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Board Members

President

Alicia Rabena-Amen, PT, DPT

Vice-President

Katarina Eleby, M.A.

Members

Dayle C. Armstrong, Ph.D., P.T., MS, DPT

Jesus Dominguez, PT, PhD

Daniel Drummer, PT, DPT

Johnathon Ervin

Tonia McMillian

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

October 15, 2021 9:00 a.m.

Department of Consumer Affairs
Public WebEx and Teleconference
Platform

Board Staff

Jason Kaiser, Executive Officer

Elsa Ybarra, Assistant Executive Officer

Sarah Conley, Manager

Liz Constancio, Manager

Brooke Arneson, Executive Analyst

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

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1. Call to Order

10 The Physical Therapy Board of California (Board) meeting was called to order
11 by President Dr. Rabena-Amen at 9:12 a.m. and adjourned at 2:34 p.m. on
12 October 15, 2021.

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2. Roll Call and Establishment of Quorum

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Armstrong - Present

17

Dominguez- Present

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Drummer - Present

19

Eleby - Present

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Ervin - Absent

21

McMillian - Present

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Rabena-Amen - Present

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24 All members were present with the exception of Mr. Ervin, and a quorum was
25 established. Also present at the meeting were: Michael Kanotz, PTBC Legal
26 Counsel; Jason Kaiser, Executive Officer; Elsa Ybarra, Assistant Executive
27 Officer; Brooke Arneson, Board staff, and Sarah Irani and Shelly Jones, DCA
28 SOLID WebEx Moderators.

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32 **3. Reading of the Board's Mission Statement**

33
34 Ms. McMillian read the Board's mission statement: To advance and protect the
35 interests of the people of California by the effective administration of the
36 Physical Therapy Practice Act.

37
38 **4. Public Comment on Items Not on the Agenda**

39 *Please note that the Board may not discuss or take action on any matter raised*
40 *during this public comment section that is not included on this agenda, except*
41 *to decide whether to place the matter on the agenda of a future meeting.*
42 *(Government Code sections 11125, 11125.7(a).)*

43
44 The Board requested public comment on items not on the agenda, and there
45 was no public comment.

46
47 **5. Review, Discussion and Possible Board Action on Sunset Review Report**
48 **Pursuant to BPC Section 2602**

49
50 Mr. Kaiser stated that the final 2022 Sunset Review Report for the Physical
51 Therapy Board of California (Sunset Report) will be submitted to the legislature
52 in early 2022. Mr. Kaiser referred members to the Board meeting materials
53 which outlined the process and timeline for the Sunset Review and Oversight
54 Hearings which included a template of the Sunset Report. Mr. Kaiser solicited
55 the members for their feedback on how they would prefer to review the Sunset
56 Report and if the members would like to delegate or comprise a Sunset
57 Subcommittee to review the Sunset Report before the Board does their final
58 review at the December meeting. Mr. Kaiser added that Board member
59 elections will be done in December and two members will be presenting and
60 answering questions on the Sunset Review Report to the legislature at the
61 Sunset Review Oversight Hearings in 2022.

62
63 **MOTION:** Establish a Sunset Subcommittee to work with staff on
64 the Sunset Review Report.

65
66 **M/S:** Dominguez/McMillian

67
68 **VOTE:** Armstrong - Aye
69 Dominguez- Aye
70 Drummer - Aye
71 Eleby - Aye

Ervin - Absent
McMillian - Aye
Rabena-Amen – Aye
6-0 Motion Carried

Ms. McMillian and Dr. Dominguez volunteered to be on the Sunset Subcommittee.

Mr. Kaiser stated that a draft report would be sent to the Sunset Subcommittee on October 16, 2021 with the anticipation that at the November 4, 2021 Sunset meeting, a draft Sunset report would be sent to the full Board for their review.

6. Discussion and Possible Board Action Regarding Sunset Review Subcommittee's Recommendation on Issues to be Identified on the Sunset Review Report Pursuant to Business and Professions Code (BPC) Section 2602

Mr. Kaiser stated that staff have identified several issues to be identified in the Sunset Report for consideration by the Board.

Updating Fee Statute

Mr. Kaiser stated that extending the statutory fee caps is an issue that has been identified for consideration and while the PTBC fund is fiscally healthy and PTBC is not proposing a fee increase of any kind at this time, should unseen circumstances occur, the Board fees are currently limited with what it collects in revenue by our statutory caps and we cannot increase fees without emergency legislation. Mr. Kaiser added that while this issue was identified in the previous Sunset, it was the Business and Professions Committee's decision not to extend the statutory caps at that time and suggested addressing this issue at the PTBC's next Sunset Review.

Dr. Drummer asked when the last fee increase was implemented. Mr. Kaiser responded that the last fee increase regulation went into effect in 2015.

Dr. Armstrong added that this issue should be addressed in this Sunset Report as PTBC is being proactive in planning, rather than waiting for an emergency to necessitate emergency legislation. Ms. Eleby agreed with Dr. Armstrong and added that the timing was not right at the Board's previous Sunset Review,

110 however this is an issue that needs to be addressed proactively, not in a dire
111 situation and it should be included in our issues identified in the Sunset Report.

112
113 Mr. Kaiser solicited the Board for feedback if they would like any additional data
114 from staff for presentation at the next meeting to address this issue and if PTBC
115 should move forward with a specific dollar amount request for the fee caps, or if
116 it should be an open-ended request for the fee caps. Mr. Kaiser stated that at
117 the PTBC's last Sunset Review, a specific dollar amount for the fee caps was
118 not provided to the legislature. Dr. Dominguez recommended providing the
119 legislature with specific numbers for the fee cap increases so PTBC can make
120 a solid case for our request.

121
122 Ms. Eleby added that she would like to see a timeline of how much the fees
123 have increased since PTBC's creation and an analysis/comparison of Boards
124 (both US wide and California) with similar licensee population size and fees
125 which would help PTBC determine the increase for the statutory fee caps. Ms.
126 McMillian agreed with Ms. Eleby and wanted to further know what role the cost
127 of living plays in the assessment of fees since the cost of living is so different in
128 each state. Mr. Kaiser responded that it would be helpful to provide the Board
129 a comparison of fees for the largest jurisdictions such as Florida, Texas, New
130 York.

131 **Direct Access Waiver Extension Permanent**

132
133 Mr. Kaiser stated that another potential issue staff have identified for the Board's
134 Sunset Review is that the PTBC had a waiver exemption, during the pandemic,
135 that was provided by the Director of DCA. Mr. Kaiser stated that the waiver
136 specified that the in-person evaluation for direct access physical therapy could
137 be done via telemedicine, through a video conferencing platform, and that the
138 exemption expires in October 2021. Mr. Kaiser added that PTBC has not had
139 any issues with this exemption through the Board's enforcement process.

140
141 Mr. Kaiser stated that due to the COVID-19 pandemic, the Governor Issued
142 Executive Order N-40-20 on March 30, 2020, and DCA was granted the
143 authority to provide waivers during the state of emergency. The DCA waiver
144 identified as DCA-20-09 Examination Requirement for Continued Physical
145 Therapy Treatment temporarily waived the requirement for a licensed physician
146 and surgeon or podiatrist, as applicable, to conduct an in-person patient
147 examination and evaluation as required by Business and Professions Code

148 section 2620.1, subdivision (a)(4), subject to the condition that the examination
149 and evaluation must be performed via appropriate electronic means. Mr. Kaiser
150 added that the waiver has been in place for the duration of the pandemic and
151 terminates on December 31, 2021; he added that the PTBC has not identified
152 any consumer issues or vulnerabilities. Mr. Kaiser stated that the PTBC believes
153 that the proposed legislative authority would facilitate access to care for physical
154 therapy consumers while maintaining appropriate consumer protection.

155
156 Mr. Kaiser stated that staff are proposing that BPC section 2620.1 of the
157 Physical Therapy Practice Act be amended to eliminate the requirement that the
158 patient examination and evaluation must be conducted in person by a physician
159 or surgeon. He added that the proposed legislative authority would provide
160 greater access to care for physical therapy consumers while maintaining
161 appropriate consumer protection.

162
163 Dr. Drummer suggested removing the direct access (12 visits or 45 days)
164 requirement altogether from the practice act since there haven't been any issues
165 or concerns raised with the waiver exemption. Dr. Drummer stated with the
166 pandemic implementing telehealth, it pushed that boundary even further and
167 there have been no issues. He added that temporary direct access has helped
168 physicians who are opposed to direct access be more comfortable with the
169 concept, and while some may still be opposed to it; it is clearly demonstrated
170 that this is not an issue. Dr. Drummer stated free direct access to physical
171 therapy care would remove the burden from the patient and he suggested
172 bringing this forward as an issue to be addressed in the Board's Sunset Review.
173 Mr. Kaiser added that this would be considered increasing access to care and
174 removing the barrier.

175
176 Dr. Rabena-Amen asked if this is necessary for public protection. Mr. Kaiser
177 responded that Dr. Drummer is correct, there is nothing in our data that shows
178 this waiver has created any issues; however, the absence of data does not
179 affirm an argument. Mr. Kaiser cautioned from an administrator's perspective,
180 that the issues addressed in the Sunset Report should not be considered
181 controversial in nature as this is the Board's sunrise bill and our extension. If the
182 Committee allowed this to be included in our sunrise bill at the request of the
183 Board, PTBC could risk a governor veto based on stakeholder feedback and
184 other special interest groups having concerns with this issue.

186 Mr. Kaiser stated this issue is identified as an increasing access to care issue,
187 especially considering the global pandemic and technological advancements we
188 have made; however, he cautioned there is an audience that will oppose this on
189 principle, and it could create an issue in our Sunset process.

191 Mr. Kaiser stated that staff could collect data for presentation to the Sunset
192 Committee and have that information prepared for presentation at the
193 November 4th Sunset meeting for the Board's consideration. Members agreed
194 to have this information included in the November 4th meeting.

196 Dr. Rabena-Amen asked for PTBC staff to reach out to external stakeholder's
197 such as the California Medical Association, California Physical Therapy
198 Association, Chiropractic Association, and the Medical Board of California and
199 ask them for feedback and if they have any additional data. Mr. Kaiser added
200 that while it is appropriate for the Board to have this conversation, it may be
201 more appropriate for this conversation to be had at the association level. He
202 stated that CPTA could opine on the Sunset Review and they can suggest
203 issues they think the Board should address during its Sunset Review process.
204 Dr. Rabena-Amen suggested PTBC look at this as a public protection issue.

206 Ms. Eleby asked if PTBC is aware how other jurisdictions handle this issue and
207 what their laws are in access to care. Mr. Kaiser responded that there are a
208 number of states that have complete direct access; meaning a consumer can
209 approach a physical therapist and the physical therapist can provide a physical
210 therapy-based evaluation/diagnosis and can continue to see that physical
211 therapist for physical therapy services as appropriate, without the involvement
212 of a physician or surgeon. He added that model does exist in other jurisdictions
213 and provided and paid for by some of the largest insurance providers in the
214 nation, and while some jurisdictions have had this authority for a very long time,
215 some are newer, however it seems as the years go by, it is a more accepted
216 model which is coming our way.

218 Dr. Rabena-Amen suggested reaching out to one or more of our border states
219 to see if there is any information to be collected and brought back to the Board
220 for further discussion at the next meeting.

222 **WebEx Requirement Added to Statutory Authority for Board Meetings**

Mr. Kaiser stated that due to the COVID-19 pandemic, the legislature granted temporary authority in Government Code 11133 for DCA Boards through January 31, 2022, to utilize online platforms in lieu of in person meetings. Mr. Kaiser added that requiring the use of technology such as an online platform like WebEx, would increase consumer and stakeholder access and participation; and is more effective than a teleconference.

Mr. Kaiser stated that this recommendation is intended to be an additional point of access, not as a replacement or in lieu of the existing mandate. Mr. Kaiser added that currently, the PTBC is mandated to meet at least three times a calendar year, meeting at least once in Northern California and once in Southern California; and that adding an online option will provide greater stakeholder access; is more cost effective; and offers broader platform functionality and features. Mr. Kaiser stated that staff are recommending an amendment to BPC section 2611 that would require the Board to provide online access in addition to its existing mandates of in-person Board meetings.

Dr. Rabena-Amen asked if there was any anticipated push back with this issue and request. Mr. Kaiser responded that our request might be misconstrued at first, some may think we are asking for only WebEx or virtual meetings in lieu of in-person meetings, and what PTBC is recommending is offering online platforms in addition to meeting in-person. Mr. Kaiser stated that in WebEx there is the capability to see who is participating in the meeting and engaging in the meeting which does not always happen with in-person meetings so it is easier to keep track of in WebEx.

Dr. Rabena-Amen added that adjusting to being virtual and doing the best that we can is not the same as being face to face with the interaction that happens organically between the members and the public. She added that the Board would not want to revert to all WebEx meetings in lieu of in-person meetings.

Dr. Rabena-Amen asked what the difference was between WebEx and Webcasting. Mr. Kaiser responded that WebEx provides the opportunity for the public to engage in the meeting and with the Board directly, whereas a webcast is the public just watching the meeting with non participation. Mr. Kaiser stated that we don't need to have both, however he believes it is a benefit to the public to have both options.

Mr. Kaiser stated that staff can work with PTBC's legal counsel to brainstorm what potential proposed language would look like and present it to the Board at the subsequent Sunset meetings. Members agreed in including this issue as an issue to address in PTBC's Sunset Report.

Mr. Kaiser solicited the Board for feedback on any additional issues they would like to address in the Sunset Report.

Dr. Rabena-Amen asked if there are any issues concerning continuing competency that the Board should address during Sunset; specially broadening or clarifying alternate pathway. Mr. Kaiser responded that there is room to address alternate pathway however he recommended addressing it through regulatory change, and not Sunset.

Dr. Armstrong asked if there was any feedback from the physical therapy community in California in the last five years, since the last Sunset Report, regarding suggested changes for continuing competency or in the PT Practice Act. Mr. Kaiser responded that PTBC receives feedback daily from stakeholders about practice act issues; and some things are appropriate for us to consider; administrative items such as retired license status, continuing competency requirements etc. However, there are also general advocacy for the profession ideas that get presented to us as well, which are more association-driven issues. Mr. Kaiser added that the intended beneficiary of those conversations are the licensees themselves and so when that is the case, that is appropriate for the association to address them. Mr. Kaiser stated that PTBC needs to always consider who the beneficiary would be; the licensee or the consumer, and that sometimes issues can be synonymous, for example AB 1000 with direct access.

7. 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).]

There was no public comment.

8. Agenda Items for Future Meeting

December 9-10, 2021

Department of Consumer Affairs
WebEx

Dr. Rabena-Amen asked for an update on the Jurisprudence Assessment Module (JAM).

Mr. Kaiser stated that once Sunset was finished the PTBC would be addressing the Strategic Plan.

9. 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 11:31 a.m. and reconvened into open session at 1:30 p.m. on October 15, 2021.

10. Reconvene Open Session

The Board reconvened from closed session into open session at 1:30 p.m. on October 15, 2021.

25. Adjournment

The meeting adjourned at 2:34 p.m. on October 15, 2021.