



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY – ARNOLD SCHWARZENEGGER GOVERNOR

Physical Therapy Board of California

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PHYSICAL THERAPY BOARD OF CALIFORNIA APPROVED MEETING MINUTES

Wednesday, July 28, 2010 8:00 a.m.

**Department of Health Services
1500 Capitol Avenue
East End Complex, Hearing Room 72.167
Sacramento, CA 95814
(916) 445-3700**

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

Dr. Sara Takii, Physical Therapist, President
Dr. Debra Alviso, Physical Therapist, Vice President
Ms. Marty Jewell, PT, Ph.D.
Mr. James Turner
Ms. Karen B. Pines, LMFT

The Physical Therapy Board of California (Board) July 2010 meeting was called to order by Dr. Takii, Physical Therapist at 8:10 a.m. Though Ms. Pines, LMFT was absent, a quorum was established. Ms. Pines, LMFT arrived at 8:19 a.m.

1. Introduction of New Board Member, Karen B. Pines – Dr. Sara Takii, Physical Therapist

Dr. Takii, Physical Therapist introduced Ms. Pines, LMFT and welcomed her to the Board.

2. BreEZE Presentation – Debbie Balaam, DCA Acting Chief Information Officer

Debbie Balaam and Brandon Rutschmann presented BreEZe. BreeEZe is a new computer system that will replace three of DCA's current computer systems: CAS, ATS and, iLicensing. CAS and ATS are both based on technology from the 1980s and iLicensing was never implemented. There are two principle initiatives BreEZe will meet which are job creation, helping applicants receive licenses faster and licensees receive license renewals faster, and to be in keeping with the Consumer Protection Enforcement Initiative (CPEI) to improve consumer protection. BreEZe will serve both DCA staff and customers. DCA staff will benefit from BreEZE through pre-screened applications, automated routing and having central access to complaints. DCA customers will benefit from web-based access which will provide a single portal to access, if applicable, multiple licenses held within any DCA agency. The budget for

BreEZe has been approved for the next five years. It is estimated to cost approximately \$25 million. Each DCA agency will be paying a portion of the cost to implement and maintain BreEZe. The cost will be incurred on a per transaction basis which, for the Board, is approximately \$3 per transaction for the first 5 years to cover the initial implementation, then \$.30-\$.50 per transaction after that for system maintenance. The overall estimated cost to the Board for BreEZE is \$40,000 per year for the vender and \$20-30,000 per year for the OTEC, the State data center, to house the equipment.

BreEZE is on target to meet the set project deadlines. Vendors are submitting their proposals to pre-qualify for the project. It is estimated the BreEZe team will meet with the vendors August 2010 through November 2010. After the vendors have a specific idea of DCA's needs, they must submit new proposals, which are due December 2010. Two to three months are being allotted for Legislature approval and the BreEZe team is hoping the vendors can begin building the system July 2011. The first phase of implementation will be in 2012; the Board is in the first group to implement BreEZe.

3. Special Order of Business – Wednesday, July 28, 2010, 9:00 a.m.

Hearing on Petition for Termination of Probation – Mimi Saadat, PT

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

Disciplinary decisions are available on the Board's website at www.ptbc.ca.gov

4. 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.ptbc.ca.gov.

5. Approval of Minutes

(A) May 12 & 13, 2010 Board Meeting Minutes

Corrections were made to the minutes as follows:

Dr. Takii, Physical Therapist noted she is on the Federation of State Boards of Physical Therapy (FSBPT), Foreign Education Standards Committee (FESC), not Dr. Alviso, Physical Therapist as stated in the minutes. Claire Yazigi, Legal Counsel, noted a quotation needs to be added in front of "Client" on page 12, line 542. Mr. Steven K. Hartzell, Board Executive Officer suggested removing the following sentence on page 12, lines 543-545:

"These terms are too closely related to Wellness, which has not yet been defined within the physical therapy scope of practice."

MOTION: To adopt the draft minutes from the May 12 & 13, 2010 meeting with recommended corrections.

MOVED: Dr. Alviso, Physical Therapist

SECOND: Mr. Turner

ABSTAINED: Ms. Pines, LMFT

VOTE: 4-0 Motion carried

6. President's Report – Dr. Sara Takii, Physical Therapist

(A) Update

Dr. Takii, Physical Therapist discussed the Board's positive experience at the DCA Board Member Training. DCA encouraged all boards to have regular communication and one way this will be achieved is through monthly teleconferences including all board presidents.

(B) 2010/2011 PTBC Meeting Dates

Due to budget restraints, Mr. Hartzell proposed changing the November Board meeting location from Oakland to Sacramento. In addition, if the meeting location is changed, the dates would also have to be changed based on the availability of a meeting space. The Board is legally obligated to hold a meeting in Los Angeles, San Francisco and Sacramento each year; however, given the current fiscal circumstances Mr. Hartzell recommended changing the November Board meeting location to Sacramento and changing the date to November 2-3, 2010. The Board was informed of the proposed meeting locations and dates for 2011.

Motion: To change the November Board meeting location to Sacramento and change the date to November 2-3, 2010.

Motion: Ms. Pines, LMFT

Second: Mr. Turner

Vote: 5-0 Motion carried

Mr. Hartzell informed the Board that Governor Schwarzenegger issued an Executive Order to begin furloughs again on the second, third and fourth Friday of each month beginning August 2010. Therefore, all proposed meeting dates for 2011 on a Friday must be changed to Thursday. Lastly, it was determined the Board could discuss strategic planning when all Board vacancies have been filled.

7. Executive Officer's Report – Steven K. Hartzell

DCA recommended all boards create an Executive Committee to encourage board member participation. Mr. Hartzell explained the president and vice president act as an Executive Committee for the Board; however, if the Board wishes to implement an Executive Committee they may do so. Ms. Yazigi said all meetings, including Executive Committee meetings are subject to Notice requirements and the Bagley Keene Open Meeting Act.

Ms. Jewell, PT, Ph.D. expressed concern regarding receiving adequate information in a timely manner. Mr. Hartzell agreed Board staff can provide information to members as it is received by staff. Ms. Pines, LMFT suggested the Board use laptops at the meeting so Board members can have access to the most current information. In addition, Ms.

Pines, LMFT wanted to clarify if it is a violation to ask questions to the public via the web-site to stimulate discussion and get public feedback. Ms. Yazigi responded that would be a violation of the Bagley-Keene Open Meeting Act.

8. Consumer Protection Services Enforcement Report – Elsa Ybarra

Ms. Ybarra informed the Board staff is continuing to work towards meeting the 18 month timeline set by DCA to resolve discipline. There was question regarding the inconsistent numbers reflected on the Monthly Enforcement Report to DCA. Mr. Hartzell informed the Board the antiquated system that generates the reports is not consistent and does not provide exact data; however, the data does provide a good overall look at what is happening in Consumer Protection Services (CPS). Dr. Alviso, Physical Therapist asked what prompts a citation being issued for an address change. Ms. Ybarra responded the returned mail cases are based on returned mail received by the Board and address changes received over 30 days after a licensee has moved. The Board asked staff to number each chart in the enforcement reports for ease of reading.

9. Application and Licensing Services Report – Ilda Romo

The Board members indicated they had no questions regarding the Application and Licensing Services Report that was not elsewhere on the agenda. Ms. Romo stated she will number the charts on the Application and Licensing Services Report.

10. Consumer and Professional Associations and Intergovernmental Relations Report – Steven K. Hartzell

(A) California Physical Therapy Association (CPTA)

Representatives from the CPTA indicated they had nothing to report or discuss that is not elsewhere on the agenda.

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

Topics regarding the FSBPT were addressed elsewhere on the agenda.

(C) DCA Director's Report – Brian Stiger

Brian Stiger thanked the Board for their participation in the DCA Board Member Training. Mr. Stiger also thanked Mr. Hartzell for all his contributions to the improvements DCA is implementing. The Budget Change Proposal (BCP) has been approved for the CPEI, which will bring 140 positions to the various boards and bureaus; the Board is getting five of those positions. DCA is encouraging the Board to begin filling those positions despite California not having a budget at this time. DCA began obtaining data on the eight performance measures which were established in the CPEI; the measures will be posted to the Board's website in October. Mr. Stiger thanked the Board for including enforcement statistics in the agenda book, one of the many good practices the Board currently employs; this is a good reflection of the Board and Mr. Hartzell. In the spring, the first phase of the licensing reform began by DCA requesting that licensing staff work to eliminate any backlog of licensing applications, even if it required working overtime. The next phase of the process has started, which is collecting statistics from the boards on the progress made. In the future, DCA will be

looking at obtaining additional resources to improve licensing processing procedures, BreZE being one of those resources.

DCA continues to encourage the implementation of internal policies based on the 16 standards that stemmed from SB 1441. DCA also encourages all boards to post their agenda items on-line and webcast their meetings. Mr. Stiger informed the Board within 3 years 8 million more Californians will be entering the healthcare system, and enforcement units will be impacted by this, so DCA is starting to look at predictions on how the enforcement units will be impacted for future planning. Dr. Takii, Physical Therapist asked that DCA have a calendar of all board meetings readily available so Board members may attend other meetings, and to make it possible for the Board to coordinate its meeting with other boards. Mr. Stiger responded DCA is looking at, for the future, having a website with this information. Ms. Jewell, PT, Ph.D. asked Mr. Stiger about the managing of special funds and when these funds will be returned to the Board. Mr. Stiger said he did not have that information, but can find out and provide the Board with an update. Mr. Hartzell advised the Board to refer to the CALSTARS report for that information should be included.

11. Legislation Update – Sarah Conley

(B) AB 1647

Mr. Hartzell expressed concern about the bill allowing certified athletic trainers to practice healthcare, but has not seen any specific language added to address the concerns. The bill has been amended to limit the title protection to “certified athletic trainer.”

(E) AB 2382

Stacy DeFoe, California Physical Therapy Association (CPTA) Executive Director explained the CPTA has been working to show the Senate Appropriations Committee there is no financial ramification to the State, so the CPTA hopes the bill will pass. The amendments made to the bill were minor and included language in respect to the intent of the bill requested by the University of California.

12. Draft Regulatory Language for Board Consideration and Possible Action for the Following Section of Division 13.2 of Title 16 of the California Code of Regulations (Physical Therapy Board of California) – Rebecca Marco

(A) Components of SB 1111 (Consumer Protection Initiative) that may be adopted through regulation

Ms. Yazigi provided background for the regulations based on components of SB 1111. SB 1111 did not pass out of the Senate Business, Professions and Economic Development Committee; however, DCA is requesting each board examine the components to determine what can be put into regulation. Ms. Yazigi advised the Board they had previously seen the language for these regulations, but there have been a few changes and some clarification.

Since the regulation language based on the components of SB 1111 was fairly involved, the Board broke the draft into four sections, as it was presented in the draft.

1. 1398.4 Delegation of Functions.

Ms. Yazigi addressed the questions regarding agency vs. agency itself. Ms. Yazigi referred to an Office of Attorney General opinion dated November 6, 2007 which explained the Board may delegate items that do not require special judgment or discretion conferred upon the Board by statute. The Executive Officer is authorized to investigate claims, prepare preliminary reports, hold hearings, make recommended findings and recommend the Board bring action because these are preliminary responsibilities.

MOTION: To adopt 1398.4 with addition of default decisions as directed by legal counsel.

MOTION: Ms. Jewell, PT, Ph.D.

SECOND: Dr. Alviso, Physical Therapist

Vote: 5-0 Motion carried

2. 1399.15 Model Guidelines for Issuing Citations and Imposing Discipline.

Ms. Yazigi suggested, for clarity, to change the language regarding a licensee's committing of a sexual offense. Ms. DeFoe asked for clarification of the term "finding." Ms. Yazigi explained the term "finding" is being used as defined for legal purposes, meaning adjudicated information, factual findings.

Mr. Hartzell pointed out the reference to the Model Guidelines for Issuing Citation and Imposing Discipline (Guidelines), revised May 13, 2005 is incorrect; there is a more current version of the Guidelines.

MOTION: To adopt 1399.15 with changes legal counsel suggested and check Guidelines revision date.

MOTION: Ms. Jewell, PT, Ph.D.

SECOND: Mr. Turner

VOTE: Motion withdrawn

Mr. Hartzell asked the Board members if they are clear the proposed language for 1399.5 would include all that is listed in the Penal Code as referenced in the Education Code. Ms. Yazigi noted the Board does not need to refer to the Education Code, but could define sexual misconduct itself. Mr. Hartzell recommended waiting for clarification of the proposed language before taking action.

Due to additional consideration, and the recommendation provided by Mr. Hartzell, Ms. Jewell, PT, Ph.D. withdrew the motion to adopt 1399.15 and Mr. Turner withdrew the second to that motion.

Ms. Yazigi explained if a licensee committed any of the acts included in the section of the Penal Code referenced in the Education code, the proposed decision would automatically be revocation; however, the Board can choose to not adopt the decision. Further discussion lead the Board to determine more time is needed before a decision is made on proposed language for 1399.15. Kim Kirchmeyer, DCA Deputy Director for Board and Bureau Relations, supported the Board's decision.

3. 1399.23 Required Actions Against Registered Sex Offenders.

Ms. Yazigi clarified the proposed language that will be added as 1399.23 includes revocation only when a licensee is required to register as a sex offender after initial licensure. However, Ms. Yazigi pointed out the Board may exercise its own discretion to discipline a licensee required to register as a sex offender under Penal Code 314. Mr. Hartzell expressed concern that though the Board should, if error, error on the side of consumer protection, the way the proposed language is currently written, the licensee's right to due process would be eliminated. In addition, Mr. Hartzell questioned the legality of implementing this against existing licensees through regulation. Ms. Yazigi responded the Board may not be able to implement this in regulation, but that would be determined at the Office of Administrative Law (OAL). There are legal concerns regarding a regulation such as this; however, there currently is a similar provision in statute for physical therapist and physical therapist assistant applicants. Essentially this new regulation would make the same apply to licensees as well.

Ms. Kirchmeyer stated DCA holds the position if an individual is registered as a sex offender, he/she should not be licensed, with the exception of what is included in proposed language for Section 1399.23 (b) (2).

Ms. Yazigi wanted to clarify the proposed language does not allow for Board discretion. Mr. Hartzell suggested, to be consistent with the existing standard, changing "shall" to "may" under 1399.23 (a).

MOTION: To adopt 1399.23 with the following revisions: section 1399.23 (a), changing "shall" to "may" and eliminating "shall" under section (a) (2).

MOTION: Ms. Pines, LMFT

SECOND: Mr. Turner

VOTE: 5-0 Motion carried

4. 1399.24 Unprofessional Conduct.

Ms. Yazigi explained the proposed language for 1399.24 had few changes since last presented.

MOTION: To accept 1399.24 as written.

MOTION: Dr. Takii, Physical Therapist

Ms. Yazigi believed too much was deleted and recommended leaving in "old" (c), still deleting (d), and arranging the subsections accordingly to be in alphabetical order.

Based on Ms. Yazigi's recommendations, Dr. Takii, Physical Therapist withdrew her motion.

MOTION: To re-insert draft language originally lettered as (c), and letter the subsections accordingly

MOTION: Dr. Takii, Physical Therapist

SECOND: Mr. Turner

VOTE: 5-0 Motion carried

(B) Comments received on Modified Text to Section 1398.44, Adequate Supervision Defined

Minutes on agenda items 12(B) and 12(C) have been combined; see item 12(C).

(C) Comment received on Modified Text to Section 1399, Requirements for Use of Aides

Rebecca Marco, Assistant Executive Officer explained the comments on 1398.44 and 1399 should have been limited to modified text, but the two comments received were on the proposed text. The Board does not need to consider the comments because they were already addressed at the May 2010 Board meeting. In addition, the comment received from Patricia Blaisdell with the California Hospital Association included concerns regarding aides and being in the same facility and in close proximity; this issue is addressed in statute, so it cannot be changed.

MOTION: To direct staff to proceed

MOTION: Ms. Jewell, PT, Ph.D.

SECOND: Mr. Turner

VOTE: 5-0 Motion carried

(D) Update on Rulemaking Calendar

Ms. Marco clarified the rulemaking items specified on the calendar to be heard at the November 2010 Board meeting are for Board consideration, not for public hearing. There may, however, also be rulemaking items at the November 2010 Board meeting for public hearing.

13. Discuss and/or Action on Request for Board to Consider Physical Therapists Providing Advice Regarding Medication – Steven K. Hartzell

The Board received a letter from Mary Aloe, Area Rehab Director, Gentiva Health Services requesting an updated opinion on physical therapists' scope of practice

regarding medication. In addition, the Ms. Aloe asked for clarification from the Board regarding physical therapists' ability to review a patient's medication list.

Mr. Hartzell recommended discussing whether or not physical therapists can suggest or prescribe over-the-counter medications. The basic philosophy is physical therapists cannot; however, Mr. Hartzell requested a basis for the philosophy. It was suggested all issues be discussed at the November 2010 Board meeting after further research.

Ms. Jewell, PT, Ph.D. proposed the Board assist staff with determining what information needs to be gathered to address this issue properly. Mr. Hartzell welcomed the Board to provide any input they deemed relevant, which staff would greatly appreciate.

14. Scope of Practice for Electromyography

Ms. Yazigi introduced Laura Freedman Eidson, previous Board legal counsel. Ms. Freedman Eidson attended to discuss her legal opinion for the Board regarding the scope of practice for physical therapists certified in electroneuromyography.

The legal opinion Ms. Freedman Eidson provided the Board was a confidential opinion from attorney to client, which could be made public if the Board voted to do so.

MOTION: To waive the attorney- client privilege of the opinion written by Ms. Freedman Eidson.

MOTION: Mr. Turner

SECOND: Ms. Jewell, PT, Ph.D.

MOTION: 5-0 Motion carried

Ms. Freedman Eidson explained she has provided the Board a legal opinion stating what physical therapists certified in electroneuromyography are currently doing is appropriate under the laws authorizing them to do so. The conclusion of Ms. Freedman Eidson's opinion is that physical therapists certified in electroneuromyography get to use professional judgment in evaluating the neuromuscular performance of a patient and can issue conclusions about the performance to the referring physician. It does not authorize diagnosis or prognosis which is specifically exempted from the law. Based on the level of detail in Board law, the specific authorization to conduct evaluations and the large of amount of detail in Board regulation that address the skill and knowledge level for electroneuromyography certification, physical therapists with such certification are thoroughly prepared to issue opinions regarding the performance of the nerves and muscles. The primary focus of the opinion is that physical therapists certified in electroneuromyography are able to analyze and interpret data and develop findings and conclusions regarding the functioning of the nerves and muscles.

Dr. Takii, Physical Therapist shared that this issue arose when insurance carriers refused to pay physical therapists certified in electroneuromyography, reasoning that what the physical therapists were doing was not within their scope of practice, even though they have been doing it for decades. Ms. Freedman Eidson concurred and added there was also information on a third party web-site which stated the Board

issued a statement saying physical therapists certified in electroneuromyography could conduct tests, but not read the performance results.

Ms. Freedman Eidson explained the Board should address the mis-statement on the third party web-site by writing a letter to the host of the web-site providing the correct information and position taken by the Board. Another aspect of the issue is reimbursement, which is not within the Board's jurisdiction; however, the scope of practice of a physical therapist certified in electroneuromyography is.

Dr. Alviso, Physical Therapist expressed concern about the term "evaluation" being separated from physical therapy and asked for clarification because in reading the opinion, it seemed that only physical therapists certified in electroneuromyography could perform evaluations at this level. Ms. Freedman responded the term "evaluation" appears in both general authority for scope of practice and specific authority for physical therapist certified in electroneuromyography. Under Business and Professions Code Section 2620.5, the big exception is that physical therapists certified in electroneuromyography can penetrate the skin, which requires specific statutory authority.

Ms. Jewell, PT, Ph.D. suggested this opinion be added to the Board's website.

Darin White, Physical Therapist with a certification in electroneuromyography thanked the Board for addressing this issue. Medicare took it upon themselves to deem what physical therapists certified in electroneuromyography were doing was not within their scope of practice. In addition, what Medicare does, other companies tend to follow, so he appreciates the Board's help in getting things corrected.

Ms. Freedman Eidson explained the legal opinion she provided was reviewed by the Medical Board of California's attorney to add an additional level of support. In addition, this legal opinion states the position of the Board on this issue. It does not need to be adopted by a regulation because it is an interpretation of the Board's present laws.

Ms. Jewell, PT, Ph.D. asked if the opinion would have greater strength if it was either adopted or confirmed as supported by or concurrent with the Board. Ms. Freedman Eidson responded the Board may motion to affirm the opinion if they would like.

MOTION: To endorse and adopt Ms. Freedman Eidson's legal opinion regarding scope of practice of physical therapists certified in electroneuromyography as the position of the Board.

MOTION: Ms. Jewell, PT, Ph.D.

SECOND: Dr. Alviso, Physical Therapist

VOTE: 5-0 Motion carried

15. Actions by the Federation of State Boards of Physical Therapy (FSBPT) to Suspend Testing for NPTE Candidates from Specific Countries

Mr. Hartzell explained approximately one week ago the FSBPT released a press release and held a webinar regarding suspending testing. The FSBPT suspended testing of graduates from the following four countries: Philippines, Egypt, Pakistan and

India. The FSBPT has been monitoring an issue known as question recall since 2002. Question recall involves individuals who have memorized questions from the exam, and then posts them to the internet. In 2002, when the issue became a wide spread practice, approximately 100 questions were identified to be on the exam which were posted to the internet.

The FSBPT has been addressing this issue since then and in 2006 became aware of an examination preparation service in the Philippines that held approximately 150 test questions in their possession. After 2006, the FSBPT began working with Caveon, a test-security firm. Caveon analyzes every physical therapy exam taken and, based on the analysis, reaches an opinion on each score as to whether or not an individual had an unfair advantage. If the scores were invalidated, the individuals had the opportunity to retest. Recently, the problem has grown and there are more than 350 jeopardized test questions.

Originally when the exam went to computer based testing, there were three forms of the examination available on any given day, through 2006. There were concerns regarding having so few versions of the examination, so the FSBPT now has added additional versions, but will not release the exact number for security purposes.

The Office of Professional Examination Services (OPES), with DCA addressed exam security and test validity. Amy Welch Gandy, Test Development Consultant Supervisor and Sonja Merold, Chief of OPES represented OPES. Ms. Merold explained OPES is an office within DCA and reports to DCA executive management. OPES stated the physical therapy exam is the first step in consumer protection because by passing the exam an individual has met the minimal acceptable competent standards to practice safely and independently.

OPES develops a range of exams, conducts occupational analysis and does exam audit work for fourteen boards, five bureaus and three committees. Though many services are provided by OPES, they were asked to attend the meeting to share similar situations and experiences like the Board is experiencing with the FSBPT. Ms. Merold presented an example of exam questions being posted to the internet. The first response from OPES was to completely stop the examinations and begin an immediate investigation.

Ms. Welch Gandy and staff at OPES reviewed the information on the testing issue with FSBPT provided by Mr. Hartzell and the FSBPT. OPES believes suspending testing of graduates in just the four countries is too narrow; if test questions have been exposed, testing should be suspended for all candidates. OPES recommends the FSBPT suspend testing for all candidates and provides a new exam in an abbreviated amount of time, not the twelve months the FSBPT is currently stating. In addition, OPES supports Mr. Hartzell in the recommendation to audit the FSBPT.

Dr. Alviso, Physical Therapist inquired about the length of time it would take to conduct an audit on the FSBPT. Ms. Merold said it would take approximately one year based on staffing and workload. Ms. Welch Gandy added OPES would request information from the FSBPT so the timeframe would also depend on how responsive the FSBPT is to their requests. Mr. Hartzell has already requested some information from the FSBPT verbally, and will be following that up in writing.

Ms. Pines, LMFT expressed concern that it seems graduates of the four countries suspended from testing are being used as scapegoats for a system that does not work. Ms. Welch Gandy responded the FSBPT hired Caveon to analyze the exams. Caveon found a significant number of candidates from these four countries which showed irregularities in the results. The analysis was performed on all candidates' examinations. Mr. Hartzell added though the FSBPT has an internal basis for suspending testing from the graduates of the four specified countries, the Board does not have this same evidence.

Ms. Jewell, PT, Ph.D. wanted to clarify the expectation and need of OPES presenting. Mr. Hartzell explained he is recommending to the Board that OPES conduct an audit of the FSBPT. Mr. Hartzell has already requested this be done because he feels it is necessary; however, he asks the Board directly make a motion to address the actions of the FSBPT. Ms. Jewell, PT, Ph.D. inquired about the position other states are taking regarding this issue. Mr. Hartzell shared he had met with another state who wrote a letter of concern to the FSBPT, but beyond that did not want to take a leadership role with this issue; the states are waiting for another state, such as California, to take the lead.

Dr. Takii, Physical Therapist asked for the cost of having OPES audit the FSBPT. Mr. Hartzell said the financial negotiations are still in progress.

Ms. Yazigi addressed some of the issues with the approach the FSBPT took with suspending testing. There are two parallel main concerns happening at the same time. The over-arching concern is if an exam is compromised, it is compromised due to all the access to information available, so the issue cannot be separated by specific locations. This lies within the ability to maintain testing security and how that should be done, which is an issue of consumer protection. The Board must determine if the test is adequately testing the skills and knowledge of the candidate if it is compromised in any way by any individual. The second concern is discrimination and the liability that opens the Board up to. California is very specific in that there shall be no discrimination based on race or ethnicity. Though the argument may be made that FSBPT is not discriminating based on race or ethnicity because the testing suspension is based on the schools the candidates attended, the practical viewpoint to look at is the population of candidates who attend the schools from the four specified countries. This can be found to be contradictory to California's Constitution and, by extension, the Board.

Brian Hudson with the American Association of International Healthcare Recruitment (AAIHR) expressed concern regarding cutting off the supply of physical therapists with an ever growing demand from the public and provided an example, First Kindred who has over 600 openings for physical therapists. Mr. Hudson said one of the reasons he attended the meeting was because many states will look to California for what to do about this issue. Lastly, Mr. Hudson shared the three main issues he saw: the FSBPT did not consult with the Board prior to taking action, the Board is open to risk for they are the licensing authority and the FSBPT did not explore other options available to them.

Mr. Hartzell closed with the recommendation the Board needs to notify the FSBPT explaining the Board is not accepting the actions taken thus far, ask for reversal of their decision and request the evidence justifying their actions. In addition, Mr. Hartzell recommends the Board direct staff to look into legal action and meet with the Deputy Attorney General (DAG) liaison to determine what the options are. Also, it is suggested

the Board direct the delegate for the FSBPT meeting, legal counsel and Mr. Hartzell to come up with some motions for consideration by the FSBPT.

After much Board discussion, Dr. Takii, Physical Therapist clarified what should be included in the letter to the FSBPT. The letter will state the Board is requesting the FSBPT take a stand on the discrimination issue by either opening the test for all candidates, or suspending it for all candidates and include the audit notice. Mr. Hartzell added he will send a second letter to the FSBPT that will include a request the FSBPT provide the evidence which has lead to the actions taken and information regarding the possible breach of contract.

MOTION: To write the FBSPT the first and second letter, as discussed, and give Dr. Takii, Physical Therapist authority to approve both letters

MOTION: Ms. Pines, LMFT

SECOND: Ms. Jewell, PT, Ph.D.

ABSENT: Mr. Turner

VOTE: 4-0 Motion carried

16. Public Comment on Items not on the Agenda

There were no additional public comments.

17. Agenda Items for Next Meeting – Tuesday and Wednesday, November 2-3, 2010 – Sacramento, CA

- Wellness – Appointment of a Task Force
- Use of the Title Doctor of Physical Therapy
- Probation Process and Expectations – Presentation by Probation Monitor
- Physical Therapists Role Regarding Providing Medication Advice
- Rulemaking

18. Adjournment

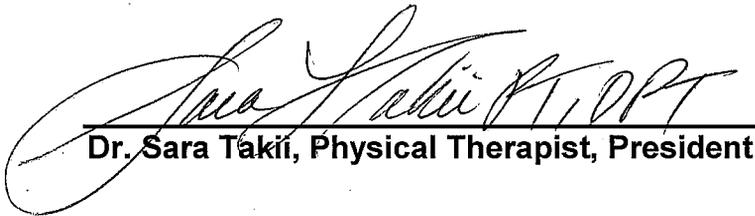
The meeting was adjourned at 6:10 p.m., July 28, 2010.

MOTION: To adopt the draft minutes from the July 28, 2010 meeting as amended.

MOVED: Mr. Turner

SECOND: Dr. Alviso, Physical Therapist

VOTE: 5-0 Motion carried


Dr. Sara Takii, Physical Therapist, President

12-18-10
Date