

Physical Therapy Board of California

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APPROVED
PHYSICAL THERAPY BOARD OF CALIFORNIA
MEETING MINUTES
October 25 & 26, 2007

Elihum Harris Building
1515 Clay Street, Room 9
Oakland, California 94612
(510) 622-2564

Thursday, October 25, 2007 8:30 AM – 5:00 PM

1. Call To Order and Roll Call

President Krueger called the meeting of the Physical Therapy Board of California to order at 8:43 a.m. Roll call was taken. All members were present. A quorum was established.

Nancy Krueger, PT – President
Martha Jewell, PT, PhD. - Vice President
Debra Alviso, PT
Adele Levine
Sara Takii, PT
James Turner

2. Approval of Minutes

(A) August 1, 2, & 3, 2007 – Strategic Plan & Board Meeting

Corrections were identified as follows: line number 51, the meeting date was changed to Thursday, August 2nd; line 76 was added to read “Moved by Ms. Alviso, seconded by Ms. Takii to consider approval of the strategic plan including the goals, objectives and performance measures at the meeting of the Board in October, 2007; and line 244, third sentence, *certain* was added between the words *removes* and *restrictions*.

It was moved by Ms. Jewell, seconded by Ms. Alviso to approve the minutes with corrections. Vote: 5-0 with one abstention. Motion carried.

(B) October 2, 2007 – Teleconference Meeting

The spelling of President Krueger’s name was corrected.

It was moved by Ms. Jewell, seconded by Ms. Alviso to approve the minutes with corrections. Vote: 5-0 with one abstention. Motion carried.

3. President’s Report – Nancy Krueger, PT

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(A) 2008 Meeting Dates

The Board members scheduled the following dates and locations for the 2008 meetings: 1) January 24 and 25, Los Angeles Area; 2) March 20 - Strategic Planning, Sacramento; 3) May 15 and 16, Fresno; August 7 and 8, San Diego; November 6 and 7, Oakland. Mr. Hartzell advised the members that he had been communicating with Cheryl Resnik of USC, and Ms. Alviso said she also had been in touch with CSU Fresno, regarding hosting meetings of the PTBC. The members discussed accessibility to the students, as well as cost effectiveness to the Board, were some of the advantages of scheduling meetings at physical therapy schools.

The Board decided it would be too soon to produce a new Strategic Plan, therefore the meeting scheduled for March 20, 2008 will focus on establishing timelines for carrying out the goals and objectives set in the plan developed in August.

(B) Update

President Krueger thanked the CPTA for hosting the Board as an exhibitor at the conference in September. She indicated that it afforded opportunity to interact with the licensees and to respond to inquiries regarding continuing competency and other related topics.

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

(A) Update

Mr. Hartzell indicated that he will be updating the Board on items placed throughout the agenda. Mr. Turner asked about the status of SB 1049, extending the position of the Executive Officer. Mr. Hartzell replied that the bill had been signed.

(B) FY 2006 - 2007, FY 2007 – 2008, & FY 2008 - 2009 Budget

Mr. Hartzell referred the members to the September CalStars report included in the agenda book. He indicated that this report does not include the budget and that the next report would be much more informative.

(C) Office Relocation

Mr. Hartzell informed the Board that the office will be acquiring a new Voice Over Internet Protocol (VOIP) system and that it will be part of the state of California's CalNet II telephone system. He indicated that the ongoing costs of the system were not known yet. He further advised that the landlord of the new building is offering two to three months of free rent and that after that the base rate will be within 5 to 10 cents per square foot of the current rent.

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(D) CAPTE Update

Members were advised by Mr. Hartzell that he drafted and mailed the comments, resulting from the October 2, 2007 meeting, to CAPTE by the deadline date imposed. Ms. Alviso requested a copy of the letter.

5. **Strategic Plan – Rebecca Marco**

(A) Strategic Plan Adoption

The Board members reviewed and discussed the draft Strategic Plan included in the agenda book. Mr. Turner suggested that the Introduction of the Strategic Plan (plan) indicate that the executive officer reports to the PTBC and serves at their pleasure.

The Values of the plan were considered.

It was moved by Ms. Alviso, seconded by Mr. Turner to change the first value to read: The Board's leading responsibility is consumer protection. And to change the fourth value to read: The Board respects diversity in its policies. Vote: 6-0. Motion carried.

They also agreed to change the Goals as follows:

➤ Goal One

It was moved by Ms. Jewell, seconded by Ms. Takii to reword Goal One, Objective A to read: Determine the level of compliance with the Physical Therapy Practice Act. Vote 6-0. Motion carried.

Goal One, Objective E was changed to read: Review other relevant publications.

➤ Goal Two

It was moved by Ms. Jewell, seconded by Ms. Alviso to amend Goal Two, Objective A to read: Reevaluate the Board's previous position on Physical Therapy Corporate Ownership by a Layperson. Vote: 5-0. Motion carried.

Goal Two, Objective C was amended to read: Participate in a statewide campaign to reduce unlicensed activity.

➤ Goal Three – No amendments

➤ Goal Four

Goal Four, Objective A was amended to read: Work with DCA to enhance data management.

➤ Goal Five

Goal Five, Objective A was amended to read: The Board will take advantage of technology to enhance communication with licensees.

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Goal Five, Objective B was amended to read: The Board will publish articles and advertise in publications that are available to licensees.

Goal Five, Objective C was amended to read: The Board will conduct some meetings in hospitals and physical therapy schools.

Goal Five, Objective D was amended to read: The Board will encourage communication with licensees through electronic mail.

Goal Five, Objective E was amended to read: The Board will participate in regional and statewide meetings of the CPTA when invited.

Goal Five, Objective F – No amendments

➤ Goal Six

Goal Six of the Strategic Plan was amended to read: Review the role of the Board in the education of physical therapists and physical therapist assistants.

Goal Six, Objective A – No amendments

Goal Six, Objective B was amended to read: The Board will review CAPTE accreditation standards for physical therapy programs developed by CAPTE.

It was moved by Ms. Jewell, seconded by Ms. Takii to approve the plan with the changes noted. Vote: 5-0. Motion carried.

Staff was directed to correct corresponding Performance Measures accordingly.

(B) Strategic Plan Matrix Chart

Staff will prepare a matrix chart reflecting the changes made to the plan for review by the Board at the January 2008 meeting.

6. Consideration of Proposed Amendment to Section 1398.26.1 of the California Code of Regulations, Title 16, Division 13.2, Article 2, Entry Level Education Equivalency Review (ELEER) of the Physical Therapist

Mr. Hartzell referred the Board to the Issue Paper included in the agenda book. He indicated that the question is whether the PTBC should continue to use the ELEERS for evaluation of education received at non-CAPTE approved education institutions located outside of the United States or utilize the FCCPT Cousework Evaluation Tools (CWT). He further explained the history of the development of the ELEERS as outlined in the Issue Paper.

It was moved by Ms. Jewell, seconded by Ms. Takii that the President appoint a task force of two members of the PTBC to compare the ELEERS and CWT's in order to make a recommendation to the PTBC regarding whether a regulatory revision should be sought.

Vote: 5-0. Motion carried.

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Ms. Freedman, legal counsel, advised the Board that if it appointed a task force it would have to follow the rules of the Open Meeting Act. She recommended that the president ask two members to work with staff on the issue in lieu of appointing a task force.

After consideration of legal counsel's advice, it was moved by Ms. Jewell, seconded by Ms. Takii that the President ask two members of the PTBC, rather than appoint a task force, to work with staff to compare the ELEERS and CWT's in order to make a recommendation to the PTBC. Vote: 5-0. Motion carried.

President Krueger solicited the assistance of Ms. Jewell and Ms. Takii to work with staff. Ms. Alviso volunteered she had information regarding the FCCPT's CWT that she would share with staff for those working on the issue.

7. Consideration of Revising the Physical Therapist Assistant Education Equivalency Tool for Purposes of Defining Business and Professions Code Section 2653(b)

Mr. Hartzell referred the members to the Issue Paper included in the agenda book. He asked whether the PTBC should revise the Physical Therapist Assistant Candidate Checklist utilized for the review of foreign educated physical therapists whose education is deemed not to be equivalent to an education received at a CAPTE approved educational program and should the checklist be incorporated by reference in regulation.

After discussion it was moved by Ms. Jewell and seconded by Ms. Takii that the President shall ask two members of the PTBC to work with staff to revise the Physical Therapist Assistant Candidate Checklist. Vote: 5-0. Motion carried.

President Krueger determined that the same two members work with staff on both issues; therefore, Ms. Jewell and Ms. Takii will be working with staff on this issue as well.

8. Consideration of Proposed Amendment to Section 1399.15, of the California Code of Regulations, Title 16, Division 13.2, Article 2, Disciplinary Guidelines

Ms. Ybarra presented the draft Model Guidelines for Issuing Citations and Imposing Discipline to the Board. After careful consideration it was determined that further amendments were necessary prior to proceeding to the rulemaking process; therefore, staff will refine the draft and present it to the Board at the meeting in January 2008.

9. Discussion and Consideration of Proposed Regulations to Define a "Doctoral Degree in a Related Health Science" for Purposes of Business and Professions Code Section 2633

The members reviewed the proposed regulatory language presented by legal counsel on which physical therapists may use the term "doctor".

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It was moved by Ms. Jewell, seconded by Ms. Takii to proceed with rulemaking defining a doctoral degree in a related health science for purposes of Business and Professions Code Section 2633. Vote: 6-0. Motion carried.

10. Consideration of Proposed Amendment of Regulations Defining the Use of Assistive Personnel

Mr. Hartzell referred the members to the Issue Paper included in the agenda book. He explained that this issue has been on the agenda for discussion in the past but did not result in the PTBC proposing any restrictions on a physical therapy aide providing direct care. However, statutory changes are currently being proposed that would require a PT to provide and document some training of the physical therapy aide as the result of the rewrite of the Physical Therapy Practice Act. Mr. Hartzell requested that the Board form a task force to conduct an in-depth analysis of the issue but suggested the task force not commence its task until the Continuing Competency Task Force has completed their charge.

Ms. Erickson opined that there is as much abuse with the lack of supervision of the physical therapist assistant as there is with the physical therapy aide.

It was moved by Ms. Jewell, seconded by Ms. Takii that the President will appoint a task force to examine and identify the role and supervision issues related to assistive personnel and report back to the Board. Vote: 6-0. Motion carried.

The members suggested posting a call for participants, to serve on the task force, on the Board website. President Krueger said she would assist with drafting the request for participants. She also expressed her interest to participate as well as Mr. Turner. It was also suggested that Carrie Lopez, DCA Director be asked to recommend participants as a consumer member.

11. Rulemaking – Rebecca Marco

(A) Rulemaking in Progress

Ms. Marco explained that currently the sole rulemaking in progress is the proposed changes to sections 1399.25 and 1399.26, which are the subjects of the hearing scheduled today at 1:30 p.m.

(B) 2008 Proposed Rulemaking Calendar

Ms. Marco presented the proposed 2008 Rulemaking Calendar. Ms. Marco suggested adding a proposal to develop language prohibiting the clinical coordinator of a foreign educated physical therapist from being related to the applicant. She suggested that it poses a conflict of interest. The members agreed and also suggest consideration be given to language addressing the corporate practice of physical therapy. Ms.

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Freedman advised the members that there was an interest group consisting of deputy attorney generals and DCA legal counsels visiting this issue and suggested they wait until they have completed their task. The members agreed to postpone adding this issue to the rulemaking calendar.

1:30 P.M. Regulatory Hearings

12. Regulatory Hearing on the Proposed Language for Section 1399.25 and 1399.26 of the California Code of Regulations, Title 16, Division 13.2, Article 2, Administrative Citations and Amount of Fines

Ms. Freedman announced that it was 1:30 p.m. and that the regulatory hearing would now commence. She called for public comment or testimony. There was no public comment or testimony given. Staff informed the Board that no written comments had been received. The hearing closed at 1:34 p.m.

It was moved by Ms. Alviso, seconded by Ms. Levine to proceed with the rulemaking process on sections 1399.25 and 1399.26 of the California Code of Regulations and to delegate to the Executive Officer the authority to make any non-substantive changes, if needed.

Vote 5-0. Motion carried.

13. Continuing Competency Task Force Report – Marty Jewell, PT, PhD

The members reviewed the language developed to date by the task force and suggested changes or additions. Ms. Freedman agreed to incorporate their suggestions for consideration by the task force at their next meeting. Ms. Jewell reported that the task force was progressing with their task and that she anticipated there would be a final proposal to the Board in January 2008. Ms. DeFoe complimented the task force and its work and asked that the CPTA be defined in the regulation in addition to the APTA. Ms. Freedman agreed to incorporate the definition.

14. Proposed Disciplinary Decisions

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

RECESS

The Board recessed at 6:37 p.m.

15. Evaluation of Executive Officer

This agenda item was initially moved to Friday, October 26 and then postponed to the January 2008 meeting.

Friday October 26, 2007 9:00 AM – 12:00 PM

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16. Call to Order and Roll Call

President Krueger called the meeting of the Physical Therapy Board of California to order at 9:10 a.m. Roll call was taken. All members were present. A quorum was established.

Nancy Krueger, PT – President
Martha Jewell, PT, PhD. - Vice President
Debra Alviso, PT
Adele Levine
Sara Takii, PT
James Turner

17. Review and Approval of Newsletter – *Debi Mitchell*

The Board suggested the following edits to the newsletter: 1) Remove the reference to “New” Board members and include all Board members; 2) update the article on the Continuing Competency Task Force; 3) enhance the importance of professional judgment in the corresponding article; 4) include an article on the issue of the ELEERs vs. the use of the FCCPT CWT, and an article soliciting participants to visit defining the use of assistive personnel; 5) add the suite number and phone numbers of the Board; 6) update the dates on the Disciplinary Actions Taken, as well as delete the word “Taken” from the title; 7) add the violations code; 7) emphasize, the article title “Avoid an Administrative Citation” by printing it in red; and, update Board calendar.

Ms. Freedman advised the Board that there was no formal approval of the newsletter of the Board required in order for staff to move forward with the requested edits.

18. Consumer Protection Services Report – *Nancy Krueger, PT*

This agenda item was visited on Thursday, October 25 at the request of Ms. Ybarra. The Board did revisit this agenda item again on Friday, October 26.

Ms. Ybarra advised members that there was some enhancements to the reporting of discipline and citation actions and asked if there were any questions regarding this. Ms. Krueger asked why the numbers were so high under the column titled “Other”. Ms. Ybarra explained it was caused by the recent activity taken on those who fail to submit address changes within the required 30 days.

The Board expressed its pleasure with the reporting efforts of the staff.

19. Application & Licensing Services Program Report – *Debi Mitchell*

The members reviewed the data included in the report. Ms. Jewell requested an explanation of the discrepancy between the number of applications received and the

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number of the licenses issued. Mr. Hartzell explained that there may be applications that were in process prior to the reporting that became licensed during this reporting period.

The members requested that a brief explanation of the passing rates by school and other data that staff could identify be forwarded to the members.

Ms. Krueger asked when the EMG would be administered and Mr. Hartzell responded November 16th and that applications would be accepted up to the last minute of the exam.

She further asked when the exam would be updated and Mr. Hartzell replied that the examination is given so seldom, and it is so costly to update that prior to administering the upcoming exam he took two forms of the exam to have it reviewed by subject matter experts for currency.

The members were extremely interested in the FSBPT reports which generated an assortment of observations and corresponding comments.

20. 2007 Legislation Update – Steven K. Hartzell

- (A) Fee Increase
- (B) Proposed Physical Therapy Practice Act

Mr. Hartzell introduced Jason Lazark as the analyst from the Legislative and Regulatory Review Unit of DCA assigned to assist the Board with regulatory or legislative proposals. He further explained that he had been in discussion with them regarding assistance with introducing the proposals for a fee increase and to revise the Physical Therapy Practice Act. He referred the members to the proposed language included in the agenda book which was given to the legislative unit for consideration. He also advised that any language identified as controversial was removed from the proposed practice act language to heighten chances of introduction to the legislature. Also, the fee increase was separated and is also being entertained by DCA to be included with others seeking fee increases. Mr. Hartzell added that he had also been seeking the support and assistance of the CPTA with these two legislative proposals.

He suggested that assistance from the members of the Board would be helpful. Ms. Takii asked whether or not she was permitted to talk directly to her contacts regarding this and Ms. Freedman responded that yes, as long as she accurately represented what was agreed to by the entire Board and that she could express her own views as long as she distinguished them as such.

The members scrutinized the language of the proposed practice act resulting in a multitude of questions and comments responded to by Mr. Hartzell and Mr. Lazark. Mr. Hartzell stated that most likely the January 2008 meeting will be hosted by USC,

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and since Cheryl Resnik is a USC faculty member as well as one of the task force members helped develop the proposed language, he suggested she could possibly assist in responding to some of their questions regarding the thoughts behind the proposal.

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

This proposal was also being considered by DCA but Mr. Lazark did not have an update on the status.

- (D) AB 1444 – Physical therapists; Scope of Practice

This bill is a two year bill.

- (E) SB 1049 – Physical therapy; Executive Officer

This bill passed through the legislature and has been signed by the Governor.

- (F) SB 963 – Regulatory Board's: Termination

This bill became a two year bill.

- (G) SB 964 – Local agencies

No update.

- (H) AB 1025 – Professions and vocations: licensure

This bill was vetoed by the Governor.

- (I) 2008 Legislation Proposals

Discussed above.

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

- (A) California Physical Therapy Association (CPTA)

Mr. Hartzell solicited comment from Stacy DeFoe of the CPTA. Ms. DeFoe reported that the CPTA was working on gaining support of AB 1444 and that they anticipate it being heard in Assembly Business and Professions Committee on January 8, 2008. Ms. DeFoe reported that SB 284 passed through the legislature but vetoed by the Governor, AB 1073 passed and also chaptered. Ms. DeFoe further advised that the CPTA conference went well and that the 2008 CPTA conference was scheduled for

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September 26 and 27 in Oakland. She added that the PTBC would be a welcomed exhibitor.

(B) American Physical Therapy Association (APTA)

Nothing to report.

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

1. FSBPT Annual Meeting Report

Ms. Alviso was in attendance at the FSBPT annual meeting and attended workshops on Florida's unlicensed activity program, the FCCPT's Coursework Evaluation Tool and Ethical Remediation.

She reported that Florida's unlicensed activity program is progressive and proactive in reducing unlicensed activity. Florida's program addresses fraud, bogus credentials, those licensed in another country, outside scope of practice issues and retired or inactive licensees. The tools used in their program are billboards and public service announcements to educate consumers, law enforcement and prosecutors. Remedies include cease and desist orders, fines and prosecution.

Ms. Alviso additionally reported on the Coursework Evaluation Tool (CWT) for foreign educated physical therapists. She reported that there are two parts to the evaluation process – authentication and verification. The CWT was developed to correspond with applicant's graduation year. Typical deficiencies include cardiopulmonary, ethics, administration, integumentary and differential diagnosis, evaluation.

Finally, Ms. Alviso reported on Ethical Remediation. She reported that there are two primary uses of ethics education, continuing education and remediation. She said that there was a motion made by delegation from Arizona and California for FSBPT to investigate development of ethics education for use in remediation and/or education. The motion was passed.

Ms. Takii attended several workshops, including "Model Practice Act". She participated in an exercise, requiring her to analyze the California Practice Act in comparison to the Model Practice Act for completeness. She found the California Act to be generally very thorough and was an excellent activity for a relatively new Board member.

The group attended a luncheon with the FSBPT's legal counsel discussing the problems with security and testing of applicants from the Philippines. A thorough description of the cheating activities, relating to test preparation centers was given, as well as the analytical process used to determine which applicants were probably guilty of cheating. These individuals received a "fail" on the test. A delegation of practitioners and Board members from the Philippines was present at the luncheon.

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Ms. Takii, acting as delegate, represented California in the following actions that were taken at the Delegate Assembly:

- California proposed an amendment to a motion regarding by law changes passed to extend the time for the return of mail ballots, regarding Bylaw changes, to 90 days. This action will allow for a quarterly Board meeting, so that the consensus of the Board on any action may be obtained.
- California proposed a substitute amendment, regarding jurisdiction reimbursement of ADA costs during licensing examination. The amendment would have required the FSBPT to adjust the testing fee to include these costs, since it is the FSBPT that collects the fees. It is not in the budget of the jurisdictions to collect these fees. Amendment was defeated and the motion was withdrawn.
- A joint proposal by North Dakota, California, Massachusetts, and Minnesota to rescind all unexecuted portions of DEL-06-05, regarding a RFP to study Referral for Financial Gain. Amendment was defeated after numerous proposals to amend the motion. The original intent of the motion passed in 2006 remained unchanged. The RFP for the study will be advertised.
- California and Arizona proposed the FSBPT Board of Directors to study the availability of ethics courses specific to the profession of physical therapy and the effectiveness of the delivery method for remediation and/or continuing competency with a report to the 2008 Delegate Assembly. Passed.

2. FSBPT Continuing Competency Steering Committee Pilot Program Update
No update.

- (D) Department of Consumer Affairs (DCA)
- (E) California Board of Occupational Therapy (CBOT)
- (F) Board of Chiropractic Examiners (BCE)
- (G) Speech-Language Pathology and Audiology Board (SLPAB)

Nothing to report on (D), (E), (F) and (G).

(H) Veterinary Medical Board (VMB)

Mr. Hartzell reported that the VMB is still waiting on advise from their legal counsel regarding animal physical therapy by licensed physical therapists.

(I) Medical Board of California (MBC)

Nothing to report.

22. Practice Issues – Debi Mitchell

The Board will review, discuss, and take action on practice issues submitted to the Board.

There were no practice issues to review.

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23. Election of 2008 Board President and Vice President

It was moved by Ms. Takii to nominate Ms. Krueger as President. Vote: 5-0. Motion carried.

It was moved by Ms. Takii to nominate Ms. Jewell as Vice President. Vote: 5-0. Motion carried.

24. Election of 2008 FSBPT Delegate and Alternate Delegate

It was moved by Ms. Krueger to nominate Ms. Takii as delegate. Vote: 5-0. Motion carried.

It was moved by Ms. Jewell, to nominate Ms. Alviso as first alternate delegate. Vote: 5-0. Motion carried.

It was moved by Ms. Krueger, to nominate all Board members, executive officer and legal counsel as alternate delegates. Vote: 5-0. Motion carried.

25. Agenda Items for Next Meeting

1. Review statutes and regulations regarding legibility of signatures in documentation.
2. Evaluation of executive officer.
3. Proposed regulatory language for continuing competency.
4. Progress report on ELEER vs FCCPT's Coursework Evaluation Tool.
5. Strategic plan.
6. Professional corporations.
7. Response to request for task force participants to review the issues associated with supervision of assistive personnel.
8. FSBPT or jurisdiction reimbursement of ADA costs for licensing examinations.

26. Public Comment on Items not on the Agenda

There were no public comments.

27. Adjournment

President Krueger adjourned the meeting at 11:55 a.m.

Moved by Martha Jewell, Seconded by James Turner to approve the October 25 & 26, 2008 meeting minutes, with corrections to the spelling of Mr. Hartzell's name on page 9, line 412. Vote: 4-0. Motion carried.

Nancy Krueger, PT – President

Date