



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY – ARNOLD SCHWARZENEGGER, GOVERNOR

## Physical Therapy Board of California

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### APPROVED MINUTES PHYSICAL THERAPY BOARD OF CALIFORNIA MEETING

*January 28, 2010 8:30 AM*

*January 29, 2010 8:30 AM*

**Doubletree Hotel  
1646 Front Street  
San Diego, California 92101**

*For the sake of clarity, the meeting minutes are organized in numeric order to reflect their original order on the agenda; however, issues were taken out of order during the meeting.*

#### **Call to Order and Roll Call**

The meeting of the Board was called to order by President SaraTakii at 8:36 a.m. All members were present and a quorum was established.

#### **1. Disciplinary Decisions**

The Board convened in CLOSED SESSION to deliberate on disciplinary actions pursuant to Government Code section 11126 (c) (3).

Disciplinary decisions are available on the Board's website at [www.ptb.ca.gov](http://www.ptb.ca.gov).

#### **2. Hearing on Petition for Reinstatement – Azita Yazdani**

After submission of the matter, the Board convened in CLOSED SESSION to deliberate per Government Code Section 11126 (c) (3).

#### **3. Approval of Minutes**

(A) Revisions to the August 19 & 20, 2009 PTBC Meeting Minutes, adopted at the November 12, 2009 Meeting

**MOTION: To correct the minutes of the August 19 & 20, 2009 meeting which were adopted November 12, 2009 to amend line 438 on page 9 of the minutes to delete the word "of" and add the words "for knowing".**

**MOVER: Ms. Jewell**

**SECOND: Mr. Turner**

**VOTE: 4-0 Motion Passed**

(B) November 12, 2009 PTBC Meeting

**MOTION: To adopt the draft minutes of the November 12, 2009 meeting.**

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**MOVER: Ms. Jewell**

**SECOND: Mr. Turner**

**VOTE: 4-0 Motion Passed**

**4. President's Report – Sara Takii, PT**

(A) 2010 PTBC Meeting Dates

Mr. Hartzell requested that the Board cancel the Strategic Planning meeting for March 17<sup>th</sup> and 18<sup>th</sup>, 2010 in Sacramento. He explained the department's focus on Enforcement and the current assignments that are occupying staff which will make it difficult to complete all of the rulemaking calendar items. The November board meeting in Oakland will proceed as planned.

(B) Update

Ms. Takii reported that she, Ms. Alviso and Mr. Hartzell were invited to the San Joaquin chapter of the CPTA to speak with their members in Fresno, Bakersfield, and Madera about continuing competency. Ms. Takii also participated in the Federations Foreign Educated Standards Committee Meeting January 23rd and 24th and offered a summary of events.

**5. Executive Officer's Report – Steven K. Hartzell**

(A) Update

Agenda Item 5(a) is covered in items 5(b) - (c)

(B) FY 2009-2010, FY 2010-2011 Budget

Mr. Hartzell advised the Board of proposed budget for the next fiscal year, including proposed budget cuts to staff and personal services. Next years budget also includes an increase of staff for continuing education. He advised the Board that the PTBC would be receiving new staff consisting of four analytical positions and half of an investigator position in the 2010/2011 fiscal year.

Mr. Hartzell also advised the board that if a budget is not in place by July 1<sup>st</sup>, staff pay would be reduced to minimum wage.

(C) Consumer Affairs System (CAS) Replacement of Licensing and Enforcement System

Mr. Hartzell advised the Board of department plans to replace the Consumer Affairs System (CAS). He explained that the system was built in the 1970's and was written in a programming language that has fallen out of use. He explained that the majority of the staff who are experienced with the programming will be retiring soon and informed the Board that it would be 18 to 24 months before any significant changes are implemented.

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(D) Business Continuity Planning

Mr. Hartzell advised the Board that the department is reviewing its Business Continuity Plan, including disaster planning and forty to fifty percent of the state workforce becoming eligible for retirement.

(E) Newsletter

Mr. Hartzell advised the board that the PTBC newsletter will be submitted to DCA and will be available within the next sixty days. He added that the newsletter will focus largely on continuing competency matters.

(F) Department of Consumer Affairs Regulatory Next Practices: A Working Conference

Mr. Hartzell advised the board that the DCA Regulatory Next Practices conference will focus on enforcement issues and best practices. He went on to explain the conference will feature three workshops with interactive tables.

Legal Counsel then advised the Board of changes in the Open Meetings Act, Government Code 111.22.5(b). It was explained that a collective concurrence is no longer required among board members for a violation of the Open Meetings Act to occur. All that would be needed is a majority of the Board members to be discussing Board business to be in violation.

**6. Consumer Protection Services Enforcement Report**

(A) Statistics – *Elsa Ybarra*

Ms. Ybarra provided the board with an Enforcement Activity Report and reiterated the changes the department director is implementing to improve enforcement statistics. She then advised the Board that staff is looking at old cases to determine if there are alternate ways to close them. She then informed the board that staff is developing a flowchart to detail the process of opening, investigating, and closing cases, including the timeframe it takes to complete all of the actions.

Mr. Turner questioned Ms. Ybarra about the jump in complaints received from fiscal years 06/07 to 07/08. Ms. Ybarra and Mr. Hartzell explained the jump was due to the processing of address change citations that were not being issued in the previous year.

Ms. Alviso asked Mr. Hartzell if statistics encompassing a larger timeframe could be made available on an ongoing basis. Mr. Hartzell then informed the Board of current efforts to implement a standardized format to report statistics with continuity on a monthly basis.

(B) Implementation of DCA Developed Enforcement Procedures

Mr. Hartzell advised the Board of the new department project that will require boards to submit enforcement procedures to a central database for backup and reference

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purposes. Mr. Hartzell and Ms. Ybarra then explained the procedures followed concerning anonymous complaints and the Board's ability to discipline physical therapists with or without testimony from the witness or complainant.

(C) Enforcement Program Report to Department of Consumer Affairs (DCA)

Mr. Hartzell handed out a copy of the DCA memorandum concerning the Enforcement Program Reports to DCA. He advised the Board that the department has changed requirements for reporting from the 8<sup>th</sup> day of the month to the 15<sup>th</sup> of the month. Mr. Hartzell then informed the Board that he is tasked with improving upon enforcement procedures with existing resources and detailed the progress made so far.

**7. Application & Licensing Services Report – Ilda Romo**

(A) Change of When Licensed Applicant Status is Issued

Ms. Romo presented the Board with application & licensing services statistics for fiscal year 2009/2010.

Mr. Hartzell advised the Board of the interest taken by the department in processing time for applications. He then detailed the current guidelines regarding application processing and the applicant's ability to affect the progress of their applications.

Ms. Jewell expressed concern regarding the pass/fail rates for foreign physical therapy applicants. Mr. Hartzell explained that in foreign student's cases, they for the most part have been out of school for several years by the time they apply, and it is reflected through pass and failure rates. Mr. Hartzell then agreed to provide more detailed data concerning timeframes and categories for the next statistical report.

**8. Consideration of Request to Accept Alternative Documentation to Establish Application Eligibility Under Section 1398.26 of Title 16 of the California Code of Regulations.**

*Agenda Items 8 and 9 were taken out of order January 28, 2010*

Ms. Nahid Golpagoon, represented in the matter by Mr. Saied Behzadpoor, presented the board with her issue. Mr. Behzadpoor, on behalf of Ms. Golpagoon, requested that the Board consider her case based on a credential evaluations completed by the International Education Research Foundation (IERF) in 1989 and 1993, which recognized at that time that she was equivalent to a Bachelor of Science in Physical Therapy. After being presented with the matter the Board voted.

**MOTION: Based on experience and the attempts at furnishing documents along with the evaluation of July 2009 the Board considers Ms. Golpagoon's education equivalent to a PTA.**

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**MOVER: Ms. Alviso**  
**VOTE: Vote 4-0 Motion Passed**

**SECOND: Mr. Turner**

**MOTION: The documentation submitted is not sufficient to establish the existence of an education equivalent to the Physical Therapist education required for licensure in California.**

**MOVER: Ms. Jewell**  
**VOTE: Vote 4-0 Motion Passed**

**SECOND: Ms. Alviso**

It was then agreed that the Board would revisit regulations concerning the acceptance of educational requirements from decades past to determine if they are still appropriate.

**9. Consideration of Request to Accept a Period of Clinical Service Required By Business and Professions Code Section 2653(a)(3) of Less Than Full Time**

PTBC applicant Pretti Deshpande presented the board with her issue. An application for licensure was received from Ms. Deshpande, a foreign educated physical therapist that is licensed in another state but has no apparent clinical experience in the US. She requested that the Board accept a proposal allowing her to complete twenty clinical service hours a week.

Mr. Hartzell explained the history of the Licensing Committee and the establishment of the current clinical education standards to the Board.

The Board then discussed the importance of the nine months of clinical internship and expressed concern regarding Ms. Deshpande's intention of working only 20 hours a week.

Ms. Deshpande informed the Board that job priorities limit her to 20 hours a week during the school year; however, she would be willing to work 32 to 40 hours a week during the summer. She then advised the Board that she would complete an ethics course to waive three months of her clinical internship.

**MOTION: The board is willing to accept the applicant's proposal for the completion of 720 hours of clinical service within 9 months and the completion of an ethics course as satisfactory completion of the period of clinical service.**

**MOVER: Ms. Jewell**

**SECOND: Ms. Alviso**

**VOTE: 4-0 Passed unanimously**

**Recess until January 29<sup>th</sup>, 2010**

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**10. Federation of State Boards of Physical Therapy (FSBPT)**

(A) Continuing Competency Committee – Debra Alviso

Ms. Alviso informed the Board of upcoming teleconference meetings of the Federations Committee scheduled for the coming months. She then reminded Board Members that there is a trial version of Aptitude, an online tracking system, available for board members who are interested.

(B) Foreign Trained Standards Committee – Sara Takii

No Further Discussion

(C) Examination Oversight Committee – Steven K. Hartzell

Mr. Hartzell informed the Board that there is basic business occurring at the moment. He then advised the Board that meeting is planned for July where policy will be reviewed.

(D) Finance Committee – Debra Alviso

Ms. Alviso advised the Board that the Finance Committee submitted the budget to the Federation's Board of Directors in December. It was then approved by the Directors. She advised the Board to take note of the return of the funding for the administrator and member orientation in the new budget. She then advised the Board that copies of the budget could be obtained from Mr. Hartzell.

**11. Consumer and Professional Associations and Intergovernmental Relations Report**

– *Steven K. Hartzell*

(A) California Physical Therapy Association (CPTA)

Mr. Hartzell advised the Board that there was nothing specific to speak of at this time. He explained that the Board has several items involving the association coming up on legislation later in the meeting.

Stacy DeFoe presented an overview of several bills:

AB 721: the Consumer Direct Access Bill. The bill died in committee, though the association is still interested in the bill and will be re-introducing it on the senate side.

AB 1152: The bill put forward that physical therapists would be added to the list of who can be employed: a shareholder, director, or employee of a podiatric, medical, or chiropractic corporation. The bill died in the Senate committee, though reconsideration may be granted.

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Ms. DeFoe then advised the Board of the upcoming CPTA meeting in Oakland in October. She also announced Physical Therapy Legislation Day, taking place on March 17<sup>th</sup>. She invited the Board and staff to attend and offered an explanation of the days events.

Mr. James Dagostino, member of the Government Affairs Committee, inquired as to whether the Physical Therapy Board was planning on attending the Combined Sections Meeting taking place in San Diego in three weeks. Mr. Hartzell informed him that the Board would not be attending; however, Ms. Jewell assured him that several Board members would be attending, though not as Board members.

(B) FSBPT

No Further Discussion

**12. Assistive Personnel Issues**

(A) Physical Therapy Aide Supervision – Proposed Amendments to Section 1399 of the California Code of Regulations

Mr. Hartzell explained that agenda item 12(a) was included in the interest of public comment on the proposals that are being considered. Legal counsel advised the board that the changes proposed were the changes from the last task force meeting.

Ms. Jewell asked whether it was clear that the physical therapist was providing treatment and not just evaluation and monitoring in the last two lines of 1399.3(d). Mr. Hartzell explained that they could do either evaluation or direct treatment. Ms. Jewell asked for clarification as to whether an aide can provide total intervention for the day while billing for physical therapist services. Mr. Hartzell assured her that such an act would constitute billing fraud and that the physical therapist is not required by law to provide the treatment if they're doing evaluations.

Ms. Takii suggested adding a period after "condition" in the following line: "the physical therapist shall at some point during the treatment day provide direct services to the patient as treatment for the patient's condition or to further evaluate and monitor the patient's progress," adding after the period: "in addition, the physical therapist may further evaluate and monitor the patient's progress."

Mr. Hartzell advised Ms. Takii that the addition of the last sentence was not necessary after the proposed period after "condition".

Ms. Alviso expressed her desire to leave the regulation unchanged.

Nancy Krueger, speaking as a member of the public, advised the Board that she was in agreement with Ms. Alviso concerning placing a period after the word "condition" in section 3(d) of regulation 1399.

**MOTION: To direct staff to proceed with the rulemaking for the adoption of the regulation 1399.**

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**MOVER: Ms. Alviso**

**SECOND: Mr. Turner**

**VOTE: 3-1 Motion Passed**

(B) Physical Therapist Assistant Supervision – Proposed Amendments to Section 1398.44 of the California Code of Regulations

Mr. Hartzell advised the Board that the proposed amendments to section 1398.44 have been discussed at meetings and discussed by the task force and is ready for the Board to decide whether to proceed with rulemaking.

Ms. Alviso had a question regarding Section d(7) of the proposed draft language of regulation 1398.44. regarding whether a physical therapist assistant in a "management position" could be supervising a physical therapist. Mr. Hartzell explained that the physical therapy assistant would be supervising matters such as hiring and work hours, while they would not be allowed to supervise patient care.

**MOTION: Direct staff to proceed with the rulemaking procedures for regulation 1398.44.**

**MOVER: Ms. Alviso**

**SECOND: Mr. Turner**

**VOTE: 4-0 Motion Passed**

(C) Documentation Requirements – Proposed Amendments to 1398.37, 1398.52, 1399.10, 1399.12 and 1399.85 of the California Code of Regulations

Legal counsel advised the Board that Regulation 1398.12 is already in use and will be changed to 1398.13 before the final adoption.

Ms. Takii recommended a change to the language of section (d) of 1398.12. She suggested the phrase "The physical therapist shall ensure that subdivision (c) is complied with" be replaced with "The physical therapist shall ensure compliance with subdivision (c)."

**MOTION: Accept agenda item "12 (c)" as amended and staff be directed to proceed with the rulemaking process of the item.**

**MOVER: Ms. Jewell**

**SECOND: Ms. Alviso**

**VOTE: 4-0 Motion Passed**

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**13. Limitation of the Number of Physical Therapy Aides That May be Supervised At One Time by a Physical Therapist**

Mr. Hartzell advised the Board that any decision on this matter would require a statutory as well as a regulatory change.

Ms. Alviso informed the Board that she would be willing to prepare an issue paper on this matter if the discussion leads to that. The Board debated whether a number representing the maximum amount of aides a physical therapist can supervise belongs in statute or regulation. After some discussion the Board decided to further discuss the regulation regarding wellness before coming to a decision on limitations regarding the number of physical therapy aides a physical therapist can supervise at one time. The discussion was then deferred to item 14 of the agenda.

**14. Legislation Update – Steven K. Hartzell**

**(A) Department of Consumer Affairs Enforcement Legislation**

Mr. Hartzell gave the Board a detailed overview of the DCA Enforcement Legislation. He also reminded the Board that the legislation is only in draft form and had not been submitted at the time of the meeting. He then advised the board that the Consumer Protection Enforcement Initiative is available on the DCA website for further review.

**MOTION: To support the Department of Consumer Affairs legislative proposal to enhance the enforcement process.**

**MOVER: Mr. Turner**

**SECOND: Ms. Jewell**

**VOTE: 4-0 Motion Passed**

**Recess at 12:49PM. The Board reconvened at 2:07PM January 29<sup>th</sup>, 2010.**

**(B) Revision of Physical Therapy Practice Act**

Mr. Hartzell informed the Board that the agenda item reflects the changes made at the November 12, 2009 board meeting.

2630.4. (c) – Ms. Alviso requested a clarification as to the meaning of “normal exercise.” Mr. Hartzell explained that “normal exercise” would refer to non-restorative care.

2633. (e) – The Board discussed the language in section (e) concerning physical therapist assistants, their ability to bill for physical therapy services and their rights to advertise their services as “Physical Therapy.”

2648.3. – The Board decided to remove a comma from the last two sentences of section 2648.3

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2651. – Change “Accreditation Council of Canadian Physiotherapy” to “Accreditation Council of Canadian Physiotherapy Academic Programs.”

**MOTION: That staff continue to seek the inclusion of the changes in a bill.**

**MOVER: Ms. Jewell**

**SECOND: Mr. Turner**

**VOTE: 4-0 Motion Passed**

(C) California State University Authority for Issuance of the DPT

Mr. Hartzell informed the Board that the state university system is currently not authorized to issue a Doctorate degree. Though there were meetings regarding creating a bill to grant the CSU authority to issue the DPT, the Chancellor’s office of the CSU system advised a potential author that they would not support the bill as they are focusing on a nursing bill at the moment.

Ms. Stacy DeFoe informed the Board that a state assembly member representing the district of CSU Northridge has expressed interest in carrying the bill with or without the support of the Chancellor’s office. She then informed the Board about a meeting between physical therapists and personnel from the CSU system to speak about the bill.

(D) AB 721 Physical Therapist Scope of Practice

The Board decided the matter was discussed and warranted no further discussion.

(E) Department of Consumer Affairs Omnibus Bills

The PTBC has been asked to be included in this bill though no specifics are available at this time.

(F) Senate and Assembly Business & Professions Committee Bills Impacting of the Regulation of the Physical Therapy Profession

Mr. Hartzell informed the Board that the DCA Enforcement bill will be a topic of the committee along with another bill that focuses on the non-health boards.

(G) DCA’s Bill to Implement Diversion Standardized Guidelines

Mr. Hartzell informed the Board that there will be a bill and a need for statutory changes to totally implement the diversion guidelines.

**MOTION: To support DCA in a bill to fully implement the uniform standards regarding substance abuse in healing arts and licensees.**

**MOVER: Mr. Turner**

**SECOND: Ms. Alviso**

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**VOTE: 4-0 Motion Passed**

**15. Physical Therapist Workforce Shortages**

Ms. Takii informed the Board that the APTA is worried about the work force in general. It was proposed that the individual states attempt to gather information about currently practicing therapists and analyze the statistics to find out how many people are retiring vs. those who are coming into the field from school. Ms. Takii recommended a survey be sent with license renewals to gather more information on the matter. Ms. Takii then informed the Board that there are at least 4 people working on it, but doesn't know about the number of states involved. She stated that there would need to be a compatible questionnaire created to be easily implemented with whatever data they already have.

Mr. Hartzell expressed concern over the monetary costs of such a questionnaire and recommended a flier instead.

Ms. Alviso asked if such a thing could be sent out with the PTBC Newsletter while the rest of the Board decided it would warrant further discussion.

**16. Draft Regulations Prepared By Legal Counsel Regarding Wellness (As Defined in Business & Professions Code Section 2620)**

The Board discussed the draft regulations prepared by legal counsel regarding the definition of "wellness". Questions were raised regarding the interpretation of the term and whether or not it can be considered physical therapy while others agreed that there would need to be clarification regarding the role of a patient versus a client.

Ms. Krueger advised the Board that people setting up wellness clinics are searching for guidance. She recalled an inquiry she received from a physical therapist teaching body mechanics class to senior citizens about whether she would need releases for her services.

Ms. Jewell stated she would like wellness to be something that would be uniquely identifiable because the wide range of perspectives is a big issue in the matter.

Ms. Takii then asked if there was a way to discuss this issue without making a task force. Steve recommended suspending the upcoming task force meeting until more information is obtained on the matter.

**MOTION: To disband the taskforce.**

**MOVER: Ms. Jewell**

**SECOND: Mr. Turner**

**VOTE: 4-0 Motion Passed**

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**17. Request for Rulemaking by CPTA Regarding Definition of Passive Exercise**

Cheryl Resnik PT, President of the CPTA, appeared before the Board to request that the PTBC consider the creation of a regulation through the rulemaking process that would define the term "passive exercise." She explained the request is based on the belief that a more detailed definition of "passive exercise" and what the public should expect when being provided care by a physical therapist is needed.

The Board then directed staff to develop an Initial Statement of Reasons in draft form to be brought to the next board meeting for review

**18. Update on Veterinary Medical Board's Position on Physical Therapists Providing Services to Animals**

Mr. Hartzell advised the Board that the Veterinary Medical Board has decided to move forward on rulemaking defining animal physical therapy and the role of other people in that. He then explained that no language was available yet and would be distributed when it is made available.

**19. Strategic Plan Priorities**

The Board agreed that this item of the agenda cannot be discussed fully due to time constraints and multiple upcoming events that will significantly affect the Board priorities. The Board agreed that the best time to revisit the issue would be the November meeting.

**20. Department of Consumer Affairs New Performance Measurement System**

Mr. Hartzell advised the Board that documents concerning this agenda item will be made public as they become available.

**21. Adoption of Department of Consumer Affairs Uniform Standards Regarding Substance- Abusing Healing Arts Licensees**

Mr. Hartzell informed the board that extensive discussion occurred during the formation of the standards prior to adoption. He advised the Board that the standards would be utilized by the boards since there was no statutory choice. He then advised the Board that legal counsel is reviewing the standards to determine if additional statutory changes will be required.

**MOTION: Direct staff to determine what statutory and regulatory changes need to be made in order to make the Board in compliance with the documentation and to proceed with regulatory changes.**

**MOVER: Ms. Jewell**

**SECOND: Mr. Turner**

**VOTE: 4-0 Motion Passed**

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Recess at 12:47PM January 28<sup>th</sup>, 2010. The Board reconvened at 2:19PM.

**22. Re-Fingerprinting of Existing Licensees**

Mr. Hartzell advised the Board that the Nursing Board had come under scrutiny a year ago for their lack of consistent fingerprinting of their licensees. He then explained that the PTBC has been fingerprinting with the Department of Justice since it began and implemented FBI fingerprinting in the 1990's. Though recent comparisons of the Board database imply that there are missing licensees. Based on the reports, Mr. Hartzell suggested that the Board would need to re-fingerprint a number of licensees.

**MOTION: To proceed with rulemaking to develop a regulation that would authorize the board to require licensees to submit new fingerprints as the board determines is necessary.**

**MOVER: Ms. Jewell**

**SECOND: Mr. Turner**

**VOTE: 4-0 Motion Passed**

**23. Rulemaking – Rebecca Marco**  
(A) 2010 Rulemaking Calendar

Mr. Hartzell informed the Board members of recent additions to the rulemaking calendar.

**MOTION: To adopt the rulemaking calendar including changes made at the current board meeting.**

**MOVER: Ms. Alviso**

**SECOND: Ms. Jewell**

**VOTE: 4-0 Motion Passed**

**24. Scope of Delegated Authority to Executive Officer**

Mr. Hartzell gave the Board an overview of the delegations available to him as an Executive Officer.

Ms. Takii asked for a list of delegations that could be made available to the Board members for reference and Mr. Hartzell agreed, though he advised her that a full list may not be available.

**25. Public Comment on Items not on the Agenda**

No Public Comment

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**26. Agenda Items for Next Meeting – May 12 & 13, 2010 – Loma Linda, California**

- Wellness
- Passive Exercise
- List of Delegation of Authority for Executive Officer
- Changes to Disciplinary Guidelines focused on Substance Abuse Guidelines and Continuing Competency.
- Proper use of DPT as a Designation of one's Degree.

**27. Adjournment**

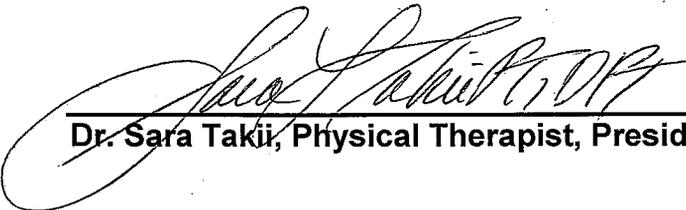
**Meeting Adjourned at 4:59PM January 29, 2010**

**MOTION:** To adopt the draft minutes from the January 28 & 29, 2010 meeting as amended.

**MOVED:** Ms. Jewell, PT, Ph.D.

**SECOND:** Dr. Alviso, Physical Therapist

**VOTE:** 5-0 Motion carried

  
\_\_\_\_\_  
**Dr. Sara Takii, Physical Therapist, President**

12-10-10  
\_\_\_\_\_  
**Date**