

**PHYSICAL THERAPY BOARD OF CALIFORNIA**

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APPROVED
BOARD MEETING MINUTES
February 9, 2007

Department of Consumer Affairs Howe Avenue Complex
1424 Howe Avenue, Greg Gorges Conference Room
Sacramento, California 95825
(916) 561-8200

Friday, February 9, 2007 8:00 a.m.

1. Call To Order and Roll Call

President Krueger called the meeting of the Physical Therapy Board of California to order at 9:05 am. Roll call was taken. The minutes are to reflect the meeting was not able to commence at 8:00 am as there was not a quorum.

Nancy Krueger, PT- President
Adele Levine
Debra Alviso, PT, DPT, OCS
Marty Jewell, PT, PhD
Sara Takii, PT

All members were present.

2. The Board will convene in CLOSED SESSION to deliberate on proposed disciplinary decisions and stipulated settlements per Government Code Section 11126(c)(3).

Disciplinary decisions are available on the Board's web site at www.ptb.ca.gov.

3. 9:00 A.M. – Hearing on Petition for Termination or Modification of Probation of Gurdev Bhachu, PT

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

Disciplinary decisions are available on the Board's web site at www.ptb.ca.gov.

4. Introduction of New Board Member(s) – Nancy Krueger, PT – President

President Krueger introduced Marty Jewell since she was not present at the last meeting due to a medical condition.

5. Overview of State Budget Process Presented by DCA – Sui Lim

Sui Lim, budget analyst, directed members to the hand out on the state budget process. Ms. Lim reviewed the handout and presented an overview of the Board's budget.

6. Approval of Minutes

(A) November 9, 2006 – Board Meeting

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Moved by Marty Jewell, Seconded by Debra Alviso to approve the November 9, 2006 minutes with amendments to Agenda Item 6 page 3, line 114, add the word “disciplinary” before votes; Agenda Item 17 page 9, line 397, add after delegate “to the executive officer the authority under Government Code 11181” and delete after delegate “the authority by Section 11181 of the Government Code to the executive officer the ability”; Agenda Item 9 page 5, line 210, provide additional clarification on the term “blanket” (personnel costs for other specifically budgeted positions). Vote: 5-0. Motion carried.

(B) December 12, 2006 – Teleconference Meeting

Moved by Adele Levine, Seconded by Debra Alviso to approve the December 12, 2006 meeting minutes as written. Vote: 5-0. Motion carried.

7. President’s Report – Nancy Krueger, PT

(A) Update

President Krueger reported the meeting location was changed from Los Angeles to Sacramento due to the Board’s budget constraints. The members agreed to schedule two day meetings as the Board is anticipating fuller agendas. Staff will schedule the meetings accordingly to allow members and staff to travel on the first and second day of the meetings to minimize hotel and travel costs. President Krueger emphasized the Strategic Planning meeting located in Sacramento in March will be two full days and to plan accordingly.

(B) 2007 Meeting Dates

President Krueger reviewed the 2007 Board Calendar included in the agenda book. There were no changes to the calendar.

(C) Modify Appointments to Task Forces or Committees

President Krueger appointed Luis Williams, PTA, to the Continuing Competency Task Force.

8. Executive Officer’s Report - Steven K. Hartzell

(A) Update

Mr. Hartzell reported Stephen Chabak, PT recently sent letters to all current and past Board members that were on the Board at the time he was issued an administrative citation. Mr. Hartzell informed the members he will be working with legal counsel on responding to Mr. Chabak’s accusations and he will be inviting DCA to review the entire file as this may become a public affairs issue.

Mr. Hartzell reported that during Sunset the statutory authority language for the executive officer position was not extended through the Sunset process. He has been working with the Joint Committee staff and they have stated they are planning to introduce urgency legislation this month which will include the language for the extension of the executive officer position.

Mr. Hartzell reported due to an excess amount of vacation hours he has accrued, DCA is requiring him to utilize his vacation time that has exceeded the state cap.

(B) 2007 – 2008 Budget

Mr. Hartzell reported on the 2007-2008 Budget Report included in the agenda book and explained there has been a decrease in the investigative cost associated with Division of Investigation (DOI) as they do not have resources to investigate all the Board’s complaints. He further explained the Board’s budget is extremely restrictive and that the newsletter may need to be funded next fiscal year which would result

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in delaying the publishing until July. Mr. Hartzell reported the Board was successful in transferring the Board's cashing function from the Medical Board of California to the Board.

(C) BCP's

Mr. Hartzell explained Budget Change Proposals (BCPs) are confidential working papers of the Governor until the time the Governor announces his budget in January. The Board will be preparing a BCP for staff increase which will be dependant on the fee increase that the Board is requesting through the 2007 legislative process.

(D) Office Relocation

Mr. Hartzell reported the relocation of the entire Howe Avenue complex is still scheduled for September.

(E) Board's COOP/COG Plan

The COOP/COG plan is the Board's emergency disaster recovery plan. With the threat of flooding in Sacramento due to the condition of the levies it is essential all State agencies have a plan that identifies their essential functions.

9. Licensing

The full Board will review, discuss and take actions on licensing issues that have been submitted to the Board.

President Krueger reported the decision to not have a Licensing and Practice Issues Committee for this meeting was made due to the Board members are all newly appointed. She suggested the members discuss the make-up of the Board at the Strategic Planning meeting and until then the entire Board will review Licensing and Practice Issues.

Carl Nelson directed members to the briefing paper included in the agenda book and deferred to legal counsel for their direction in reviewing the request by Marilyn Freedman.

Kurt Heppler, legal counsel, advised the Board to not proceed on the matter of Ms. Freedman's request as she does not meet the requirements of California Code of Regulations §1398.26(b). He further stated there has already been a determination by the credential evaluation service that Ms. Freedman was unable to furnish the appropriate documentation that indicates she has met the educational requirements. Mr. Heppler also identified that she is not considered an applicant of the Board as she has not formally submitted an application for licensure. Therefore, the Board does not have the authority to consider her request at this time until she submits an application.

Anita Scuri, supervising legal counsel, pointed out that at the last meeting the Board made the determination that if an applicant was unable to furnish a credential report by the evaluation service that states their education was equivalent, than the application would not be accepted. Ms. Scuri indicated the Board may want to reconsider allowing a person the right to file an application without the credential evaluation report. However, the application would not be considered complete without the credential evaluation report that indicates the applicant met the educational equivalency.

Mr. Hartzell explained that even though Ms. Freedman is licensed in another state she is still required to meet the Board's requirements. The Board requires an applicant to apply by endorsement not reciprocity which means edibility for licensure in California is not solely based on licensure in another state.

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Staff was directed to notify Ms. Freedman that the laws and regulations do not permit the Board to review her request to waive her educational deficiencies as she has not filed an application for licensure. However, advising her an application needs to be filed does not mean the Board has determined her education is equivalent.

Mr. Hartzell reported an applicant, who is licensed in another state, has requested staff consider waiving their examination score report that states they failed the national examination in California by two questions. At one time not all states had the same passing rate for the national examination. Mr. Hartzell informed the Board that the laws and regulations specifically indicate a person must pass the examination in order to be issued a license.

Mr. Heppler explained that an agency is bound by its own regulations and statutes.

10. Practice Issues

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

- (A) Review and action on Joint Statements by the California Board of Occupational Therapy and the Physical Therapy Board of California to provide clarification of both professions scope of practice and physical therapist supervising an occupational therapist to obtain their advance practice certification.

Debi Mitchell reported she met with the executive officer of the California Board of Occupational Therapy along with legal counsel from both Boards to discuss both joint statements. The joint statement “Clarification of a Physical Therapist’s and Occupational Therapist’s Scope of Practice” has been approved by staff and legal counsels from both Boards. Mr. Heppler had a minor change to the third paragraph and will provide staff with that change. The purpose of this statement is to direct people to the appropriate statute that defines each professions scope of practice. This statement will also reiterate that physical therapists and occupation therapists are not interchangeable.

Ms. Mitchell reported the joint statement on “Clarification of a Physical Therapist’s Responsibility of Supervising an Occupational Therapist while obtaining an Advance Practice Degree in Hand Therapy and/or Using Physical Agent Modalities” is still being discussed by staff and legal counsel. There is another meeting scheduled at the end of the month to continue discussing this statement.

Moved by Adele Levine, Seconded by Marty Jewell, to adopt the joint statement on “Clarification of a Physical Therapist’s and Occupational Therapist’s Scope of Practice” for public dissemination and to be placed on the Board’s web site once approved by the California Board of Occupation Therapy. Vote: 5-0. Motion carried.

11. Public Discussion Regarding the Development of Regulations to Define a "Doctoral Degree in a Related Health Science" for Purposes of Business and Professions Code Section 2633

President Krueger opened the public discussion regarding the development of regulations to define a “Doctoral Degree in a Related Health Science” for purposes of Business and Professions Code Section 2633.

There was no public comment received.

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Ms. Scuri explained that the new statutory language as written permits a physical therapist that has obtained a doctorate degree in physical therapy to use the title “Dr.” However; if a physical therapist’s doctorate degree is not in physical therapy then they would not be permitted to use the title “Dr.” when working as a physical therapist unless that person has a doctorate degree in a related health science that has been adopted into regulation by the Board.

Board members directed staff to research the following by the next board meeting:

1. Define “health related science” (i.e. kinesiology, physiology)
2. Research other state licensing board’s language pertaining to the use of “Dr.”
3. Obtain input from the Federation of State Boards of Physical Therapy and the California Physical Therapy Association
4. Add in the newsletter or post on the web site for people to submit their input to the board
5. Ms. Takii will research the legislative intent of the language

Ms. Jewell volunteered to assist the Board in researching this information.

12. Strategic Plan Update – Rebecca Marco

(A) Strategic Plan

(B) Strategic Plan Matrix Chart

Ms. Marco directed members to Christina Metzen’s briefing paper included in the agenda book that updates the Board on Deliverable 1, Objective 1A of the Strategic Plan on collaborating with other health boards to produce public service announcements. She reported that at this time there is nothing that has been established with the other boards, but that the State of Florida actively campaigns against unlicensed practice by health care professions. Staff will continue to explore this option with DCA and contact Florida for their strategies for reducing unlicensed practice.

13. Adoption of Revisions to the Records Retention Schedule – Michael McCormick

Mr. McCormick reported the Records Retention Schedule has been presented for Board approval. Ms. Scuri explained that Boards normally review their Records Retention Schedule only if the Board wishes to change a procedure within the Records Retention Schedule (i.e. if the Board wanted to change maintaining disciplinary records on file indefinitely or to purge them after so many years).

Mr. McCormick explained the function of the Records Retention Schedule and that it is a form of protection for the Board that clearly defines how long the Board will maintain their records. He reported the Board will be addressing electronic files and the length of time the Board will want to maintain those records.

The Board did not wish to make any procedural changes to the Records Retention Schedule.

14. Rulemaking – Michael McCormick

(A) 2007 Rulemaking Calendar

Mr. McCormick reported that the 2007 Rulemaking Calendar has been filed with the Office of Administrative Law.

(B) Rulemaking in Progress

15. Continuing Competency Task Force Report – Marty Jewell, PT, PhD - Chair

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Ms. Jewell reported the Continuing Competency Task Force met on January 26, 2007. The first meeting was brainstorming all the things the task force wants to consider when developing regulations regarding continuing education and continuing competency. The task force identified five major categories to be considered. Ms. Jewell reviewed the five categories that are identified in the meeting minutes included in the agenda book. Ms. Jewell reported the task force is meeting again in April.

Ms. Jewell explained to the public that the continuing competency requirement will not become effective until at least 2008 and that the Board will allow adequate time for licensees to comply with the regulations.

Mr. Heppler explained that through the rulemaking process the public will have multiple opportunities to provide verbal or written comment on the language that is developed by the task force.

16. Newsletter Update – Debi Mitchell

Ms. Mitchell directed members to the draft newsletter included in the agenda book. President Krueger mentioned she would like to write an article on supervision requirements if there is space available.

Mr. Hartzell reiterated that this newsletter may not be published until July due to the Board's budget constraints.

Bob Williams, PT, suggested publishing smaller issues throughout the year instead of one large newsletter. He expressed his appreciation that the Board has been publishing a newsletter annually or biannually as the information in the newsletter is very valuable.

Ms. Mitchell responded the Board is actively urging licensees and consumers to continually check the Board's web site as new information is always being posted.

President Krueger stated that Board will be addressing "How to change the culture of the consumer and licentiates to go the Board's web site" at the Strategic Planning Session.

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

(A) California Physical Therapy Association (CPTA)

Stacy DeFoe, CPTA Executive Director, reported the CPTA would be happy to assist the Board with researching health related science doctorate degrees that are needed for the use of "Dr."

(B) American Physical Therapy Association (APTA)

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

Mr. Hartzell reported the FSBPT will no longer be administering the examination outside of the United States due to security concerns.

(D) Department of Consumer Affairs (DCA)

(E) California Board of Occupational Therapy (CBOT)

(F) Board of Chiropractic Examiners (BCE)

Mr. Hartzell reported the BCE wants to repeal the mandatory CPR certification as part of their continuing education requirements. The BCE has requested the ability to query the PTBC's

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enforcement data information that is available through the TEALE database. Mr. Hartzell is exploring with legal counsel if it is legal for the BCE to have this access. He indicated if it is legal to share this information than the BCE would need to agree to give the Board query access to their enforcement information as well.

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

(H) Veterinary Medical Board (VMB)

- Development of Statutory and/or Regulatory Language regarding Physical Therapists Involvement in Animal Rehabilitation

Mr. Hartzell introduced Sue Geranen the Executive Officer at the VMB. Ms. Geranen reported the VMB has been active with the national associations and other states regarding physical therapists being able to provide animal rehabilitation. The ability for a physical therapist to provide animal rehabilitation is consumer driven and as such it is the licensing Boards responsibility to determine if this can be done legally. Ms. Geranen explained the steps the Nevada state board has taken in order to permit animal rehabilitation and that there has been a certification developed for physical therapists to perform this treatment. The VMB's state association in California has submitted a document advocating direct supervision of physical therapists under a veterinarian. She stated there are a couple of VMB Board members that are interested in serving on a task force with a couple of PTBC Board members to begin the discussion of allowing animal rehabilitation in California by physical therapists under the supervision of a veterinarian. She reported this may also require legislation by both Boards in order to have statutory authority.

President Krueger responded the Board is not ready at this time to develop a task force but that this will be discuss at the Strategic Planning meeting to determine the direction of the Board.

Moved by Marty Jewell, Seconded by Sara Takii to direct staff to consult with PTBC legal counsel and the VMB to develop statutory amendments to the Physical Therapy Practice Act (PTPA) and/or Veterinary Practice Act to enable physical therapists to assist veterinarians in animal rehabilitation. Vote: 5-0. Motion carried.

(I) Medical Board of California (MBC)

Mr. Hartzell reported he attended the last MBC meeting and expressed to the MBC his desire to work with them on legislation.

18. FSBPT Continuing Competency Steering Committee Pilot Program Update – Steven K. Hartzell

Mr. Hartzell directed members to his briefing paper included in the agenda book. The FSBPT originally asked for two Board members along with the executive officer to participate on the committee. However, as other states want to be involved, the FSBPT is now asking for only one Board member along with the executive officer to participate. Mr. Hartzell explained this would involve conference calls and minimal travel. The FSBPT will fund all travel.

Adele Levine nominated Ms. Jewell to participate in the FSBPT's Continuing Competency Steering Committee Pilot Program as she is the chair of the continuing competency task force. Ms. Jewell agreed to participate.

19. Disciplinary Action Report – Nancy Krueger, PT-President

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President Krueger directed members to the Disciplinary Action Report included in the agenda book. Mr. Hartzell explained how the complaints are categorized and the investigative process.

Mr. Hartzell reported the Board is now issuing administrative citations with a one hundred dollar fine to licensees that fail to notify the Board of an address change within 30 days as required by regulation. He indicated that several licensees have paid the fine and a few have requested formal conferences to contest the citation.

20. 2007 Legislation Update – Steven K. Hartzell

(A) Fee Increase

Mr. Hartzell reported the legislation language included in the agenda book was submitted to legislative counsel last week. Legislative counsel will now rewrite the language in the proper format. The fee increase is extremely necessary to the Board's budget. The Board does not intend to immediately increase the fees to the maximum amount that is indicated in the fee increase bill. He reported it took the Board ten years to reach the cap amount in the current fee language and that it is necessary to set the maximum amount at a cap that the Board may anticipate being at in the next ten years. Mr. Hartzell also explained that in the language he included the option of reducing the fees if it became necessary to align the budget in the future. The option to reduce fees is not included in the current fee language.

Mr. Hartzell explained DOI's cost can significantly impact the Board's budget and reported DOI has increased their investigative costs.

Ms. Scuri identified language on page 3 of the proposal striking 2660(e) recognizing the Board does not give the examination. She encouraged the Board to keep portions of that language so the Board does not give up the ability to deny or discipline a person who impersonated themselves as a proxy for an applicant in any examination that is required for licensure in this chapter.

Mr. Hartzell thought the Practice Act Task Force identified examination subversion in another section. Ms. Alviso identified this section on page 4 under 2660.7. Mr. Hartzell requested legal counsel's assistance with making sure that he has addressed everything appropriately.

Ms. Jewell questioned if the Board was anticipating having an inactive status for licensees and if so would there be another fee for licensees that change from active to inactive? Mr. Hartzell explained the Board would need statutory authority for an inactive fee different from a renewal fee.

Ms. Jewell commented that there are multiple physical therapist and physical therapist assistants that are not actively working or have retired but do not want to give up their license. She feels the Board is going to have to address inactive status; otherwise, these licensees will be required to meet the continuing competency requirements in order to maintain their license.

Ms. Alviso pointed out there is not a fee associated with the initial license fee for a physical therapist assistant. Mr. Hartzell will need to review this language and he will notify legislative counsel if the initial license fee needs to be added into the fee language.

(B) Proposed Physical Therapy Practice Act

Mr. Hartzell reported he submitted the Proposed Physical Therapy Practice Act that was written by the Physical Therapy Practice Act Task Force. He reported legislative counsel would not accept the written format by the task force as it would require them to search all laws in the state of California to determine

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if any of the Board's sections are referenced in any other laws. The amount of work involved for legislative counsel would take at least a year. Therefore, he had to reconstruct the Proposed Practice Act so that it would be accepted by legislative counsel by using the existing code sections.

Mr. Hartzell identified the language in the Proposed Physical Therapy Practice Act that includes adding a physical therapist assistant on the Board. He reported the CPTA's biggest focus is with section 2620. President Krueger hopes the CPTA and the PTBC will collaborate together if the CPTA seeks to change any of the language in section 2620 or any other part of the proposed practice act.

Moved by Adele Levine, Seconded by Sara Takii to approve the concept for revision of the Physical Therapy Practice Act. Vote: 4-0, 1 Abstain – Marty Jewell. Motion carried.

(C) Obtain Legislative Authority to Disconnect Telephones of those Engaging in the Unlicensed Practice of Physical Therapy

Mr. Hartzell reported at the last meeting he was directed to pursue adding the Board to the list of agencies that have the authority to disconnect a telephone for unlicensed services. Mr. Hartzell reported this request has been submitted to legislative counsel.

Mr. Hartzell reported now that the language has been submitted to legislative counsel the next step is to seek authors to carry the bills. He explained it is not unusual for the language in the bills to change as the bills go through the legislative process.

21. Election of 2007 Board President and Vice-President

Ms. Levine nominated Nancy Krueger for Board President.

Moved by Adele Levine, Seconded by Sara Takii to appoint Nancy Krueger as Board President. Vote: 5-0. Motion carried.

Ms. Levine nominated Marty Jewell as the Board's Vice President.

Moved by Adele Levine, Seconded by Debra Alviso to appoint Marty Jewell as the Board's Vice President.

Vote: 4-0, 1 Abstain-Mary Jewell. Motion carried.

22. Election of 2007 FSBPT Delegate and Alternate Delegate

Ms. Alviso nominated Sara Takii as the FSBPT Delegate.

Moved by Debra Alviso, Seconded by Adele Levine to appoint Sara Takii as the FSBPT Delegate. Vote: 5-0. Motion carried.

Ms. Alviso nominated President Krueger as the FSBPT Alternate Delegate. President Krueger declined the nomination.

Ms. Takii nominated Ms. Alviso as the FSBPT Alternate Delegate.

Moved by Sara Takii, Seconded by Marty Jewell to appoint Debra Alviso as the primary FSBPT Alternate Delegate. Vote: 5-0. Motion carried.

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Moved by Adele Levine, Seconded by Marty Jewell to appoint all other members, executive officer, and legal counsel as additional FSBPT Alternate Delegates if needed. Vote: 5-0. Motion carried.

23. Agenda Items for Next Meeting

PTBC Meeting – May 17 & 18, 2007 in Los Angeles

Mr. Hartzell reported he will be giving a presentation at Loma Linda University the day prior to the Board meeting in May and if the members are interested in attending to please notify staff.

24. Public Comment on Items not on the Agenda

Justin Carr, PT, from Mercy General Hospital reported he was sent as a representative to obtain clarification on physical therapists supervising occupational therapists while obtaining advance practice certification. President Krueger informed him the Board is still working on developing the language with the CBOT. His next question was, “What is the Board’s definition of Direct Access?” Mr. Hartzell explained a physical therapist is required to have a diagnosis from a professional that is authorized to diagnose within their professional scope of practice. A physical therapist does not need to have a referral in order to provide treatment.

25. Adjournment

The meeting of the Physical Therapy Board of California adjourned at 4:33 p.m.

Moved by Marty Jewell, Seconded by Debra Alviso to approve the February 9, 2007 minutes with amendments to Agenda Item 20, page 8, line 365, deleting the word “addresses”. Vote: 4-0. Motion carried. Ms. Levine was not present.

The minutes have been corrected to reflect the amendments in the motion.

Board President – Nancy Krueger, PT

Date