows that 216% of the budget has been spent. Mr. Kaiser responded that the board member allocation is low and hasn't been adjusted. Mr. de los Reyes stated there are a couple options for this line item; the Board could do a net-zero line item adjustment or go through the budget process to increase the allotment.

(B) Outreach Report – *April Beauchamps*

Ms. Beauchamps reported that the website traffic for quarter 2 decreased 8% with the laws tab showing the most significant decrease at 24%. Ms. Beauchamps explained that the publications and about us tabs have steadily decreased due to the Board's outreach efforts. Ms. Beauchamps stated that the forms and applications tabs have decreased due to outreach efforts and the Board encouraging applicants and licensees to utilize BreEZe.

Ms. Beauchamps reported that Facebook traffic increased 84% with the most significant increase being our "Consumers" showing an overall increase of 587% and our "Engaged Users" showing an 514% increase.

Ms. Beauchamps stated that the Board conducted 4 outreach events at Sacramento State on October 1<sup>st</sup>, 8<sup>th</sup> and 15<sup>th</sup> and November 27<sup>th</sup>. Ms. Beauchamps shared that the next Newsletter will be coming out Spring of 2019. She also stated that outreach events coming up include the licensing fair at West Hills College in LeMoore, CA, and school presentations at Northridge and Casa

Loma College. Ms. Beauchamps added that the Board will also be attending Student Conclave at the University of the Pacific. Dr. Drummer asked if the Outreach report could be amended to include the additional items in Ms. Beauchamps presentation.

**14. DCA Budget Unit – Presentation of Services – *Robert de los Reyes, DCA Budget Manager***

Mr. de los Reyes provided a budget and Fi\$Cal update to the Board which included an updated fund condition statement.

**15. Discussion and Possible Board Action on the Board Member Administrative Manual – *April Beauchamps***

Ms. Beauchamps presented the Board Member Administrative Manual. The Board asked staff to bring the Board Member Administrative Manual back to the Board for consideration at the June 2019 meeting, once members and legal counsel had additional time for review.

David Campbell, licensed PT, provided public comment on Agenda Item 15. Mr. Campbell suggested an amendment on page 7, in the introductory section and recommended that the Board amend this section to be more aspirational. Ms. Bojack, legal counsel, clarified that the section Mr. Campbell was referring to is from the Board's mandate to protect the public as stated in BPC 2602.1 and the amendments that Mr. Campbell suggested would not be consistent with the Board's mandate. Dr. Rabena-Amen suggested that members look at this introductory section during their review of the Board Administrative Manual and take Mr. Campbell's recommendations into account for further discussion at the June 2019 meeting.

**16. Public Comment on Items Not on the Agenda**

The Board requested public comment on items not on the agenda. David Campbell, licensed PT, stated that in recent years, his experience with continuing education is that the burden of documentation of course completion has been put on the attendee of the course rather than the provider and he asked the Board if this has been an issue brought to the Board. Mr. Kaiser responded that today's law states that continuing education providers should provide attendees of continuing education classes with a certificate upon completion and in addition, regulations state that licensees should retain completion records for 5 years and providers should retain completion records for 7 years. Mr. Kaiser also stated that licensees should be able to contact the course providers for completion documentation for continuing competency audit purposes. Dr.

Drummer clarified that courses that have not been approved or accredited may not have adhered to those retention requirements. Mr. Kaiser added that the Board tries to educate its licensees to make sure that a continuing competency course is accredited prior to taking it.

## **17. Recess**

The Board recessed at 5:30 p.m. on the first day of the meeting, Thursday, March 21, 2019.

## **Friday, March 22, 2019**

## **18. Call to Order - 9:00 a.m.**

## **19. 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; Elsa Ybarra, Sarah Conley, Brooke Arneson, Monny Martin and April Beauchamps.

Mr. Watkins read the Board's mission statement: To advance and protect the interests of the people of California by the effective administration of the Physical Therapy Practice Act.

## **20. 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, March 22, 2019 at 8:58 a.m. to deliberate on Agenda Item 20(A) and reconvened into open session at 10:06 a.m. The Board went back into closed session at 11:46 a.m. and 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, March 22, 2019 at 11:46 a.m. to deliberate on Agenda Item 20(B). The Board reconvened open session to adjourn at 6:30 p.m.

## **21. Reconvene Open Session**

The Board reconvened into open session to adjourn at 6:30 p.m. on day two, March 22, 2019.

## **22. Application Services – Discussion and Possible Board Action – *Valerie Kearney***

- (A) Program Updates
- (B) Statistical Reports

Due to time constraints, no presentation was made on the Application Services Report.

## **23. Licensing Services – Discussion and Possible Board Action – *Justin Silva***

- (A) Program Updates
- (B) Statistical Reports

Due to time constraints, no presentation was made on the Licensing Services Report.

## **24. Continuing Competency Services – Discussion and Possible Board Action – *Veronica Gutierrez***

- (A) Program Updates
- (B) Statistical Reports

Due to time constraints, no presentation was made on the Continuing Competency Services Report.

## **25. Consumer Protection Services – Discussion and Possible Board Action– *Marney Kincaid***

- (A) Program Updates
- (B) Statistical Reports

Due to time constraints, no presentation was made on the Consumer Protection Services Report.

**26. Probation Monitoring Services – Discussion and Possible Board Action – *Monny Martin***

- (A) Program Updates
- (B) Statistical Reports

Due to time constraints, no presentation was made on the Probation Monitoring Services Report.

- (C) Presentation on the Overview of the Probation Monitoring Program

Mr. Martin presented a general overview of the probation monitoring program.

**27. Board Member Training – Presentation on the Legislative Process – *Dennis Cuevas-Romero, Deputy Director, Division of Legislative Affairs***

Mr. Cuevas-Romero presented a general overview of the legislative process.

**28. 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 there was no public comment.

**29. Agenda Items for Future Meeting –**

June 20-21, 2019  
California State University Long Beach  
Long Beach, CA

The Board indicated it did not have any specific items at this time for the June 20-21, 2019 meeting.

**30. Adjournment**

The meeting adjourned at 6:30 p.m.