



Physical Therapy Board of California

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APPROVED MINUTES
PHYSICAL THERAPY BOARD OF CALIFORNIA MEETING
November 12, 2009
Ohlone College Newark Campus
39399 Cherry Street
Newark, CA 94560
www.ohlone.edu

8:30 AM Call to Order and Roll Call

The meeting of the Board was called to order by President Jewell at 8:35 a.m. All members were present and a quorum was established.

1. Disciplinary Decisions

The Board convened in CLOSED SESSION to deliberate on disciplinary actions pursuant to Government Code section 11126 (c) (3).

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

The Board reconvened at 10:25 a.m.

At this time, President Jewell thanked Ms. Einfalt for hosting the Board's meeting at Ohlone College and welcomed the students of Ohlone's physical therapist assistant program to participate. The Board introduced themselves and explained their role as members.

2. Approval of Minutes

(A) August 19 & 20, 2009 PTBC Meeting

MOTION: To approve the minutes as written.

MOVED: Ms. Takii

SECOND: Ms. Alviso

VOTE: 4-0 Motion carried.

3. President's Report – Martha Jewell, PT

(A) 2010 PTBC Meeting Dates

Mr. Harzell advised the Board that the dates of the Department of Consumer Affairs' (DCA) Regulatory Next Practices Working Conference in Sacramento is scheduled for the week of July 26, 2010 and indicated that the Board's meeting date will be on Thursday, July 29, 2010.

Ms. Jewell asked whether the Board felt a strategic planning meeting in March would be set. The Board felt that it may be too soon to revisit the Strategic Plan in its entirety but discussed identifying specific items to address in March. The Board decided to hold the March dates and revisit the need at the January, 2010 meeting.

Ms. Takii advised that the Assistive Personnel Task Force will meet on Friday, February 26, 2010.

(B) Update

Ms. Jewell offered a summary of the Board's current events.

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

(A) Update

Mr. Hartzell advised the Board that Debi Mitchell accepted employment with the Pharmacy Board and acknowledged her outstanding contributions as an employee of the Board. He also advised the Board of the addition of Lita McFadden, Waltraud Blanchard, Jason Kaiser, Lisa Chullino and Susan Burrows and further advised that the Board has run out of physical space for staff and is seeking additional space.

(B) FY 2009-2010, FY 2010-2011 Budget

Mr. Hartzell directed the members to the September CALSTARS report and indicated that it did not include current budget information. He drew their attention to multiple line items and offered explanations of expenditures.

Ms. Jewell questioned the budget expenditure of \$10,000 to the Federation of State Boards of Physical Therapy (FSBPT). Mr. Hartzell explained it was to reimburse the FSBPT for special accommodations granted to examination candidates.

(C) Diversion

Mr. Hartzell advised the Board there is a meeting scheduled on Monday, November 16, 2009 to review the final standards established by the Diversion Standardized Guidelines Committee (Committee) and that this meeting should bring closure to the charge of the Committee. Mr. Hartzell warned the Board that DCA may be making a recommendation to the Committee to end all Diversion programs. He further explained the history of the Diversion program and some of the misconceptions about the program structure.

(D) Impact of the State's Economic Situation

Mr. Hartzell indicated he didn't see a quick change in the state's economic situation and it wasn't likely there would be a timely budget. He stressed the impact the furloughs are having on staff and workload.

(E) Newsletter

Staff was hopeful to have the articles for the newsletter to the Publication, Design and Editing team the following week.

(F) Department of Consumer Affairs Regulatory Next Practices: A Working Conference

This was addressed in agenda item 3A.

5. Consumer Protection Services Report

(A) Statistics – *Elsa Ybarra*

Ms. Ybarra directed the Board to the summary included in the agenda book, and presented additional statistics at the meeting. She advised the Board that with the benefit of additional Consumer Protection Services Program staff, there should be a future reduction of processing times.

(B) Proposed Enforcement Model

Mr. Hartzell advised that a model has been developed which includes a budget change proposal to augment the budget for additional staff designated to enhance enforcement programs. He discussed some of the more significant procedural changes proposed, such as changing the Board's burden of proof from "clear and convincing" to a "preponderance of evidence" and the use of non sworn investigators vs. sworn investigators. If it is determined that the Board has the authority to directly employ its own non-sworn investigators the Board may wish to pursue that. The underlying focus is to reduce the complaint processing times to one year or less.

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

Ms. Romo presented the report included in the agenda book. Ms. Jewell questioned whether the data could be used to address manpower needs in the future. Mr. Hartzell indicated that the inactive license category in addition to the continuing competency requirements, may contribute to workforce shortages.

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

(A) California Physical Therapy Association (CPTA)

Tameka Island, representing the CPTA indicated she had nothing to share at this time.

(B) FSBPT

Ms. Alviso was acknowledged for her appointment to the Finance Committee. Discussion took place under agenda item 8.

8. Federation of State Boards of Physical Therapy (FSBPT)

(A) 2009 Annual Meeting

Ms. Takii referred to her report in the agenda book and commented on her appreciation of the numerous sessions made available to the attendees of the FSBPT meeting. She also commended Ms. Alviso on her campaign efforts for a position on the Board of Directors.

(B) Continuing Competency Committee – Debra Alviso

Ms. Alviso indicated there wasn't a lot of new information to share but ask whether the information regarding the FSBPT competency examination is included in the newsletter. Ms. Marco responded she would ensure that it was.

(C) Foreign Trained Standards Committee – Sara Takii

Ms. Takii expressed enthusiasm for the mission of the Credential Standards Review Committee and its work towards work force issues. She also requested work force issues be placed on the next agenda.

Mr. Hartzell announced that Examination Oversight Committee will be meeting in December and that one of the topics for discussion will be exam subversion.

9. Assistive Personnel Issues

(A) Task Force Update – Sara Takii

Ms. Takii updated the Board on the outcome of the October 23, 2009 task force meeting and referred the Board to the draft minutes included in the agenda book. It was noted that the minutes were still in draft form since the task force had not yet adopted them formally. Ms. Takii further explained that most of the time the task force focused on the supervision of the assistant and aide and didn't spend much time on the wellness issue; however, she felt that more attention was given to wellness than was captured in the minutes. Staff was directed to review the tape from the October task force meeting to prepare more descriptive minutes on the issue, The task force is scheduled to meet next on February 26, 2010. Ms. Jewell asked if there were any further comments by the Board on the minutes. Ms. Yazigi, legal counsel responded to a couple of issues raised by the Board.

(B) Physical Therapy Aide Supervision – Proposed Amendments to Section 1399 of the California Code of Regulations

Ms. Alviso expressed concerns with the language in 1399(C) (2). She indicated clarity to specify non-patient related tasks are under the supervision of the physical therapist should be considered. Ms. Freedman, legal counsel pointed out that the language Ms. Alviso was referring to is existing language, not proposed. Mr. Hartzell stated the language in question addresses the aide as a safety person. Ms. Jewell suggested the task force address the language addressing the supervision of the aide while doing non patient related tasks and Mr. Hartzell responded it may be most appropriate for legal counsel to address it; therefore, the issue clarifying the restrictions on the aide during gait or transfer training was left with legal counsel.

Ms. Yazigi pointed out a question raised at the task force meeting regarding the responsibility of the Physical Therapist at all times for the conduct of the aide. Does this mean that the Physical Therapist is responsible for the aide even while the aide is not on duty? Her suggestion was to qualify the issue by amending the language to delete the words "on duty" and add "performing patient related tasks and non patient related tasks as defined in subsection (c) (2)".

MOTION: To strike the words "on duty" from proposed section (C).

AMENDED MOTION: To also delete the reference "as defined".

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

MOTION: To withdraw the motion to amend the language in section 1399(b)(3)(D).

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

(C) Physical Therapist Assistant Supervision – Proposed Amendments to Section 1398.44 of the California Code of Regulations

A student of Ohlone College asked whether the proposed language was new or existing language. He was advised that the entire regulation had been deleted and all new language proposed.

Since the Board had no comments on the proposed language, Mr. Hartzell advised the Board of options for proceeding from here. He suggested 1) including the language as a public forum topic on the Board agenda in January, 2) include it in the newsletter or 3) proceed with the rulemaking process. The Board opted to include it in the newsletter as a mode of receiving public comment prior to proceeding to the rulemaking process.

(D) Documentation Required by Each Provider – Proposed Amendments to 1399.85 of the California Code of Regulations

The Board discussed the necessity of requiring documentation of the evaluation since it would be included in the examination.

MOTION: Strike “Evaluation” in section (a) (2) and leave when the patient is to be reevaluated and the reevaluation.

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

The Board directed staff and legal counsel to organize and structure proposed language for newsletter publication.

(E) Identification of Students and Interns – Possible Regulation Changes to 1398.37 and 1398.52 of the California Code of Regulations

This was discussed as part of agenda item 10.

10. Rulemaking – Rebecca Marco

Agenda item 10 was taken out of order. It was addressed prior to agenda item 9.

(A) Continuing Competency

Ms. Marco advised the Board that the regulation went into effect on November 6, 2009. She also indicated that staff was concluding the development of an application for agencies seeking approval as an approval agency as defined in the regulation.

(B) 2010 Rulemaking Calendar

Ms. Marco presented the rulemaking calendar for review. She advised that the request to add language regarding the Delegation of Authority was new from last year's calendar. It was noted that wellness needed to be added to the calendar. Ms. Island representing the CPTA requested the issue of manipulation/mobilization be placed on the calendar. Ms. Alviso asked if they had language to propose for consideration by the Board. Ms. Island indicated they would and she would get it to Board staff in time for the January meeting.

MOTION: To approve the rulemaking calendar as edited.

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

Ms. Marco suggested that since it was a very demanding calendar, the Board may want to consider prioritizing. It was decided that the Board would consider the Strategic Plan and prioritize accordingly.

Board recessed for lunch until 1:30 p.m. When it reconvened it considered agenda item 9.

11. Strategic Plan Progress Report

There was nothing new to report.

12. Legislation Update – Steven K. Hartzell

(A) Summary of 2009 Legislation

Mr. Hartzell updated the Board of the status on legislation followed by the Board in 2009.

(B) Suggestions for Legislation for 2010, including Revision of Physical Therapy Practice Act

Mr. Hartzell advised the Board of the history in the development of the language and then proceeded to summarize each section. He suggested to the Board that the issue of physical therapist assistants acting as a clinical instructors should be addressed in the proposal. The issue regarding identification of clinical instructor or clinical supervisor was also considered.

Since the reference to mobilization or manipulation can be addressed in regulation, Mr. Hartzell suggested deleting it.

Strategic concepts were discussed regarding improving opportunity for successful implementation of legislative proposal. The Board discussed the following: (the following references and cites are to the draft proposed Practice Act language).

- Section 2608.3 – (b) replace “supervisor” with “instructor” and add physical therapist assistants as clinical instructors. Strike subsection (c) since mobilization or manipulation can be addressed in regulation.
- Delete proposed 2620 language and restore to its original form or simply eliminate the words “initiate treatment” from 2620 (a) and the words “including mobilizations or manipulation” from subsection (b).
- Eliminate reference to reevaluation in section 2622(a).
- Strike 2630.3(d) since it's included in the proposed regulatory changes to section 1398.44.

- Strike 2630.4(d). Strike language since it too can be addressed in regulation. Ms. Alviso suggested eliminating the limit to one aide per Physical Therapist from statute and address it in regulation.
- Eliminate reference to “intern” in 2633.7 and throughout the practice act.
- Section 2636.7 references issuance of a temporary permit. Mr. Hartzell suggested that the issue needed further review to ensure that it doesn’t conflict with section 2639.
- Mr. Hartzell brought to the attention of the Board that the timeframe for cancelling of a license will decrease from 5 years to 3 years in section 2646.
- Section 2651 “or such other body” should be consistent with section 2650(a)(2).
- Section 2653(b) requires demonstrating proficiency in English. Concerns were raised regarding the addition of the requirement; however, the Board believes it is a contributor to the failure rate of the examination.
- Section 2655.3(e)(2) – delete word approved and (3) make “Meet” singular
- Section 2660(e) – return the reference to alcohol as an addiction considered a violation.
- Section 2682 – change language to indicate the physical therapy fund is for the sole use of the PT Board. Ms. Jewell suggested change “appropriated” to “solely”.

Ms. Island, CPTA representative advised that the Board will have until February 27, 2010 to introduce legislation and it can be amended at any time in either house.

MOTION: Direct staff to seek an author for the practice act revisions as modified during discussion and give staff and legal counsel the flexibility to make changes.

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

13. Elections

(A) PTBC President

MOTION: Ms. Alviso nominated for president, she declined.

MOVED: Ms. Takii

Since Ms. Alviso declined the nomination, there was no second to the motion or vote.

MOTION: Ms. Takii nominated for president, she accepted.

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

(B) PTBC Vice-President

MOTION: Ms. Alviso nominated for vice president.

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

(C) FSBPT Delegate

MOTION: Ms. Jewell nominated for delegate.

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

(D) FSBPT Alternate Delegate (Primary)

MOTION: Ms. Alviso nominated for alternate delegate (primary).

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

(E) FSBPT Alternate Delegate (Backup)

MOTION: Mr. Turner was nominated as alternate, the Executive Officer and legal counsel as as backup.

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

14. Public Comment on Items not on the Agenda

Mr. Turner reported on the Citizens Advocacy Center meeting. He characterized the meeting as “decent” and advised that he didn’t gain as much as he would have liked but he was glad he went. He was disappointed that there wasn’t a larger attendance. He reported on the history of a public member’s role on a Regulatory Board.

15. Agenda Items for Next Meeting – January 28 & 29, 2010 – San Diego, California

- Work force shortages
- Animal therapy by physical therapists
- Mobilization/Manipulation issues
- Wellness questions for direction of Board
- Enforcement Model
- Rulemaking Calendar

16. Adjournment

The meeting was adjourned at 5:58 p.m.

Motion: To approve the November 12, 2009 Board Meeting Minutes as written.

Moved: Ms. Jewell Second: Mr. Turner Vote: 4 – 0 Motion carried.

Martha Jewell, PT, PhD – President

Date