



Physical Therapy Board of California

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APPROVED MEETING MINUTES August 19 & 20, 2009

Department of Consumer Affairs
Hearing Room
2005 Evergreen St.
Sacramento, CA 95815

Wednesday, August 19, 2009 9:00 AM
Thursday, August 20, 2009 8:30 AM

9:00 AM

Call to Order and Roll Call

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

1. **Ethics Training** – *Laura Freedman and Claire Yazigi, Legal Counsel*

Ms. Freedman and Ms. Yazigi provided ethics training to the Board members and reviewed the Board members' responsibilities.

10:00 AM

2. **Hearing on Petition for Termination/Modification of Probation** – Andrew Ramirez, PT
After submission of the matter, the Board convened in CLOSED SESSION to deliberate per Government Code Section 11126 (c) (3).

3. **Hearing on Petition for Reinstatement** – Anthony Michael del Zompo, PT
After submission of the matter, the Board convened in CLOSED SESSION to deliberate per Government Code Section 11126 (c) (3).

4. **Disciplinary Decisions**

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

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

5. **Consumer Protection Services Report**

(A) **Statistics**– *Elsa Ybarra*

Ms. Ybarra directed members to the new formatted Consumer Protection Services statistical report included in the agenda book. Mr. Hartzell and Ms. Ybarra explained the report and answered Board members' questions.

(B) State and Consumer Services Agency Meeting With Health Regulatory Boards – Sara Takii & Steven Hartzell

Ms. Takii reported on the meeting she attended on July 23, 2009 at the State and Consumer Services Agency (Agency) regarding all Health Regulatory Boards enforcement procedures. She indicated Mr. Aguiar, Agency's Director, informed the assemblage of the Governor's concerns and expectations regarding the Board's procedures to process complaints from the general public. Mr. Aguiar reminded the Boards that they are independent bodies and the Executive Officers are hired by the Boards. The Board members control the Executive Officers and as the majority of the Board members are appointed by the Governor, they are to represent him in serving the public. The Governor expects the highest quality of protection and service to the public.

Ms. Takii reported the Governor wants a new uniform plan of handling all complaints in a timely manner. The Governor feels complaints should be processed in less than two years. The timeline for completing the new uniform plan is by the end of September 2009.

6. Department of Consumer Affairs Division of Investigation (DOI)

Daryl Walker, Acting Chief of DOI, provided information regarding the investigative services provided to the Board.

Mr. Walker reported on the investigative services DOI provides the Board. He further explained what may cause delays in investigating a complaint. He looks forward to working with the Boards in improving the process and the timeframe in completing cases.

7. Office of the Attorney General, Health Quality Enforcement Section (HQE)

Carlos Ramirez, Senior Assistant Attorney General, provided information regarding the legal services provided to the Board.

Mr. Ramirez reported on the legal services the Attorney General's (AG) office provides the Board. He explained the types of cases the AGs office receives that are at times incomplete from all the different Boards which results in a lengthier timeframe to process the cases. He further explained the priority of how the cases are reviewed and processed. His agency is reviewing their processes as well to determine where they can be more efficient.

8. Evaluation of Executive Officer

This item was considered in CLOSED SESSION pursuant to Section 11126(a)(1) of the Government Code.

9. Approval of Minutes

(A) January 29, 2009 Board Meeting

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.

(B) March 18 & 19, 2009 Strategic Planning and Board Meeting

MOTION: To approve the March 18 and 19, 2009 Strategic Planning and Board Meeting Minutes as written.

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

(C) May 14, 2009 Board Meeting

MOTION: To adopt the May 14, 2009 Board Meeting Minutes as written.

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

(D) June 16, 2009 Special Teleconference Board Meeting

MOTION: To approve the June 16, 2009 Special Teleconference Board Meeting Minutes with the following amendments: line 52, 82, 94, and 124, change the word role to “roll”.

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

10. Review and Action on Retention Schedule – Carl Nelson

Mr. Nelson directed members to his briefing paper included in the agenda book and reviewed the changes to the record retention schedule. He further explained the change in reducing the length of time the Board maintains abandoned applications is changing from two years to one year.

Ms. Romo explained the automated renewal batches that are received from the Central Cashier's office from the Department of Consumer Affairs (DCA) were not included in the record retention schedule and that now they are included as part of the renewal record retention.

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

(A) Healing Arts Board Roundtable

Mr. Hartzell reported the DCA is planning another Healing Arts Board Roundtable in January 2010. He will keep the members updated on the date and location once he receives the information.

(B) 2010 PACT Summit

Mr. Hartzell reported the Governor has approved the DCA to plan another Summit and that it will be scheduled in the beginning of July 2010 in Sacramento.

12. President's Report – Martha Jewell, PT

(A) 2009 PTBC Meeting Dates

Mr. Hartzell reported the November meeting has been reduced to only a one day meeting on November 12 at Ohlone College due to Veteran's Day and now the mandated furlough day. Ms. Marco reported the next Expert Consultant Training is scheduled at Ohlone College on November 4, 2009. Mr. Hartzell also reported the FSBPT Conference will be held in San Diego on October 1 – October 4, 2009 and mentioned that the CPTA Conference will be held in Pasadena during the same time. This will result in Board members who have been elected as delegates for the FSBPT Conference not being able to attend the CPTA Conference this year.

(B) 2010 PTBC Meeting Dates

Stacy DeFoe, CPTA's Executive Director, reported the CPTA Conference is scheduled on October 1 and 2, 2010 in Oakland, the APTA's Combined Section is scheduled for February 17-20, 2010 in San Diego, and the FSBPT's Annual Conference is October 14-17, 2010 in Denver, CO. Ms. Marco reported the Summit has been scheduled for July 26-28, 2010 in Sacramento. Mr. Hartzell reported the Board's August meeting will be moved to July as part

of the Summit and that staff will be working with the physical therapy programs to determine if any of the other meetings throughout the year can be held at one of the programs. The Board is statutorily required to annually have a meeting in Los Angeles, Sacramento, and in San Francisco.

(C) Update

President Jewell acknowledged how busy the Board members and staff have been this past year in attending all the meetings as noted in the agenda and expressed her appreciation of everyone's dedication and hard work.

13. Federation of State Boards of Physical Therapy

(A) Continuing Competency Committee -Debra Alviso

(1) Update

(2) Continuing Competency Model

Ms. Alviso reported on her briefing paper (included in the May agenda book) regarding the FSBPT's Model Continuing Competency Guidelines. Since the May meeting the FSBPT's Board of Directors has adopted the guidelines. She reviewed the FSBPT's Model as outlined in her briefing paper in comparison to the Board's proposed continuing competency language. Ms. Alviso explained the process the FSBPT went through in developing the guidelines and the struggles they encountered in order to identify the hours and types of activities that would satisfy the continuing competency requirements.

(B) Update

Mr. Hartzell reported the delegate to attend the FSBPT's annual conference is Sara Takii and the alternate delegate is James Turner.

Mr. Hartzell directed members to the Delegate Assembly Agenda handout and asked if members have any specific item that they would like to direct the delegates to address while attending the FSBPT meeting.

Ms. Alviso had concerns on page 2 under Rights of Members with the removal of Representative of the Member Boards to Member Board Delegates and if this would prohibit the Executive Officer from speaking. Mr. Hartzell indicated the delegates that attend the FSBPT meeting can address this issue for further clarification.

Ms. Alviso also asked the delegates to take a look at how they can fill the Vacancies in Office and if this would allow a person to stay in office for an extended period of time without having to run for election. She also indicated they removed the Resolution Committee from reviewing the by laws. Mr. Hartzell explained a task force is being created to review the by laws when needed.

Mr. Hartzell reported he is on the Examination Oversight Committee, and at this time he has nothing to report.

The Board directed the delegates to use their discretion and judgment when attending the meeting. The deadline for the Board to submit their questions or comments to Mr. Hartzell for the delegates to address is September 10.

(C) Foreign Trained Standards Committee Update- Sara Takii

Ms. Takii reported the FSBPT's Foreign Trained Standards Committee (Committee) is looking at creating standards to evaluate the credentialing agencies to ensure they are properly

evaluating foreign educated credentials. She reported on the FSBPT's Course Work Tool (CWT) and how the FSBPT is in the process of getting all the states to use the FSBPT's CWT. California at this time uses its own evaluation criteria, which is the ELEERS. The ELEERS are identified in regulation. Another issue the FSBPT is looking at is developing best practices for supervised clinical practice of the foreign educated physical therapist. The FSBPT is working on a mechanism to determine the best way to evaluate the foreign educated physical therapist's clinical experience. The Board currently requires the use of the APTA's Clinical Performance Instrument (CPI) to evaluate the foreign educated physical therapist clinical experience during the required period of clinical service. The Committee feels the CPI may need to be modified in order to better meet the State's needs.

Ms. Takii reported the Board was previously looking at eliminating the ELEERS and adopting the FSBPT's CWT due to the fact the FSBPT has the financial resources to continually update the CWT whereas the Board does not. The CWT and the ELEERS are in alignment together in regards to the educational requirements. Mr. Hartzell reported that the Board has previously adopted this change and it has been placed on the Board's 2009 rulemaking calendar for staff to make this change in the regulation. However, due to the continuing competency regulations staff has not been able to process this rulemaking file this year but this item will continue to stay on the rulemaking calendar for 2010.

(D) Invalidated Scores – Debra Alviso & Steven Hartzell

Mr. Hartzell provided background information on why he is requesting action by the Board to request the FSBPT to develop a process where an examination score could be invalidated by the state that authorized the applicant to take the examination. If the FSBPT is not able to invalidate the score then he is requesting the FSBPT place a notation on that candidate's file that whenever the examination score is sent to another state that it indicates the authorizing state considers the examination invalid for this candidate.

Ms. Freedman stated that the Board can place this requirement in the FSBPT's contract to flag the candidate's examination score record when the Board deems a candidate's examination score invalid.

(E) Candidacy of Debra Alviso For FSBPT Board of Directors

Ms. Alviso reported she is running for a Board of Directors position with the FSBPT.

MOTION: The Physical Therapy Board of California endorses the candidacy of Dr. Debra Alviso, physical therapist, in running for the Board of Directors of the Federation of State Boards of Physical Therapy.

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

14. Public Forum on Physical Therapy Aide Supervision

Proposed Amendment to Section 1399 of the California Code of Regulations

- (A) Open Forum
- (B) Board Discussion

President Jewell reviewed the changes that were made by the task force and opened up the discussion to the Board and public.

The Board and public discussion included:

- Did the task force feel that section (6) was duplicative or should it be moved to section 1399.12 since it is a documentation requirement?

- Does the Board want to retain the requirement of co-signature by the physical therapist of the physical therapy aide?
- Is the physical therapy aide required to document in the patient record? It needs to be clear that the physical therapy aide only documents the services they provide are services that have been directed by the physical therapist.
- How does the physical therapist document the treatment by the physical therapy aide?
- If the Board does not require the physical therapy aide to document then is there a need to document the physical therapy aide's competency?

Additional discussion occurred as reflected under Agenda item 20.

The Board directed legal counsel to draft language for section 1399 and 1399.12 based on all the discussion received at this meeting and to submit their proposed language to the task force at the October 23, 2009 task force meeting.

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

- (A) Open Forum
- (B) Board Discussion

There was no public comment that was received under this section alone. The comments received were under agenda item 20.

MOTION: To direct legal counsel to edit language from discussion today and to make public the proposed language clarifying that this is not final language but language that is being presented for public comment only.

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

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

- (A) Update
- (B) FY 2008-2009, FY 2009-2010, FY 2010-2011 Budget

Mr. Hartzell reported on the month twelve CalStars Report included in the agenda book for FY 2008-2009. He reported on the Governor's Executive Order which suspended all contracts and purchase orders beginning March 2009 for FY 2008-2009.

Mr. Hartzell reported on FY 2009-2010 budget and the challenges of the state's budget. Mr. Hartzell will be purchasing new computers this year as staff computers are very old and continue to break down. He further reviewed other purchases he anticipates making during this fiscal year.

Mr. Hartzell discussed the challenges he anticipates for FY 2010-2011 and that the Board has submitted a Budget Change Proposal (BCP) to request an additional eleven staffing positions. He explained the Board has been functioning with the help of temporary staff and that it is essential to make these temporary positions permanent. Due to the renewal fee increase he can now submit a BCP to request additional staff. He discussed the Governor's Executive Order mandating three furlough days each month and the impact that this is having on staff's workload. He clarified that the Board is funded one hundred percent by the licensing fees and not by the State's General Fund.

- (C) Diversion

Ms. Mitchell reported on the briefing paper included in the August meeting book which explained the status of the diversion contract.

Ms. Mitchell explained the legislature passed SB1441 which established the Substance Abuse Coordination Committee (SACC) that is comprised of the Director of DCA as Chair and all the executive officers from all the health care Boards. She directed members to the handout which includes the SACC meeting minutes from the past meetings along with draft uniform standards for 1-12. The next SACC meeting is scheduled for September 2, 2009.

Mr. Hartzell requested that if members have any comments on the uniform standards that are included in the handout that they provide them to him by August 31, 2009 so he can bring them forward at the next meeting. He further explained the difference between some of the other Board's diversion programs under DCA and the Physical Therapy Board's Diversion Program. The Physical Therapy Board does not divert discipline but uses the diversion program as another component to monitor licensees that are on probation. He is campaigning to change the title of the Diversion Program to the Substance Abuse Monitoring Program.

Mr. Hartzell explained that the DCA will be considering in the new Enforcement Plan Model on whether to eliminate the Board's Diversion Program. He is opposed to using the Diversion Program in lieu of disciplinary action and that the Physical Therapy Board does not utilize the program in this manner. However, he is in support of keeping the diversion program as another avenue to monitor licensees with substance abuse problems that are in the program as a result of disciplinary action or if a licensee self-refers into the program.

Ms. Mitchell reported that the Physical Therapy Board is the only Board that requires the participants in the program to pay the entire cost of the program, which can cost a participant up to six hundred or more dollars a month

(D) Impact of the State's Economic Situation

Mr. Hartzell handed out a proposed motion that he drafted for the Board to discuss and possibly take action. It was a motion that asks the Governor to exempt the Physical Therapy Board and the Division of Investigation from the mandated furlough days. He explained the Board will be held accountable for any tasks that staff is not able to complete in a timely manner due to the furloughs. He is required to report to the DCA any backlogs the Board is experiencing and he will be reporting this information more aggressively. The Board will be experiencing backlogs due to the Governor's mandated furloughs. He reviewed the proposed motion and explained the hardships staff has faced due to the furlough days.

After further discussion, the Board members agreed to wait to take action on the motion until they have a chance to review the final version of the DCA's 2009 Enforcement Plan Model. The Board will review this again at the November Board meeting.

(E) Newsletter

Ms. Mitchell directed members to the memorandum that was included in the August meeting book and reviewed the list of articles that are to be published in the next Progress Notes. She also identified additional articles that members have requested to be included in the next newsletter from Board discussion at this meeting. Ms. Mitchell explained the Board will be using the services of the Office of Publications, Design, and Editing (OPDE) at the DCA to create and print the next Progress Notes. She reviewed the deadlines for submitting articles and explained that all articles must be submitted at one time to OPDE.

Public comment: CPTA will email staff information regarding CPTA's continuing competency requirements.

17. Consumer and Professional Associations and Intergovernmental Relations Report

– *Steven K. Hartzell*

Brian Stiger introduced himself as the Governor's newly appointed Director of DCA. He provided an overview of his experience and discussed the new 2009 Enforcement Model Plan that was handed out which compares the existing enforcement model to the new enforcement mode. He explained the DCA is reviewing the enforcement process, as the current process is unacceptable. The new plan is very aggressive and the timeline to complete the new enforcement plan is within sixty and ninety days. The DCA will be establishing a new Enforcement Compliance Officer at the Deputy Director level who will be responsible in overseeing and auditing all the enforcement programs for all the Boards and Bureaus.

The DCA is looking into expanding the enforcement program to include staffing non-sworn special investigators to reduce costs and to assist with the complaint investigative process, provide the executive officers with more authority to suspend a licensee if the crime or complaint is at a more serious level, and for the DCA to have on staff an administrative law judge. He further reviewed the handout on the new Enforcement Model Plan and the expectations that the DCA has in ensuring that public protection is at the highest priority and that complaints are processed in a timely manner.

Mr. Stiger realizes that Boards may need to seek statutory changes in order to comply with the new plan. The draft Enforcement Plan was introduced to the legislature last week and the DCA will be updating the legislature as the plan is developed.

President Jewell expressed her interest to the Director that she is looking forward to seeing more details of the plan.

(A) California Physical Therapy Association (CPTA)

Ms. DeFoe, CPTA's Executive Director, reported she confirmed that the 2010 CPTA conference will not overlap with the FSBPT's conference next year.

(B) FSBPT

No further discussion.

18. Rulemaking – Rebecca Marco

(A) Rulemaking in Progress

Ms. Marco directed members to the May agenda book to review the 2009 Rulemaking Calendar. She indicated the ELEERS were included in the 2009 Rulemaking Calendar and that they will continue to be included in the 2010 Rulemaking Calendar. She explained the Board must include all regulations on the Rulemaking Calendar that it is considering to revise.

(1) Continuing Competency

Ms. Marco reported the continuing competency rulemaking file will be filed with the Office of Administrative Law (OAL) on Monday August 24, 2009. OAL has 30 days to review and approve the file and once approved it will be filed with the Secretary of State's office.

(2) Model Guidelines for Issuing Citations and Imposing Discipline

Ms. Marco reported the Model Guidelines for Issuing Citations and Imposing Discipline rulemaking file will be in effect in three weeks.

19. Strategic Planning – Debi Mitchell

Ms. Mitchell directed members to the Draft Strategic Plan that is included in the May agenda book and asked if they have any changes prior to adopting the Strategic Plan. She reported that the names on the front page will be changed to reflect all current appointments.

The Board made the following updates to the Strategic Plan:

- Goal Four, Objective 4.2, change the objective to read “Monitor the implementation of the continuing competency requirements.”
- Remove under Goal Four, Objective 4.2, Major Activities, Collection of continuing competency fee, change third bullet to read, “Establish inactive license status” and bullet four to “Monitor exemptions from the continuing competency requirement.”
- Goal Five, Objective 5.3, Major Activities, last bullet change the title iLicensing to “Breeze”.

MOTION: To adopt the 2009 Strategic Plan as amended.

MOVED: Mr. Turner SECOND: Ms. Takii

VOTE: 4-0 Motion carried.

Ms. Mitchell reviewed the draft Strategic Plan Matrix Chart included in the August meeting book and asked if the members approve of using this format to track the timelines and completion of achieving the Board’s Strategic Plan.

All members agreed to use the Strategic Plan Matrix Chart to track the progress of accomplishing the goals of the Strategic Plan.

20. Assistive Personnel Task Force Update – Sara Takii, PT

Ms. Takii reported the task force was not able to address wellness at this meeting due to the length of discussion on the physical therapy aide and physical therapist assistant supervision. Due to the volume of comments that were received from the public it was agreed that the task force should start from scratch again and formulate language based on the comments received. The revised proposed language that the members are reviewing today is the outcome of the task force meeting.

In developing the physical therapist assistant language of section 1398.44 of Title 16 of the California Code of Regulations, the task force took into consideration developing language that not only specified how the physical therapist assistant must be supervised but that the physical therapist assistant must also take responsibility for knowing who the physical therapist of record is for the patient they are treating. The proposed language specifies what the physical therapist assistant is not authorized to perform and what they are required to do as a physical therapist assistant. Ms. Takii reported the task force also took into consideration when writing this language what the Board can support when enforcing the regulation when a complaint is submitted.

Discussion by the Board and the public included:

- Need to clarify the language in section d(4) “write progress notes” to possibly add to other health care providers, excluding daily chart notes
- Does this language indicate if there is not a co-signature that the physical therapist is providing adequate supervision?

- In section d(7) to modify the language to “Provide treatment if the physical therapist assistant has an ownership interest or serves in a leadership role in the physical therapy business where the care is being provided
- Who will be responsible to ensure the written system of transfer to the succeeding physical therapist? Legal’s suggestion would be to change the language to read “The physical therapist of record shall ensure a written system of transfer to the succeeding physical therapist exists.
- What jurisdiction does the Board have to require the facility have a written system as written in section b? A suggestion was made to write the language for the written system to identify “who is responsible to ensure a written system is in place”.
- How do you define guidance in section c? Suggestion would be to change the word guidance to perform or document.
- To possibly delete the language in section e(a) and move it to section 1399.12 since the language addresses documentation.

Ms. Alviso expressed her appreciation of the handout on the task force’s objectives and results from the task force meetings.

MOTION: To direct staff to distribute to licentiates the proposed language with a disclaimer that this is a report from the task force and the Board is seeking public input as a part of the process of developing the language.

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

Legal counsel suggested that the documentation requirements should be addressed in the Patient Document regulation which is currently 1399.85 and is noted on the proposed language as changing to 1399.12 in order to properly place this section in the physical therapy regulations. All patient documentation whether it is the physical therapist, physical therapist assistant, or physical therapy aide should be addressed in this section and not in the supervision regulations.

Ms. Freedman explained why legal counsel modified the task force’s language in section (b). It was clarified by Ms. Mitchell that the paragraph under section (a)(7) in the proposed draft was removed by the task force at their last meeting.

Board discussion included revising the proposed language to include:

- Section (b) to address nonlicensed personnel
- Adding a section (c) to address physical therapist assistant documentation
- Adding a section (d) to address student or intern documentation.
- To write language that consolidates all the record keeping into this section.
- Adding language to section (a) that indicates “A physical therapist shall sign and date, and document in the patient record the following:” Ms. Freedman explained adding electronic signature to the regulation is an easy fix as this type of language is addressed in other regulations.

The Board directed legal counsel to draft language based on the discussion today to include documentation of the physical therapist, physical therapist assistant, and the physical therapist’s responsibility of the physical therapy aide documentation and return the draft language to the Board at the next Board meeting in November.

Ms. Takii reported the Board received only four responses from the physical therapy programs on the survey that was sent out asking if the schools use the term “intern” or “student”. Ms. Marco reported she surveyed the schools via email and sent out the survey three times and the responses received indicated the term “student” is being used. She received responses from mostly physical therapist assistant programs. Mr. Hartzell recommended adding this to the upcoming newsletter soliciting more input from interested parties before the Board takes further action.

21. Legislation Update – Steven K. Hartzell

(A) AB 721; Nava. Physical Therapists; scope of practice.

Ms. DeFoe, CPTA’s Executive Director, reported this bill was sponsored by CPTA and it was recently heard in committee; however, it did not pass out of the committee. She reported that it was not voted down but the bill did not receive enough votes for it to pass. She indicated the CPTA had a large volume of support from licentiates even though it did not pass. This bill was not granted reconsideration so the CPTA will not be able to bring it forward again.

(B) AB 867; Nava. California State University: Doctor of Nursing Practice degree.

Ms. DeFoe reported the CPTA is watching this bill due to the California State Universities only being allowed to offer a masters degree. All the financial impact has been removed from the bill but it is still residing with the senate. She reported that CAPTE is currently moving forward to require all physical therapist programs be accredited at the doctorate level. The CPTA is looking into this at this time.

(C) SB 389; Negrete McLeod. Professions and vocations.

Mr. Hartzell will email the members an update on this bill.

(D) SB 599; Negrete McLeod. Licensing boards; disciplinary actions.

Mr. Hartzell will email the members an update on this bill.

(E) Moscone-Knox Legislation Re: Corporate Practice for Podiatric Corporations.

Ms. DeFoe reported this bill did not pass out of committee but it was granted reconsideration. She anticipates this bill to be brought back next year.

22. Discussion and Action on the Examination/Certification Process for Clinical Instructors – Martha Jewell, PT

President Jewell directed members to her briefing paper in the May agenda book and to her recent handout for information on this agenda item. She explained the certification process for clinical instructors and the course that is provided by the American Physical Therapy Association (APTA). Recently it was brought to her attention by a physical therapist faculty member (who is also an instructor for the APTA Clinical Instructor Certification courses offered in Northern California) that a number of students have been cheating and/or failing the certification examination and the problem this can cause for the Board. In her discussion with the APTA it was recognized that the APTA does not have any standards developed or a test validation mechanism to determine if the information on the examination is valid. She discussed with the APTA that the FSBPT may want to consider including this item as part of their process of standardizing the foreign educated physical therapist education. The FSBPT may be able to provide some standardization for clinical instructors since the APTA does not have the need to standardize this and do the test validation. President Jewell suggests that the Board consider reviewing this requirement of certifying clinical instructors to be able to supervise foreign educated physical therapists during their period of clinical service is effective.

Ms. Takii replied that she recently took this examination and it is of her opinion that this examination is an effective tool to ensure that foreign educated physical therapists are supervised properly and meet the level of experience to become licensed as physical therapists in California.

Ms. Freedman indicated that cheating on this type of examination may be considered unprofessional conduct and the licensee should be reported to the Board.

Ms. Takii indicated she will bring this item up at the FSBPT meeting and then report her discussion to the Board in November.

President Jewell reported that she will continue to pursue a dialog with the APTA, she will direct the person she spoke with to write a report to Mr. Hartzell directly, and Ms. Takii will bring this topic up at the FSBPT meeting for discussion.

23. Scope of Practice for Electromyography

Darren White, PT, EN explained to the Board the problem that ENs (Electromyographer) are having in receiving reimbursement from Medicare for EN services they provide. Palmetto is a company that processes the reimbursement payment for services rendered by Medicare. He stated that Palmetto is refusing to pay for EN services by physical therapists that are EN certified because Palmetto contends that a physical therapist is not authorized within the scope of practice to perform this service. He is asking the Board to write a formal position that clarifies that a physical therapist who is certified as a EN is authorized to interpret the data in order to perform EN services for submission to Palmetto in order for physical therapists to be reimbursed through Medicare. Mr. White also made the distinction that while physical therapists should be able to interpret data under current law, technicians cannot.

Arnold Trip, PT, EN stressed to the Board the necessity for their assistance in providing a position on what ENs are authorized to perform. He recited a statement made on Palmetto's website that incorrectly states, "The Physical Therapy Board of California states that with appropriate certificates a physical therapist can perform but not read or make a diagnosis under conduction of tests or ENs. They can do the technical component only." He explains that Palmetto has abstracted the word interpretation from the clause in the Business and Professions Code 2620.5 that says a physical therapist may perform electromyographic and nerve conduction studies provided they do not make diagnostic or prognostic interpretation of the data they contain. He emphasized the word interpretation. Mr. Trip said that Palmetto further incorrectly states, "California law clearly does not allow physical therapist to perform the full global set of services, which include interpretation".

He stated that the California Code of Regulations section 1399.67 reads "The examination for certification in electroneuromyography shall test applicants in the following subject areas:

- (a) Basic science as related to electroneuromyography:
 - (1) Anatomy
 - (2) Electrophysiology
 - (3) Neuromuscular pathology.
- (b) Clinical science as related to electroneuromyography:
 - (1) Instrumentation
 - (2) Pre-examination patient evaluation
 - (3) Examination procedure and process
 - (4) Interpretation and recording of examination records and data.**

(c) Practical application of electroneuromyography:

- (1) Needle examination of muscles
- (2) Motor and sensory nerve conduction velocity examinations.
- (3) Handling of equipment
- (4) Patient preparation and management
- (5) Data collection, presentation and summarization. (*emphasis added*)**

Therefore, Mr. Trip stated, the regulation clearly requires physical therapists who are EN certified to interpret, record, and collect data. He further expressed the importance of being able to interpret the data and to be able to receive reimbursement for the EN services they provide.

Alain Claudel, PT, EN stated that it is a dynamic test and must be performed by a licensed physical therapist.

Ms. Freedman stated that the Board does not regulate billing. She indicated that legal counsel will continue to research this issue and will write a response based on the interpretation of the statute and regulations. She explained the difficulty of not being a practitioner herself that it would be helpful in order to write an opinion that she would prefer to visually be able to see the procedure being performed.

Mr. Tripp and Mr. White both invited Ms. Freedman to come and watch this procedure being performed at one of their clinics. She will need to provide them with a date she is available then they will obtain a patient's consent for her to watch them perform this service.

Public comment: Tamika Island from CPTA said she would forward information that CPTA has sent to Medicare on the subject.

24. Development of Consequences for Non-Compliance of Continuing Competency

Mr. Hartzell reported that he does not recommend amending the continuing competency language to include consequences but that this will most likely be added to the Disciplinary Guidelines in the future.

President Jewell requests that this item be placed on the January 2010 meeting agenda since the November 2009 meeting is only a one day meeting and the Board may be limited on time to go into an in-depth discussion on this issue.

25. Application & Licensing Services Report – Ilda Romo

Ms. Romo directed members to the Application and Licensing Services Report included in the August agenda book and asked if members had any questions on the statistical information included in the reports.

Ms. Alviso asked if staff has any comparisons across the nation on the examinations in order to compare California's passing rate with other states.

Ms. Romo responded that she will research this information and, if available, include it in the next report.

President Jewell believes at some point in time the Board needs to compile data on the manpower issues and directed staff to begin the process of looking at how to compile the data.

Ms. Romo reported that due to the furloughs staff is reviewing the current application and licensing process to determine if the Board can make changes in order to process the application in a timely manner. She is requesting approval from the Board to change the process of sending the applicant a copy of their examination score. Included in her briefing paper are options for the Board to consider adopting. She is recommending option number two which staff will only send the applicant a copy of their examination score letter if they fail the examination.

Mr. Hartzell explained this does not require a motion by the Board but that this was for informational purposes so that the Board is aware of operation procedures staff is looking at changing due to the furloughs.

Ms. Romo reported the Board will begin using the electronic wall certificate which will result in the licensee receiving the wall certificate in a more timely manner. The wall certificate is generated through EDD and the Board President's signature is electronically placed on the wall certificate.

26. Agenda Items for Next Meeting – November 12, 2009 – Ohlone College, Fremont

- ELEERS vs. the FSBPT's CWT
- Directed staff to determine if the May meeting will take place in Los Angeles or Fresno depending on the response staff receives from the physical therapy programs.
- Directed staff to inquire if any hospitals would like to host the Board's meeting in order to make the meeting accessible to health care professionals at work.

27. Public Comment on Items not on the Agenda

28. Adjournment

**MOTION: To adjourn the Physical Therapy Board of California meeting at 4:58 pm.
MOVED: Ms. Takii SECOND: Ms. Alviso VOTE: 4-0 Motion Carried**

For the sake of clarity, the meeting minutes are organized in numeric order to reflect their original order on the agenda, although several issues were taken out of order during the meeting.

**Motion: To approve the August 19 and 20, 2009 Board Meeting Minutes as written.
Moved: Ms. Takii Second: Ms. Alviso Vote: 4 -0 Motion carried.**

Revisions to the August 19 and 20, 2009 Meeting Minutes were re-visited at the January 28, 2010 San Diego Meeting.

**Motion: To correct the minutes of the August 19 and 20, 2009 meeting which were adopted November 12, 2009 to amend line 438 on page 9 of the minutes to delete the word "of" and replace it with "for knowing".
Moved: Ms. Jewell Second: Mr. Turner Vote: 4-0 Motion carried.**