



STATE AND CONSUMER SERVICES AGENCY - ARNOLD SCHWARZENEGGER, GOVERNOR

Physical Therapy Board of California

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APPROVED MEETING MINUTES PHYSICAL THERAPY BOARD OF CALIFORNIA January 29, 2009

Doubletree Hotel
1646 Front Street
San Diego, California 92101
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Call to Order and Roll Call

President Krueger called the meeting of the Physical Therapy Board of California to order at 9:09 a.m. Roll call was taken. Martha Jewell, Nancy Krueger, Sarah Takii, James E. Turner, and Debra Alviso were present and a quorum was established.

1. Proposed Disciplinary Decisions

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

The Board had no closed session items to discuss.

2. Presentation on The Role of an Occupational Therapist and Occupational Therapist Assistant in Response to Disasters and Emergencies – *Mary Evert, Board President - California Board of Occupational Therapy*

Ms. Evert presented a power point presentation on the roll of Disaster Preparedness and Response and discussed the importance of occupational therapists and physical therapists need to be placed on the national emergency response team.

The Board discussed with Ms. Evert the impact of disasters and various ideas on how to respond.

MOTION: To explore the legal implications of the Board being involved in a joint task force with the California Board of Occupational Therapy and report back to the Board.

Moved by: Ms. Takii Seconded: by Mr. Turner Vote: 5-0 Motion carried.

Ms. Jewell commented it appears the Board could explore opportunities within governmental structure as well as the professional associations.

Mr. Turner suggested using retired professionals as participants for a task force. The response was that the legalities of a task force would need to be explored regardless of the participants.

President Krueger expressed her appreciation of Ms. Evert for her presentation.

3. Approval of Minutes

(A) November 18, 2008 Board Meeting

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Board members thanked staff for sending out the draft minutes in a timely manner. The following corrections were made to the minutes: Page 2, line 73, strike last sentence of paragraph (lines 73,74, and 75); Line 220, add an "s" to Board in the agenda title; Line 224, "she" should be changed to Ms. Alviso; Line 248, should read northern and southern California; Line 303, add "with" between introduce and legislation; Line 323, add Marty's last name Jewell and Sara's last name Takii to the motion; Line 350, after the word "changes" add "the Board makes" and remove the word "made"; Line 418 and 419, delete editorial remark in brackets; Line 431, add the below sentence before the motion to the end of Line 429, "The Board did not have adequate time to discuss the language in depth; therefore, staff suggested that the item be included on the next agenda".

MOTION: To accept the minutes as corrected.

Moved by: Ms. Jewell

Seconded by: Ms. Alviso

Vote: 5-0

Motion carried.

4. President's Report – Nancy Krueger, PT

(A) 2009 PTBC Meeting Dates

Mr. Hartzell informed the Board the Department of Consumer Affairs (DCA) will not be having a PACT Summit in 2009 but that it looks like the next Summit will be scheduled for January 2010 in San Diego.

Mr. Hartzell reported pursuant to the Governor's Executive Order furlough days for all State offices will be scheduled on the first and third Fridays of each month beginning February 2009 and continuing through until the end of June 2010. There is a court hearing today on the furlough days.

Mr. Hartzell informed the Board SACBEE.com just placed a report on the Internet that the tentative court ruling supports the Governor's Executive Order and the furlough days will become effective February 2009.

The meeting dates were changed as indicated below in order to comply with the mandated furlough days:

- Strategic Planning Session change to March 18 and 19, 2009
- Expert Training change to May 13, 2009 in Loma Linda
- Board meeting May 14, 2009 in Loma Linda, depending on the fullness of the agenda the Board may need to add meeting on May 13, 2008.
- Board meeting change to August 19 and 20, 2009 in Sacramento
- Board meeting change to November 12 and 13, 2009 at Ohlone College in Oakland

President Krueger expressed a desire for staff to participate in the Strategic Planning Session.

(B) Update

President Krueger mentioned that several members were contacted by licensee's regarding their renewal payments. Members were encouraged to email Mr. Hartzell and Ms. Marco if they are contacted in the future to ensure an appropriate response.

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5. Newsletter Update – Rebecca Marco

Mr. Hartzell reported the newsletter has been placed on hold due to the completion of the continuing competency regulations. He indicated all the articles that have been previously submitted will be placed in the next newsletter but that we are still in need of additional articles.

6. Review & Discussion on Recommendations by the Assistive Personnel Task Force

– Nancy Krueger, PT

(A) Definition of Wellness in Regulation

President Krueger explained the task force separated into two groups; one group worked on provider identification and the second group worked on defining wellness within the regulation.

Ms. Takii reported on the recommendations by the task force for defining wellness in the practice of physical therapy. The following are topics that were discussed:

1. Promotion and maintenance of physical fitness
2. To enhance the bodily movement related to the health and wellness of individuals through the use of physical therapy intervention
3. What regulatory requirements apply to the physical therapist providing this type of physical therapy? (i.e. a physical therapist offers Pilates classes and hires an instructor to teach this class.) Does the physical therapist have to document the patient going to the Pilates class and does the physical therapist need to be present during the patient taking the Pilates class. Subgroup recommendation, under the following conditions the Board will waive the supervision requirements and limit the documentation requirements as described: 1) a physical therapist (not a physical therapist assistant) must screen the client participating in a wellness program. The screening, not necessarily an evaluation must determine whether the interventions are appropriate. The physical therapist must document the screening. A screening may be accomplished by the use of a health screen questionnaire assessment tools, physical examination, client interview, or other appropriate measures. 2) Before a client can participate in a wellness program the client must be discharged from a physical therapy program or the wellness program must be outside the present scope of the client's present treatment program.
4. A physical therapist may not discharge a patient needing restorative care or care of a condition by substituting a wellness plan. The physical therapist must continue the level of care the patient needs. The responsible practitioners tells the patient to go to the gym or perform home exercise care, this is restorative care for treatment of the condition and is not exempt from supervision or documentation of care.
5. The physical therapist assistant is not prohibited from developing the wellness program as long as the physical therapist subsequently reviewed the wellness program prior to the program being set into motion.
6. Standards regarding self-referrals and required disclosure are adequately addressed in other statutes. These provisions do not apply if 1) a physical therapist is treating a condition 2) when an economic relationship may exist and the client is engaging in normal exercise not a part of physical therapy treatment, i.e. attending a gym owned by a physical therapist or attending a Pilates or yoga class given by a physical therapist. However, if the physical therapist instructs the client to attend the gym or Pilates or yoga class as part of physical therapy then it falls under the definition of physical

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therapy. On the contrary, if a physical therapist is volunteering coaching basketball, etc is not practicing physical therapy.

7. Define a client as a person who is receiving wellness and a patient as a person who is receiving physical therapy treatment.

Mr. Dagostino, task force member, indicated the task force also looked at three types of scenarios 1) a physical therapist that is invested in a fitness gym as an economic venture with nothing to do with physical therapy or screening for wellness 2) a physical therapist who has ownership in the gym and refers that patient to the gym he has ownership in 3) the physical therapist is actually contracted with a client to set up a wellness program to manage i.e. diabetes.

Ms. Alviso indicated that we need to clearly define what constitutes physical therapy treatment intervention and wellness. What is the defining line between physical therapy intervention and wellness? Until that is clear how can we go further with defining who gets to do it?

Ms. Freedman responded that the Business and Professions Code section 2620 defines physical therapy as the art and science of a physical or corrective rehabilitation treatment of a person's mental or physical condition. That is the distinction: mental or physical condition. Then the statute goes on further to add other types of treatment but we need to first look at the mental or physical condition.

Ms. Takii explained the elements the task force discussed were "does a physical therapist need to be on the premises or with the client when the client is doing wellness exercise and what are the documentation requirements?"

President Krueger explained that due to the current physical therapy aide's supervision statutes and regulations anyone who is not a physical therapist and is providing wellness falls under the required supervision regulations. The Board cannot waive a supervision that is already in statute or regulation.

Ms. Freedman explained that one of the other recommendations from the task force was for legal counsel to review the current statutes and regulations to determine the parameters of the supervision requirements.

Board members discussed some of the issues involving physical therapist assistants and physical therapy aides in providing wellness. In addition, what defines a preventative measure verses a treatment measure, such as using ice after the wellness activity. Is this wellness or physical therapy?

Ms. Takii indicated these issues are still being discussed with the task force.

Mr. Dagostino explained that the task force was trying to define how does the physical therapist get involved in the wellness when rehabilitation is over or at the same time so that a physical therapist may compete in the open market. We need to draw a clearer line between corrective and wellness.

Karen Frederick, PT commented: Is deconditioning a condition and is obesity a medical condition?

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Ms. Jewell indicated that this is addressing adaptive physical therapy. The physical therapist, when providing wellness, may be guiding a program around an existing condition that no longer qualifies for physical therapy.

MOTION: To direct the existing Assistive Personnel Task Force to continue working on the definition of wellness in light of the statutes regarding physical therapist assistants and physical therapy aides.

Moved by: Ms. Jewell Seconded by: Ms. Takii

There was further discussion by the Board.

MOTION REVISED: To direct the Assistive Personnel Task Force to continue to explore issues related to wellness, including but not limited to, clarifying the definition of the scope of practice of wellness and defining potential limitations to regulations. Moved by: Ms. Jewell Seconded by: Ms. Takii Vote: 5-0 Motion carried.

(B) Identification of Provider Performing Treatment

MOTION: To direct staff to seek input on the most efficient way to survey individuals regarding the use of titles of students.

Moved by: Ms. Alviso Seconded by Ms. Takii Vote: 5-0 Motion carried.

MOTION: To direct staff to explore with legal counsel the recommendations of the task force regarding signature legibility and title then report back at the next meeting.

Moved by: Ms. Jewell Seconded by: Ms. Takii Vote: 5-0 Motion carried.

7. The Board's Role in Workforce Shortages Workshop – Strategic Organization, Leadership and Individual Development (SOLID) and The CENTRE

An overview of the workforce demographics that will impact our Boards and the availability of licensees in the future. Potential solutions to identified issues will be explored and linked to the strategic planning process.

Karen Stashire, Senior Consultant with the Center of Organization Effectiveness reported they have collaborated with DCA to provide a series of Board workshops. She presented 2006 workforce data from Employment Development Department (EDD) and Labor Management Information Division (LMID), a division of EDD. The reason she is here is to give the Board information to determine if they are meeting their professional workforce needs. This can also help Boards decide if they should add this into its Strategic Plan.

The Board discussed the Board's role in workplace issues and that it is the Board's role to provide education and to clarify the profession to the licensees and consumers.

Ms. Jewell commented on how each generation's motivation is different and that the Board should look at recruiting by generational specifics.

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Mr. Turner commented that during the Country's economical crisis the Board may see more people not wanting to incur the debt of going to school, whether they can receive financial assistance or not.

Ms. Stash ire gave the Boards some suggestions on areas to start researching:

- Collaborate with other agencies and institutions that are already educating and marketing
- Public and Private partnerships, maybe with different health care organizations
- Fast tracking and reviewing the requirements for licensure
- How does the Board retain existing talent and support the current licensees that are struggling?
- Partner with large organization for hiring licensees
- Increase use of technology
- Being proactive in legislation
- Are there potential strategies we might want to employ?
- Partner with educational institutions
- Educate licensees on the importance of renewing your license even if you are not working

Ms. Krueger commented that the Board should include this discussion as part of strategic planning session.

**8. Public Forum on Physical Therapy Aide Supervision
Proposed Amendment to Section 1399 of the California Code of Regulations
(A) Open Forum**

James Syms, PT, Professor at Loma Linda University, spoke on behalf of the physical therapist assistant programs and their comments are; that even the existing physical therapy aide regulation is confusing with the word "assists" in physical therapy; and will there be any direction given to the physical therapist in how they will establish the competency of the physical therapy aide?

Ms. Krueger replied the task force did discuss this issue and it was agreed that the supervising physical therapist would be responsible to determine the physical therapy aide's competency.

Mr. Dagostino, PT, member of task force, replied the job of the task force was not to draft regulations to require more structure and that California has the most tightly controlled regulations in regards to physical therapist assistant and physical therapy aide supervision.

Mr. Syms asked, "Does the Board's data reflect disciplinary action that involves physical therapy aides and is it mostly quality or supervision?"

Ms. Jewell responded that the majority of disciplinary cases are physical therapy aides practicing beyond their competency and that the supervising physical therapist is allowing the physical therapy aide to work without proper supervision.

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Mr. Hartzell commented that the regulation model is modeled after the existing medical assistant regulation.

Marijean Pirokowski, PT, Cerritos College, reported she has seen first hand the problem of who can properly observe the patient, especially in a gym setting. Clinics see it as non-patient related task. She would like the definition of observation of patient clarified. Is overseeing an exercise program observation of the patient and is it considered patient related tasks or non-patient related task? This is confusing now with the current regulation of a physical therapy aide.

Karen Frederick, Providence Hospital, she applauds the addition of expecting some level of measuring competencies but that it is a challenge and appreciates the added element.

The Board asked that the task force consider defining the term observation of the patient.

Staff was directed to include forums on the meeting agendas for the rest of calendar year.

(B) Board Discussion

**9. Public Forum on Physical Therapist Assistant Supervision
Proposed Amendment to Section 1398.44 of the California Code of Regulations**

(A) Open Forum

Mr. Dagostino, PT, task force member, indicated that when they surveyed all the practice acts in the country they found that California was the most tightly controlled state. He encourages people to assist the task force and the Board in developing language to support the concept of developing the relationship between the physical therapist and physical therapist assistants.

Ms. Jewell's dilemma is that the responsibility of the physical therapist is not clearly defined. What she wants to know is, who is the responsible therapist from admittance to discharge?

Ms. Pirokowski, PT, representing Long Beach Memorial Hospital, requests that the task force consider language similar to what is written in the physical therapy aide regulation that allows the department to develop its own policy of assigning a supervising physical therapist in charge of the patient at particular times and who the physical therapist assistant should report to that day.

Ms. Pirokowski, states it is simply not doable for the physical therapist to identify the alternate physical therapist when the staff schedule in an acute care setting is constantly changing.

Ms. Krueger asks who cosigns the physical therapist assistant's notes when the physical therapist that initially evaluated the patient is not there?

Ms. Pirokowski explained to the Board how the hospital supervises the physical therapists assistants at the hospital.

Ms. Frederick supports the intent of the physical therapist of record. However, the proposed changes as written create problems.

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Ms. Krueger commented that most of the objections to the language is the transfer of physical therapist of record. Ms. Krueger explained that the biggest concern in some of the disciplinary cases is that there was no clear evidence of who was the supervising physical therapist that was responsible for the patient. It needs to be clear in the record who the supervising physical therapist is for the patient when the physical therapist assistant is performing patient related tasks.

Ms. Frederick explained JCAHO's requirements.

Ms. Jewell suggests the facility have a chain of command of supervising physical therapists.

Carla Griffith, Director of Therapy Services at Santa Barbara County Hospital, suggested that each practice setting have an internal policy and procedure regarding who is supervising and who is responsible for the patient on any particular day. She also submitted her comments and suggestions in writing.

Tom Salizer, PT Cedar Sinai, agrees with Dr. Griffith, PT, and her comments.

David Swink, Grossmont Hospital, indicates most of his points were already made. He does not agree documenting the transfer of physical therapists. This would be a huge burden to his department. They do have a department structure of physical therapist on staff that physical therapist assistants know who to go to on any given day.

James Syms, representing California Physical Therapy Association (CPTA), indicated CPTA is aware of the difficult task the task force had in writing this language. As a chapter of APTA, there is a national position which is, APTA encourages practices and facilities to develop and implement a process to identify the physical therapist of record and a "hand off" communication procedure.

James Syms, representing himself as a PT and educator, indicated there is a lack of understanding of current law. There is a need for proper supervision.

Mr. Turner asked if it is doable to write different language for different settings.

Laura Freedman, legal counsel, explained that there is no prohibition for the Board to write separate language for all the different settings.

Ms. Krueger responded there are too many practice setting to try and write separate regulations for each type of settings.

Mr. Hartzell indicated we need to look at who is going to be providing the care in the future. Physical therapist assistants are educated and it should be written that the physical therapist assistant be able to treat the patient consistent with the physical therapists treatment plan until they have determined the patient needs to be reevaluated. This would remove the ongoing supervision of the physical therapist assistant. The complaints the Board receives are mostly that the physical therapist assistant was not properly supervised not that the patient was harmed by the physical therapist assistant.

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MOTION: To recommend the task force revisit this to look at JCAHO requirements and existing hospital guidelines to determine if alternative approaches might be possible. Moved by: Ms. Jewell Seconded by: Ms. Takii Vote: 5-0. Motion carried.

The Board directed the task force to use the May Board meeting as a target date but that they realize it may have to go to the August meeting.

(B) Board Discussion

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

(A) Update

Mr. Hartzell reported he is working with legal counsel on the concerns he has with where the ten-dollar fee is added to the continuing competency regulation. We may not be able to include the ten-dollar fee at this time. The Board could in the future write a regulation that will address collecting a ten-dollar fee for the continuing competency requirement.

(B) FY 2008 - 2009, FY 2009 – 2010 Budget

Mr. Hartzell directed members to the Calstars Report in the agenda book. He explained the nature of the Board's budget. He further explained certain line items; labor distribution; Calstars Report; witness fees; and facility operations. Mr. Hartzell also explained issues resulting from the last executive order and staff's needs in order to get caught up on their workload.

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

(A) California Physical Therapy Association (CPTA)

Mr. Syms, PT, CPTA, will report back to the CPTA on possibly collaborating with the Board on the emergency preparation plan and they are asking from their membership comments on the physical therapy aide and physical therapist assistant supervision and will provide the Board with those comments.

Mr. Hartzell indicated the CPTA's meeting is simultaneous with the Federation of State Boards of Physical Therapy (FSBPT) meeting. Board members will need to review their schedules and we will need to decide who will be participating at these meetings.

(B) FSBPT

Mr. Hartzell reported there will not be funding for the alternate delegate. Again, there is a conflict with this meeting with the CPTA so we will need to determine which members will be attending which event.

12. Possible Regulations Related to Re-Finger Printing as a Requirement for Renewal

(A) Need for Emergency Regulations

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Ms. Freedman, legal counsel, indicated this is not urgent for the Board to do at this time. She explained why two other Boards' had pursued emergency regulations and the need for them to do so, but that the PTBC has always required fingerprinting.

13. Department of Consumer Affairs Professionals Achieving Consumer Trust Summit (PACT)

- (A) 2008 PACT Summit Review
- (B) 2010 PACT Summit

This item was discussed previously as part of the Board's calendar. Members expressed how much they appreciated DCA putting this type of meeting together, but they would have enjoyed more interaction with the other Boards.

Members indicated they would have appreciated the seminars to be broader than just focused on certain professions.

Mr. Hartzell suggested the members think about putting together a presentation for the next PACT Summit.

14. Rulemaking – Rebecca Marco

- (A) Approval of 2009 Rulemaking Calendar

Mr. Hartzell directed members to the rulemaking calendar in the agenda book. Ms. Krueger asked if wellness will be added to the calendar. Elsa Ybarra indicated she would inform Ms. Marco that wellness should be added.

Ms. Jewell asked clarification on when the proposed regulations will be pursued.

Mr. Hartzell replied that staff will finish these regulations and others once the continuing competency package is complete. The continuing competency package is the focus of staff's time and resources at the moment and until this package is complete staff is not able to work on the other regulations.

Mr. Hartzell explained the current status of the timeframe for the continuing competency regulations and that until the regulation is complete the Board will not be reviewing companies for approval to provide these courses.

MOTION: To approve the rulemaking calendar with the addition of wellness.

Moved by: Ms. Jewell Seconded by: Ms. Takii Vote: 5-0 Motion carried.

- (B) Rulemaking in Progress

15. Legislation Update – Steven K. Hartzell

- (A) Proposed 2009 Legislation and Legislative Concepts
 - (1) Amendment of Physical Therapy Practice Act

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Mr. Hartzell reported that there is a commitment from DCA to include the Physical Therapy Practice Act in the omnibus bill.

(2) Criminal History Background Check Authority

Mr. Hartzell reported this is something DCA is looking at and will be included in a DCA wide bill.

(3) Bills Introduced After Publication of Agenda

Mr. Hartzell reported tomorrow is the last day to introduce bills in for this year; therefore, after tomorrow he will be working on researching all the bills that are being introduced.

Mr. Syms, CPTA Government Affairs Chair, reported CPTA is working on legislation to allow consumer direct access to physical therapy services. This bill is basically identical to AB1444 from the last session. CPTA will continue to lobby the legislature on the importance of this legislation.

Mr. Hartzell introduced Brent Jamison, DCA Assistant Deputy Director of Legislation. Mr. Jamison reported DCA is currently in the process of submitting legislation to the Senate Business and Professions Committee and they are waiting to hear back what will and will not be accepted.

Ms. Krueger mentioned that Director Lopez asked about the proposal for all boards to have the same number of members. Mr. Jamison replied that has not been determined at this time.

Ms. Jewell asked if there could possibly be a problem with DCA submitting legislation and CPTA submitting legislation separately regarding physical therapy. Mr. Hartzell explained these bills may end up getting combined throughout the process, but that he is working with CPTA and DCA in regards to these two bills.

Mr. Hartzell reported the Governor has put recommendations forward to consolidate some of the Boards under DCA; however, the Physical Therapy Board is not included in that recommendation.

MOTION: To delegate to the executive officer the authority to authorize non-substantive changes in the proposed legislation.

Moved by: Ms. Alviso Seconded by: Mr. Turner Vote: 5-0 Motion carried.

16. Consumer Protection Services Report – *Elsa Ybarra*

Ms. Ybarra directed the members to the reports included in the agenda book.

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

Ms. Romo directed the members to the information provided in the agenda book.

Ms. Jewell commented on the pass/fail rate of physical therapists and physical therapist assistant educated by accredited programs in the United States and the foreign educated. Is this something the Board should be looking at (i.e. ways to facilitate or encourage better pass rates)? Mr. Hartzell indicated this would be a topic to add to the Strategic Planning Session.

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Members directed staff to include this item in the Strategic Planning Session.

Mr. Hartzell reported to the Board that there have been some applicants that have become extremely upset over the delay of the Board issuing their license due to a delay in receiving their criminal history report from Department of Justice. He does not recommend the Board alter their current policy since it errors on the protection of the consumer. Some of the delays are the quality of the fingerprinting on the fingerprint cards of licensees from other states. The process is faster if an out-of-state applicant can come to California to have their fingerprints processed via Live Scan to minimize the fingerprint processing time frame with Department of Justice.

Mr. Hartzell reported that the ability for a renewal applicant to apply to the Board online should be available in the next couple of months.

18. Request For Change In Retention Period For Failure To Provide Timely Notification Of Address Change Citations.

Mr. Hartzell directed members to the issue paper included in the agenda book and explained that there have been complaints by licensees on the length of time an address citation is on their license record.

Mr. Hartzell recommended that if the Board chooses to review the length of time a citation is part of a licensee's record they should review the timeframe for all citations.

Ms. Jewell suggests that the issue be included in the next revision of the citation and discipline model guidelines.

MOTION: To include the issue in the next review of the model guidelines which will occur when action for the continuing competency violation is determine.

Moved by: Mr. Turner Seconded by: Ms. Takii Vote: 5-0 Motion carried.

19. Agenda Items for Next Meeting

PTBC Meeting – May 14 & 15, 2009 Loma Linda

- Task force items
- Normal items
- Report of survey results of educators
- Items from today's meeting
- Ethics Training

20. Public Comment on Items not on the Agenda

Mr. Syms expressed his appreciation to the Board for returning to Loma Linda University for the Board meeting. The meeting will be held in the same room as the last time and that the students will be there from 8 am to 12 pm on Thursday.

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21. Adjournment

President Krueger adjourned the meeting of the Physical Therapy Board of California at 4:02 pm.

MOTION: To adopt the January 29, 2009 Board Meeting Minutes with the following amendments: page 5, line 203, change the word reconditioning to deconditioning and page 9, line 411, add the words continuing competency after ten-dollar fee is added to the “continuing competency” regulation.

MOVED: Ms. Alviso SECOND: Ms. Takii VOTE: 4-0 Motion carried.

Nancy Krueger, PT – President

Date