



PHYSICAL THERAPY BOARD OF CALIFORNIA

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BOARD MEETING MINUTES

May 12 & 13, 2005

Hilton Burbank Airport & Convention Center
 2500 Hollywood Way
 Burbank CA 91505

<i>Thursday, May 12, 2005</i>	9:00 A.M.	- Board Meeting
	9:30 A.M.	- Regulatory Hearing
<i>Friday, May 13, 2005</i>	8:30 A.M.	- Board Meeting

Thursday May 12, 2005 9:00 A.M.

1. Call To Order and Roll Call

President Chu called the meeting of the Physical Therapy Board of California to order at 9:00 a.m. Roll call was taken.

Donald Chu, PhD, PT – President
 Lorraine Kimura, PT - Vice-President
 James Turner
 Ellen Wilson, PT
 Julie Brandt
 Randi Woodrow, PT

All members present with the exception of Julie Brandt.

President Chu welcomed and introduced Anita Scuri as the Board's interim legal counsel. Ms. Scuri provided a brief description of the other boards she counsels and her experience.

2. Approval of Minutes

(A) January 27 & 28, 2005 – Board Meeting

Moved by James Turner, Seconded by Randi Woodrow to approve the January 27 & 28, 2005 Board meeting minutes as written. Vote: 5-0. Motion carried.

(B) March 21 & 22, 2005- Strategic Planning Meeting

Moved by Lorraine Kimura, Seconded by Ellen Wilson to approve the March 21 & 22, 2005 Strategic Planning minutes as written. Vote: 5-0. Motion carried.

3. President's Report – Donald Chu, PhD, PT

(A) Update

President Chu reported that unless Randi Woodrow and James Turner's were reappointed this would be their last Board meeting since their term expires June 1, 2005. In light of the Board possibly having three vacant

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Board member positions in June, President Chu reported he is considering disbanding the Practice Issues Committee and the Licensing Committee until Board member positions have been filled. The Committees will meet as part of the entire Board meeting.

Ms. Scuri explained the law regarding Committees has changed. If the Board does not choose to disassemble the Committees then the members that are not assigned to a specific Committee would actually be required to sit in the audience and not participate in the discussion and decisions made by that Committee.

All members agreed to disband the Committees until Board member appointments have been filled. President Chu assigned Ellen Wilson as the lead Board member for Licensing and Lorraine Kimura for Practice Issues. The Committees will now be a part of the entire Board meeting until further notice.

(B) 2005 Meeting Dates

President Chu reported on the 2005 meeting dates and confirmed there will be no changes. Ms. Scuri encouraged the members to attend a Board Member Orientation meeting and provided the members with upcoming meeting dates.

(C) Out-of-State Travel

Mr. Hartzell reported Department of Consumer Affairs (DCA) would only allow one person from the Board to attend the Federation of State Board's of Physical Therapy (FSBPT) out-of-state meeting; even though the FSBPT will fund two people from California to attend. Mr. Hartzell reported he personally would be funding his attendance at the meeting since he is on a panel with the FSBPT. This will allow one Board member authorized by DCA to attend the FSBPT meeting.

4. Executive Officer's Report -*Steven K. Hartzell*

(A) Update

Mr. Hartzell reported on staff changes; Kirsten Salters will now be responsible for Board meetings, per diem, and travel reimbursement.

(B) 2004 - 2005 Budget

Mr. Hartzell referred to the 2004-2005 Budget included in the agenda book.

(C) 2005 - 2006 Budget & BCP's

Mr. Hartzell reported DCA would be relocating sometime towards the end of the calendar year to the former Arco Arena. He explained the Board's office is in its soft term of its lease and reported that the Board may need to relocate. He will update the Board on the status of the contract at the next Board meeting.

5. 9:30 Regulatory Hearing on the Proposed Language for Section 1399.25 Administrative Citations

(A) Hearing

Ms. Scuri called the Regulatory Hearing on the Proposed Language for Section 1399.25 Administrative Citations at 9:30 a.m. and informed the audience that this is the time to provide written or verbal testimony.

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Ms. Marco provided written comments from DCA. DCA's concern was regarding reducing the citation retention period from seven to three years and suggested the Board be consistent with the other Boards and reduce the retention period to five years.

Mr. Hartzell reported on the history of why the Board has chosen to reduce the time from seven to three years however, after given thoughtful consideration to the recommendation by DCA's regulatory and legislative unit, he agreed the Board should modify the language as suggested.

(B) Board Action

Motion by Randi Woodrow, Seconded by Ellen Wilson to delegate to the Executive Officer the authority to adopt the regulation as modified to reflect a five year rather than a three year retention period, after expiration of the 15-day comment period if there are no adverse comments. Vote: 5-0. Motion carried.

6. Physical Therapy Practice Act Review – Lorraine Kimura, PT

Ms. Kimura provided a brief history of the Physical Therapy Practice Act Review Task Force and the responsibility of their task. She expressed her appreciation to Cheryl Resnik, James Syms, Marijean Piorkowski, Robin Wham, Dennis Ellingson, John Nativo, Steven Lee, Robin Lim-Zang and Valerie Sinkus for all their hard work and dedication to the task force.

Mr. Hartzell explained the next step is for legal counsel and staff to work together to ensure the language is consistent with how regulatory language is written and to present the practice act in the Sunset Report. Ms. Scuri explained the problems of writing the practice act in plain language.

This agenda item was also discussed on Friday May 13. The members discussed and identified some areas of the practice act they would like to see modified.

7. Strategic Planning – Rebecca Marco

(A) Strategic Planning Matrix Chart

Ms. Marco reported on the Matrix Chart included in the agenda book.

(B) Adoption of Draft 2005 Strategic Plan

Ms. Marco reported Travis McCann has indicated the trend for the Strategic Plan is not to include the deliverables in the Strategic Plan itself but only in the Matrix Chart. Ms. Marco informed the Board she would be meeting with Mr. McCann to restructure parts of the Strategic Plan to follow the new trend of DCA.

Motion by Ellen Wilson, Seconded by Randi Woodrow, to delegate the authority of the final approval of the Strategic Plan to the Board President. Vote: 5-0. Motion carried.

Ms. Marco thanked all the members for their help in recruiting Subject Matter Experts for the California Law Examination (CLE) Workshops. She explained rewriting the CLE was identified as goal in the strategic plan and it will be soon accomplished.

Mr. Hartzell reported staff has been working very hard with DCA in implementing the Applicant Tracking System, which should be ready July 1, 2005.

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8. Sunset Review – Rebecca Marco

Ms. Marco informed the Board that Arlyce Ten Broeck is still assuming the responsibility of the Sunset Report and referred to Mr. Hartzell for further detail.

Mr. Hartzell reported staff will be finalizing all the data and a final report will be presented at the August Board meeting. He needs members to review the policy portion of the Sunset Report and to forward their comments to him by the end of June.

President Chu explained to Patty Evans, CEO, CPTA, the Practice Act the Practice Act Review Task Force worked on will be included in the Sunset Report. Ms. Evans offered the CPTA's assistance with providing information on continued competency.

9. Licensing Committee - Ellen Wilson, PT, James Turner, Randi Woodrow, PT, Donald Chu, PhD., PT

The Licensing meeting bullets are attached to the meeting minutes.

10. Practice Issues Committee - Lorraine Kimura, PT, Julie Brandt, Donald Chu, PhD., PT

The Board will review, discuss, and take actions on the following practice issues that have been submitted to the Board:

- (A) With the current definition of health care now clearly extended beyond the practice of medicine and the treatment of disease, can a physical therapist treat impairments and functional limitations resulting from those impairments without a diagnosis by a physician? – *Leslie Torburn, PT, MS*
- (B) Qualification to perform Manual Lymph Drainage. – *Robert Weiss, M.S.*
- (C) Providing Physical Therapy Advice Online – *Sara Gilles, PT*

The Practice Issues meeting bullets are attached to the meeting minutes.

RECESS UNTIL 8:30 A.M. Friday May 13, 2005

Friday, May 13, 2005 8:30 A.M.

11. Call to Order and Roll Call

President Chu called the meeting of the Physical Therapy Board of California to order at 9:00 a.m. Roll call was taken.

Donald Chu, PhD, PT – President
Lorraine Kimura, PT - Vice-President
James Turner
Ellen Wilson, PT
Julie Brandt
Randi Woodrow, PT

All members present with the exception of Julie Brandt.

12. Deliberation and Discussion on Stipulated Settlements, Proposed Default Decisions, Proposed Decisions, Non-Adoption of Proposed Decision, Petitions for Reconsideration – CLOSED SESSION (per Title 2, Division 3, Part 1, Section 11126(c)(3) of the Government Code)

- (A) Mitsumaro Motoyoshi, PT

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The Board's decisions on matters discussed in closed session are available on the web site at www.ptb.ca.gov once they are made public.

13. Consumer and Professional Associations and Intergovernmental Relations – Steve Hartzell
(A) California Physical Therapy Association (CPTA)

Stacey Defoe, CPTA, updated members on the following bills the CPTA is currently watching SB724, AB681, and AB213.

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

President Chu reported the FSBPT has lowered the minimum pass rate effective May 12, 2005.

(C) California Consumer Affairs Association (CCAA)

Mr. Hartzell stated there is nothing to report at this time.

(D) Department of Consumer Affairs (DCA)

Mr. Hartzell already reported on DCA under other agenda items.

(E) Citizen Advocacy Center (CAC)

Mr. Hartzell stated there is nothing to report at this time.

(F) California Board of Occupational Therapy (CBOT)

Ms. Mitchell reported the CBOT has hired a new interim Executive Officer and currently the Board is in transition and that they are also preparing for Sunset Review.

(G) Board of Chiropractic Examiners (BCE)

Mr. Hartzell referred members to Mr. McCormick's briefing paper included in the agenda book.

(H) Speech-Language Pathology and Audiology Board (SLPAB)

Mr. Hartzell referred members to Mr. Nelson's briefing paper included in the agenda book.

14. Rulemaking – Rebecca Marco
(A) Rulemaking in Progress

(B) 2005 Rulemaking Calendar

Ms. Marco reported on the rulemaking calendar included in the agenda book. She explained that the regulatory and legislative unit at DCA reviewed the Disciplinary Guidelines and the Department has concerns with the ceiling amount of \$5000 for citations. Ms. Marco directed members to a handout DCA supplied for the Board to consider the additional language to be added to the Disciplinary Guidelines. She presented the Board with multiple choices to choose from on how they can pursue with the Disciplinary Guidelines.

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Ms. Scuri informed the Board they do have sufficient time to modify the language and to issue a 15-day notice to continue with the rulemaking process before the regulatory package dies.

Motion by Ellen Wilson, Seconded by Randi Woodrow to insert the additional language provided by DCA to modify the text and to delegate to the Executive Officer the authority to adopt the regulation as modified after expiration of the 15-day comment period if there are no adverse comments. Vote: 5-0. Motion carried.

15. Newsletter – Debi Mitchell

Ms. Mitchell reported the latest Progress Notes was mailed at the end of March and the next draft newsletter will be presented at the August meeting. The members provided article suggestions for the next newsletter; the enforcement process, competency article, how to become a board member, agenda mailing list, the regulation process, and an article on 1398.38.

16. Disciplinary Action Report – Donald Chu, PhD, PT

President Chu reported on the Disciplinary Action Report included in the agenda book.

17. Legislation

A) Other Legislation

Mr. Hartzell reported he is currently watching a few bills and he will have more information at the next meeting.

18. Items for Next Meeting Agenda

(A) PTBC Meeting – August 4 & 5, 2005 in Sacramento

19. Public Address

There were two individuals from the Department of Developmental Services that ask the Board to met at least once in Ontario and they would like more information regarding how should new DPT graduating students be addressed once licensed.

20. Adjournment

The Physical Therapy Board of California adjourned at 10:08 a.m.

Moved by Lorraine Kimura, Seconded by Julie Brandt to approve the May 12 & 13, 205 Board meeting minutes. Vote: 4-0. Motion carried.

President Donald Chu, PhD, PT

Date

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Physical Therapy Board of California
Licensing Committee Bullets
May 12, 2005
Burbank, CA

- Francis Albert Wong is required to satisfactorily complete an additional six months of clinical service.
- ZsaZsa Vanessa Punay is required to complete one course in Cardiopulmonary Examination, Evaluation, and Intervention.
- Staff was instructed to contact the state licensing Board in New York to determine if Bertrand Morelle's PT license was suspended or revoked, and, if so, why. If/when that issue is resolved, Bertrand Morelle is required to satisfy all General Education deficiencies, one course in Muscular Testing, and one course in Skeletal Testing in order to be eligible for licensure in California.
- Dipali Suresh Gohil, Su Hee Whang, and Shruti Arya do not qualify at this time for physical therapist licensure. Due to the large quantity of deficiencies, these applicants will not be able to satisfy deficiencies via continuing education courses. Staff will inform these applicants about the option of possibly qualifying for physical therapist assistant licensure.
- Benjie Severino is required to complete one course in Integumentary Testing, and one course in Metabolic Testing.
- Rockwell Abril's credential evaluation on the PT Evaluation Checklist was not reviewed because staff informed the Licensing Committee that the credential report for Mr. Abril on the PTA Candidate Checklist was recently received and it was clear that he met the requirements for PTA licensure.
- Staff was instructed to clarify with FCCPT that Mihail Mihaylov was eligible to practice physical therapy in Bulgaria. If so, then Mr. Mohaylov will need to satisfy all General Education deficiencies, and take one course in Integumentary Evaluation and Examination in order to be eligible for the National Physical Therapist Examination.
- Jamie Lee Fontillas Dorado is required to complete three continuing education courses in the following areas: (1) Neuromuscular Evaluation and Examination; (2) Integumentary Evaluation and Examination; and (3) Physical Agents-Modalities.
- Aneta Franek is required to satisfy all General Education deficiencies in order to qualify for the NPTE. If/when she passes the NPTE, she will be required to do a full nine month period of clinical service as she was deficient in Clinical Education hours.
- Soonhyang Lee needs to complete a course in Integumentary Examination and Evaluation in order to be made eligible for the NPTE.
- Nery Escobar Ventura will qualify for the National Physical Therapist Assistant Examination after he satisfies his deficiency in Mathematics.
- Staff was directed to contact Gillian Pritchard and request that she arrange with her school to submit a letter to the Board stating that her records are no longer available. Additionally, staff will ask Ms. Pritchard for permission to contact the state licensing board in Indiana and inquire about the basis of her licensure in that state.
- Staff informed the Licensing Committee of OAL approval of Section 1398.38.
- Brigit Duffy will be allowed to petition the Board to waive the remaining period of clinical service after completing three months of clinical service. The old regulation (Section 1398.26) will apply in her case since the date of her original application was received by the Board prior to the implementation of the new regulation (Section 1398.26.5).

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PRACTICE ISSUES MEETING BULLETS
May 12, 2005

President Chu disbanded the Practice Issues Committee temporarily until the vacant and soon to be vacant Board Member positions have been appointed by the Governor and the Speaker of the Assembly. Practice Issues inquiries will be reviewed by the entire Board until further notice.

1. Approval of the January 27, 2005 Practice Issues Meeting Bullets

The Board approved the meeting bullets as written.

2. Practice Issues Inquiries -

(A) Inquiry - With the current definition of health care now clearly extended beyond the practice of medicine and the treatment of disease, can a physical therapist treat impairments and functional limitations resulting from those impairments without a diagnosis by a physician?
– *Leslie Torburn, PT, MS*

Board Response – The Board determined a physical therapist is not authorized to diagnosis per the Attorney General's (AG) Opinion No: 65-21 – May 7, 1965. The Board explained the AG's opinion is based on Section 2052 and 2620 of the Business and Professions Code, which specifically states a physical therapist cannot diagnose.

2052. (a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

2620. (a) **Physical therapy means the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The practice of physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions. The use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used in this chapter, and a license issued pursuant to this chapter does not authorize the diagnosis of disease.**

The Board directed Legal Counsel and the Executive Officer to write a response that references the above Business and Professions Code and that it would take a legislative change to allow physical therapist to be authorized to diagnose.

(B) Inquiry - Qualification to perform Manual Lymph Drainage. – *Robert Weiss, M.S.*

Board Response- The Board approved draft response.

(C) Inquiry - Providing Physical Therapy Advice Online – *Sara Gilles, PT*

Board Response – The Board approved draft response.